CHARTERED ACCOUNTANTS™
AUSTRALIA + NEW ZEALAND

24 July 2020

Australian Securities and Investment Commission
Level 5
100 Market Street
Sydney NSW 2000

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

Dear Sir or Madam,

ASIC Cost Recovery Implementation Statement: ASIC industry funding model 2019-20

Chartered Accountants Australia and New Zealand (CA ANZ) welcomes the opportunity to comment on ASIC's cost recovery implementation statement (CRIS) concerning its industry funding model for 2019-20.

The ASIC industry funding model (IFM) affects our members in a variety of ways as our members include auditors, registered liquidators, superannuation advisers, and financial advisers.

Impact of COVID-19 on CRIS

The COVID-19 pandemic has highlighted some of our previous concerns with the ASIC IFM. The due date for payment of the 18/19 fees for professionals such as insolvency practitioners and financial advisers coincided with the height of the lockdown, when many businesses were experiencing a significant downturn in revenue. Additionally, the pandemic is likely to further reduce the number of registered professionals and/or the number of events which in turn will increase the cost burden on the remaining participants.

Further, we note the CRIS does not appear to have been adjusted to reflect the impact of the COVID-19 pandemic on entities subject to fees under the IFM. As ASIC works towards determining the final version of the current CRIS (December 2020), consideration should be given to the challenges currently being experienced by many businesses, in particular small business, during this time. The Government has provided much needed support to some of these businesses through schemes such as JobKeeper and cashflow boost.

It is important for ASIC to consider the impact of the IFM on those entities who have needed to access Government support during this time. We consider it essential that costs recovered through the CRIS mechanism are carefully balanced against the reasonableness and appropriateness of levy's on entities and professionals in the current economic environment. This is particularly important in the context of small and medium sized entities and professional firms, where both CRIS and the impact of the pandemic could have a disproportionate impact. We are specifically concerned about the already relatively small population of registered liquidators, who's services will be critical in the coming period.

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Delayed release of CRIS relative to the financial period

The 2019-20 CRIS (the current CRIS) was released for consultation on 12 June 2020 for the 19-20 financial year. This is significantly later than the 2018-19 CRIS, which was released for consultation in March 2019 with the final version for the period released in June 2019. As noted in the current CRIS, the final version of the current CRIS is not expected to be released until December 2020, six months after the end financial year to which it relates. The timing of the current CRIS raises concerns with respect to the recoverability of levies for those industries that are required to pay based on each engagement or event.

In practice, we note that many practitioners will rely on the information provided by ASIC in the CRIS and will embed the indicative levy into engagements. For example, in 2018-19 some of our members practicing as registered liquidators were incorporating the June 2019 indicative levy of $83 per notifiable event into engagements up until the final levy of $97.42 was released in December 2019. The difference of $14.42 (17.37%) per engagement, which may appear to be immaterial, has not been recoverable for many engagements performed during that period and has been an additional cost incurred by the practitioner.

Further for this financial year, practitioners would have continued to use the estimated $83 for the first 6 months of the period and then adjusted for the second six months. However, both of these estimates fall short of the amount now indicated in the current CRIS. Additionally, based on the 18/19 period, there could be another increase in the final CRIS – particularly given the significant decrease in insolvencies for the final quarter of 19/20 – which may impact the underlying calculation metrics. All of these matters represent a significant increase, for an industry already struggling with decreases in insolvencies and recoverability of fees for work performed.

We recommend ASIC adhere to the publicised release dates for CRIS in advance to allow those captured under the model to adequately prepare for any additional costs.

Lack of transparency – sector budget cost

We note that within the CRIS, overall details on regulatory activities and sub-activities that are subject to industry funding (table 4) has been shared. However, in each sector, only top line expenses (e.g. surveillance, other regulatory activities) and costs (the total dollar amount) have been published. Considering the significant movements in costs for certain sectors, we recommend ASIC provide further sub-activity cost details outlining how the budgeted costs will be spent, as they relate to that sector, which will allow for greater transparency and understanding activities and expenses for each sector. As noted above, it is important that ASIC considers the reasonableness and appropriateness of significant movements in costs during this challenging time for many businesses.

Regulator Performance Framework: ASIC self-assessment for 2018/19

In February 2020, we provided feedback to ASIC on the Australian Government's Regulator Performance Framework (RPF) for the 2018-19 period. Our submission noted the importance of greater transparency around how ASIC assesses its progress towards achieving the KPIs, via quantitative and qualitative metrics and targets.

The RPF self-assessment report for 2018-19 has not yet been published and we note the report for the previous period (2017-18) was published in April 2019. We consider the RPF self-assessment report a fundamental part of providing greater transparency to those regulated by ASIC and this should be made available on a timely basis.

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Re-emphasis of comments

We note that many of the issues raised in our submission to the 2018-19 CRIS are still applicable to the current CRIS for 2019-20 and therefore we have reiterated and expanded on comments from our previous submission below.

Lack of a true 'user pays' system

The figures set out in the CRIS fortify our belief that the model does not represent a true 'user pays' system. In almost every area of ASIC's operations, enforcement actions are the largest component of the costs. We are of the opinion that the majority of enforcements costs should be borne by the entities and individuals who are the subject of the actions, not by the sector as a whole.

Significant increases

There have been significant increases in some of the costs associated with listed entities and Australian financial service providers.

Listed entities

We are concerned that the CRIS proposes that 2,177 (the same as last year) listed entities bear an additional $8.8m in budgeted cost recovery between them. This represents, on average, an increase of 29%[1] to the levy for each listed entity, to cover the additional $7.4m for enforcement activity. As noted above, we don't consider it appropriate for all entities, including those doing the 'right thing', to pay as 'users' of enforcement actions against a few companies who do the 'wrong thing'. We recognise that since the Royal Commission, ASIC has renewed and re-invigorated their enforcement approach which includes strong proactive engagement and the establishment of ASIC's Corporate Governance Taskforce. We encourage ASIC to consider a more reasonable mechanism to recover the costs of enforcement actions from companies who breach the law and to continue to focus on education and other pro-active engagement which could help to reduce the incidences of enforcement action required and provide wider benefit to entities who are trying to do the right thing.

Chartered Accountants who practice in personal financial advice under an Australian Financial Service Licence (AFSL) – limited or full.

Australian financial advisers who operate under an AFSL – limited or full have been struggling with the cost, both financial and emotional, in dealing with additional red tape as a result of the removal of the accountant's exemption. These costs encompass additional FASEA (The Financial Advisor Standards and Ethics Authority) education, exam and continual professional development requirements as well as CRIS levies. Many of our members who are financial advisers have to comply and pay other CRIS levies as well. The cumulative effect of levies, especially on small businesses who need the multiple registration, is significant.

Our members, who have limited licences, are finding these costs particularly onerous and many are looking to exit this industry at a time when the Government is trying to increase the level of qualification and professionalism of the industry.

We believe there is, and will continue to be, a need for trusted advisers to look after the financial advice needs of everyday Australians. This will be best served by retaining Chartered Accountants (CAs) in the

[1] In 2018-19 the budgeted enforcement cost for listed entities totalled $25,522,000 resulting in an average of $11,723 for each of the 2,177 entities. In 2019-20 the budgeted cost totals $32,933,000 resulting in an average of $15,127 for each of the 2,177 entities. The increase in budgeted enforcement cost per entity has been calculated to be 29%

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financial advice industry and we will continue our efforts to support this. Any exodus of CAs is likely to significantly reduce the overall level of training and expertise in the industry and we believe this might be an unintended consequence of ASIC's increased funding levy and the manner in which it is allocated.

We specifically recommend that ASIC take into consideration, when determining the CRIS levy, how the levy affects the business models of limited licencees. A reduction in these fees could be achieved by waiving the fixed levy, reducing the per adviser levy or charging a fee aligned with revenue (which was the original intention and the reason advisers are required to submit business metrics). Like listed entities, we believe that those who do the 'right' thing should not contribute towards the levy in the same way as those who do the 'wrong' thing. So, not only should ASIC take into consideration the level of revenue of a CA operating under an AFSL, they should also look at whether or not that CA has been under a banning order or any disciplinary action by ASIC, at both individual and AFSL levels. We would be pleased to discuss how ASIC could achieve the goal of retaining accountants in financial advice through development of a more appropriate fee structure.

We would also like ASIC to consider an allocation of expenses more in line with those businesses who are requiring the enforcement. We note that following the Royal Commission recommendations, the big four banks, AMP and Macquarie Bank are requiring vast enforcement resources, yet the cost of this additional activity is spread equally across all businesses, whether they are involved in enforcement activities or not. These additional costs are proving to be crippling, particularly for small businesses, and we are seeing a trend of our members considering giving up their AFSL as a result.

Inconsistency in fee structures

There appears to be some inconsistency in fees for similar services as set out in Table 91 of Appendix 2: Fees-for-service schedules. To resolve this, we recommend that:

- Form code 5112 Application fee for consent to remove compliance plan auditor $791 be reduced to the equivalent fee for the application for consent to resign as a public company auditor or be removed. (There is no equivalent fee for the consent to resignation/removal of an auditor of registered scheme, previous fee was only $39).
- Form code SFREG Self-managed superannuation funds-Application to register as an auditor $1,927 be reduced. The equivalent fee for the application to be registered as a registered company auditor is $338 and it is unclear why the SMSF fee would so much higher.
- Form code New TBC Self-managed superannuation funds-Application for cancellation of registration as SMSF auditor $899 be removed. There is no fee for the equivalent cancellation of a registration for a Registered Company Auditor or an Authorised Audit Company (and the previous fee was only $39).

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If you wish to discuss our comments, please contact the following people:

- Audit and financial reporting – Amir Ghandar on 02 9080 5866 or Amir.Ghandar@charteredaccountantsanz.com
- Insolvency and listed entities – Karen McWilliams on 02 8078 5451 or Karen.McWilliams@charteredaccountantsanz.com
- Financial advice – Bronny Speed on 02 8078 5442 or Bronny.Speed@charteredaccountantsanz.com
- Superannuation – Tony Negline on 02 8078 5404 or Tony.Negline@charteredaccountantsanz.com

Yours sincerely

Simon Grant FCA
Group Executive
Advocacy & Professional Standing

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Appendix A

About Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand (CA ANZ) represents more than 125,000 financial professionals, supporting them to build value and make a difference to the businesses, organisations and communities in which they work and live.

Around the world, Chartered Accountants are known for their integrity, financial skills, adaptability and the rigour of their professional education and training.

CA ANZ promotes the Chartered Accountant (CA) designation and high ethical standards, delivers world-class services and life-long education to members and advocates for the public good. We protect the reputation of the designation by ensuring members continue to comply with a code of ethics, backed by a robust discipline process. We also monitor Chartered Accountants who offer services directly to the public.

Our flagship CA Program, the pathway to becoming a Chartered Accountant, combines rigorous education with practical experience. Ongoing professional development helps members shape business decisions and remain relevant in a changing world.

We actively engage with governments, regulators and standard-setters on behalf of members and the profession to advocate in the public interest. Our thought leadership promotes prosperity in Australia and New Zealand.

Our support of the profession extends to affiliations with international accounting organisations.

We are a member of the International Federation of Accountants and are connected globally through Chartered Accountants Worldwide and the Global Accounting Alliance. Chartered Accountants Worldwide brings together members of 13 chartered accounting institutes to create a community of more than 1.8 million Chartered Accountants and students in more than 190 countries. CA ANZ is a founding member of the Global Accounting Alliance which is made up of 10 leading accounting bodies that together promote quality services, share information and collaborate on important international issues.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents more than 870,000 current and next generation accounting professionals across 179 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications.

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