



7 November 2022

Email: ASICIFMReview@treasury.gov.au

Senior Adviser
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Attention: Alesha Bhan

Dear Ms Bhan

DISCUSSION PAPER: ASIC INDUSTRY FUNDING MODEL REVIEW

The Stockbrokers and Investment Advisers Association (SIAA) is the professional body for the stockbroking and investment advice industry. Our members are Market Participants and Advisory firms that provide securities and investment advice, execution services and equity capital-raising for Australian investors, both retail and wholesale, and for businesses. Practitioner Members are suitably qualified professionals who are employed in the securities and derivatives industry.

The history of the stockbroking profession in Australia can be found [here](#).

SIAA members represent the full range of advice providers from online providers providing execution-only services to full-service stockbroking. All of our members are subject to the ASIC Industry Funding Model. Those of our members who provide personal advice to retail clients are also subject to the personal advice levy.

Thank you for the opportunity to provide feedback on the review of the ASIC Industry Funding Model. Our feedback in this submission relates mostly to the personal advice levy.

SIAA has engaged with government in its consultations on the issue of the review. We have attended:

- Treasury's stakeholder consultation in March 2022; and
- the Treasury roundtable on 17 October 2022.

We also provided feedback on the draft 2020/2021 CRIS in August 2021 where, in light of the unsustainable increase in levies for personal financial advice licensees, we called on the government to urgently review the ASIC levy model and make it more granular and risk-based to more accurately reflect the firms that were generating the enforcement and supervisory work.

Overview

We note that, in response to industry feedback and the significant decline in financial adviser numbers resulting in unsustainable increases in the levy for the financial advice sector, the previous government provided levy relief for personal financial advice licensees that resulted in \$34.2 million and an estimated \$35.3 million not being recovered from the personal financial advice licensee sub sector for 2020-21 and 2021-22 respectively. We consider that this is proof of the unsustainability of the model for this sub sector.

We make the following observations on matters contained in the Discussion Paper:

- While the government has not made decisions to make changes to the IFM and has flagged that maintaining the status quo remains an option, we consider that doing nothing about how the model impacts the personal financial advice sub sector is not an option as the model is unsustainable and no longer fit for purpose in this regard.
- The total funding available to ASIC – and therefore the amount recovered from industry through the IFM – has increased significantly since the commencement of the IFM. By way of illustration, in 2017-18 (when the levy component of the IFM commenced), ASIC recovered \$236.6 million in levies from 45,490 entities. In 2020-21, ASIC recovered \$314.1 million in levies (an increase in levies of 33 per cent from 2017-18) from 43,508 entities (a decrease in entities of 6 per cent from 2017-18). Enforcement costs account for around 30 per cent of total operating costs each year but actual enforcement costs have increased from \$67.6 million in 2017-18 to \$110m in 2020-21 (an enormous increase of 62.7 per cent). Our members are paying more in levies as a result.
- The IFM does not appear to have increased ASIC's cost consciousness and we question whether ASIC has improved its efficiency, productivity and responsiveness as a result of the model.
- The IFM was meant to improve equity by ensuring that only those entities that create the need for regulation bear its costs. That has not occurred as firms who have not been involved in ASIC's enforcement action have had to pay for that activity.
- The variation between the levy estimates and the actual levies have not provided certainty to entities in their budgeting process and have made it challenging to incorporate the levies into commercial decisions.
- As the IFM levy framework will be used to determine the levies for the Compensation Scheme of Last Resort, it is important that the model be fit for purpose. Otherwise, unfairness in the operation of the levy will flow through to the levy amounts raised for the CSLR.

Executive summary

- Changes need to be made to the model to address the many issues affecting the personal advice sub sector.
- Any change to the levy model must take into account the possibility of a continued fall in financial adviser numbers.

- The design of the current model does not meet the overarching principle for government charging that those who cause the need for regulation should pay for it.
- The model design does not reflect the fact that the stockbroking profession experiences very few client complaints.
- Poor transparency on costs and inaccurate estimates creates challenges for our members in budgeting for levy increases. Stakeholders are unclear how costs are allocated to the personal advice sub sector and the reasons behind the decisions.
- The majority of enforcement costs relate to matters arising from the Hayne Royal Commission. No SIAA members were called to give evidence before the Hayne Royal Commission and are not subject to relevant enforcement action, yet their levies include the costs of those enforcement efforts.
- A simplification of the design, structure and legislative framework would not necessarily change this outcome.
- Funding for the regulation of emerging sectors should be sourced from government.
- Attributing costs of illegal unlicensed conduct to the most 'relevant' sub sector is not the most appropriate recovery method. Enforcement of the licensing provisions benefits the entire financial services industry.
- It would be beneficial if a more accurate estimate of the levies could be received at a later date in the cycle.

Our detailed feedback is set out below.

Detailed comments

Question 1

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?

Changes need to be made to address the many issues affecting the personal advice sub sector.

As noted above, the levy relief for the personal advice sub sector resulted in \$34.2 million and an estimated \$35.3 million not being recovered from the sub sector for 2020-21 and 2021-22 respectively. This is proof that the model is not working for the sub sector. If the freeze had not been implemented, personal advice licensees would have been required to pay even higher levies than previously. We consider that changes need to be made to the IFM framework to address the following issues identified by industry stakeholders:

- **The precipitous decline in adviser numbers.** One of the biggest flaws in the ASIC Industry Funding Model is that levies imposed on the financial advice sub-sector are calculated according to the number of financial advisers on the FAR. This model may work well when the number of financial advisers on the FAR and the amounts to be levied remain stable. However, the decline in the number of financial advisers has been precipitous. Adviser

numbers on the FAR have fallen from 25,484 in 2017 to 15,900 as at 3 November 2022. Financial adviser numbers are expected to continue to fall. An article in a recent edition of *Money Management*¹ set out a series of scenarios that resulted in:

- 12,00 financial advisers in 20 years' time
- 6,000 financial advisers in 20 years' time
- less than 5,000 financial advisers by 2029
- zero financial advisers in five years' time.

We consider that any levy model must take into account the possibility of a continued fall in financial adviser numbers.

- **The model design does not meet the overarching principle for government charging** that those who cause the need for regulation should pay for it, and has led to outcomes such as:
 - groups of entities (a sub sector or multiple sub sectors) paying for enforcement action taken by ASIC against individual entities;
 - smaller entities paying for enforcement action taken by ASIC against larger entities, which industry deem as disproportionate and lacking in fairness; and
 - entities paying for enforcement costs relating to entities who have left the sector, due to the time lag between misconduct and enforcement action and the often-lengthy process of enforcement meaning matters may take multiple years to resolve.
- **The model design does not reflect the fact that the stockbroking profession experiences very few client complaints.** Recent complaints data from AFCA shows that for the period 2021/2022 out of the total number of 72,358 complaints, only 298 complaints were made against stockbrokers. This represents a percentage of 0.41% and needs to be considered in the context of 2.3 million trades a day on ASX. In 2021/22 only six complaints were found in favour of the client and 40 were found in favour of the firm. For the previous year, complaints against stockbrokers amounted to 490 or 0.69% of total complaints. The number of complaints against our members is declining but they continue to be liable for increasing levies.
- **Poor transparency on costs and inaccurate estimates creates challenges for our members in budgeting for levy increases.**

Question 2

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?

Stakeholders are unclear how costs are allocated to the personal advice sub sector and the reasons behind the decisions. We consider that the current level of transparency is unacceptable.

One issue that demonstrates this point is that of unlicensed advisers. Enforcement costs for

¹ Laura Dew, How many advisers could we see in 20 years? *Money Management*, 3 October 2022.

unlicensed advisers are currently charged to the personal advice sub sector. For example, we understand that ASIC is charging the costs of the Melissa Caddick enforcement action to the personal advice sub sector, despite the fact that:

- Melissa Caddick was holding herself out as a financial adviser but may also have been operating an unlicensed investment scheme,
- Melissa Caddick may have been providing unlicensed advice to wholesale clients as well as retail clients.

We consider that advisers on the FAR are doing the right thing and shouldn't be responsible for paying the enforcement costs of someone who isn't. We also consider that enforcement of the licensing provisions benefits the entire financial services industry.

Another allocation issue that stakeholders have difficulty understanding is why 60% of the costs of the Westpac case (that involved the provision of general advice about superannuation by call centre employees of a large bank) were charged to the personal advice sub sector.

We note that licensees that provide personal advice to retail clients account for 14 per cent of enforcement costs since the commencement of the IFM (average over 4 years from 2017-18 to 2020-21). However, there is little transparency or understanding about what enforcement matters are being charged to the sector.

Question 3

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?

As stated above, the current model is not equitable as it does not link the recovery of costs to the groups of entities causing the need for those costs. The majority of enforcement costs relate to matters arising from the Hayne Royal Commission. No SIAA members were called to give evidence before the Hayne Royal Commission and are not subject to relevant enforcement action. Yet, their personal advice levies include the costs of those enforcement efforts.

At the 2022 ASIC Annual Forum the Hon Stephen Jones MP, Assistant Treasurer and Minister for Financial Services spoke of how he had considered calls for banks to be held liable to cover all losses relating to scams on bank customers, but that he would not recommend this when the bank had taken every effort to warn the customer of the scam and prevent the scam transaction from being undertaken. His reasons were twofold: it would not be fair and it would incentivise scammers. The Minister's clarity on the moral hazard present in the calls for banks to be liable for all losses is relevant to our concerns about the IFM. It is not improving equity by ensuring that only those entities that create the need for regulation bear its costs — the reverse is true. The financial advice sector is bearing the costs of ASIC enforcement against larger entities and it sees smaller entities paying for that action, which is disproportionate and lacking in fairness.

A more equitable model would ensure that costs caused by entities that are no longer in the sub sector or who have significantly reduced their exposure to the sub sector, should not be charged to those who have not caused them.

Question 4

Is cross-subsidising costs for entities within a sub sector or sector more appropriate than cross-subsidising costs across all of ASIC's regulated population? If so, why?

It is apparent that those firms in the financial advice sub sector are subsidising the costs of firms who are no longer in the sub sector or who have reduced their exposure to the sub sector and are the subject of ASIC enforcement and supervision action in relation to personal advice issues arising from the Hayne Royal Commission. This is compounded by the fact that the number of financial advisers which form the denominator when determining the levy for the sub sector has fallen significantly since the model was introduced. Clearly this cross-subsidisation is not appropriate.

Question 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?

A major issue is the 'blow out' in enforcement and supervision costs incurred by ASIC arising from the Hayne Royal Commission and that fact that those entities against whom the enforcement and supervision is taking place are no longer in the sub sector. A simplification of the design, structure and legislative framework would not necessarily change this outcome.

Question 6

Does the design, structure and legislative framework of the levy component of the IFM have sufficient flexibility to respond to changes in the markets, sectors and products ASIC has oversight of? If not, what aspects require more flexibility and what changes could be made?

We consider that sectors that are not regulated and not paying levies should not be regulated on the basis of IFM funding. Funding for the regulation of emerging sectors should be sourced from government.

Question 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?

It is clear that the design, structure and legislative framework of the levy component of the IFM does not have the flexibility to respond to changes in the markets, sectors and products ASIC has oversight of. As stated above, a more equitable model would ensure that costs caused by entities that are no longer in the sub sector or who have significantly reduced their exposure to the sub sector, are not charged to entities who have not caused them. This would bring the model into line with the principle that costs should be recovered from those causing the need for regulation.

Essentially, the personal advice sub sector is funding large scale litigation against the large financial services firms. Unlike litigation funders, leviable firms receive no credit for litigation wins. We note

that recovered legal costs are applied back to relevant sub sectors. However, ASIC only successfully recovers a fraction of its total enforcement costs. A big issue for the sub sector is when ASIC loses cases and becomes liable to pay not only its own legal costs but the legal costs of the successful party —the advice sub sector bears those costs. One could argue that because a loss in court means that the entity in question was not in breach of the law, charging personal advice licensees for the costs of this action runs counter to the principle that sub sector members pay for the wrongdoing of their fellow members.

Question 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?

There is little transparency or understanding about what enforcement matters are being charged to the sector. It is necessary that leviable entities know the sub sectors that are being charged for enforcement matters, particularly when those matters are the subject of substantial litigation. By way of example, ASIC is currently appealing the decision of the Federal Court in the Commonwealth Bank and Colonial First State conflicted remuneration decision. This matter relates to conduct that occurred from 1 July 2013 to 30 June 2019, involving approximately 390,000 individuals and allegedly \$22 million in conflicted remuneration and was a referral from the Hayne Royal Commission. Are personal advice licensees paying for this litigation and if so, is it fair that they are?

Question 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?

As stated above, the current approach of attributing costs of illegal unlicensed conduct to the most 'relevant' sub sector is not the most appropriate recovery method. Enforcement of the licensing provisions benefits the entire financial services industry.

Question 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?

As stated above, we consider that sectors that are not regulated and not paying levies should not be regulated on the basis of IFM funding. Funding for the regulation of emerging sectors should be sourced from government. By way of example, we do not consider that it is appropriate or fair that our members pay for the regulation of crypto assets. They are not financial products.

Questions 11, 12 and 13

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?

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?

What changes could be made to the reporting of indirect costs to improve stakeholder understanding of these costs?

SIAA has no comment on the recovery of costs associated with capital expenditure nor on the reporting of indirect costs.

We note that stakeholders argue that ASIC's education and policy advice activities should be considered business as usual for an Australian Government Body and that leviable entities should not have to pay those costs. There is much to be said for this view and removing the costs of education and policy advice from the levy model is an idea that government should consider.

Question 14, 14.1 and 14.2

Do regulated entities find estimated levies useful, and how is this information used by entities?

Noting the trade-off between timing and accuracy, when is it most beneficial for entities to receive estimated levy amounts?

Would alternative information, such as a range for estimated levies, be more useful?

A key challenge for entities is the significant variance between estimated and actual levies each year, which makes it hard for entities to budget for the actual levy. As a result, entities do not find the estimated levies useful and do not engage with the draft CRIS. The inconsistent timing of when estimated levies are released for consultation with stakeholders also makes it difficult for entities to budget for the actual levies.

We consider that it would be beneficial if a more accurate estimate of the levies could be received at a later date, provided entities are still allowed the current length of time allowed between receiving the estimated levies and metric requirements and the return lodgement due date. Our members do not consider that a range of estimated levies would be more useful than a single levy estimate.

Questions 15 and 16

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?

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?

Essentially, the issue is that of the significant increase in ASIC's costs – this is what is causing volatility in the levy. If government has no appetite to contribute to ASIC's costs, the only other way to bring equity and stability back into the model is for government to place a cap on ASIC's budget. Clearly, any changes to the levy structure will push the costs onto other sub sectors. While ever the model is a 'nil sum' game, a reduction of a levy for one sector will result in an increase for another.

Questions 17 to 25

Fees for service

SIAA has no comments on fees for service.

Questions 26 to 31

Key issues related to reporting, transparency and consultation

As discussed at the Treasury roundtable, many industry stakeholders don't engage with the CRIS as Treasury does not take into account any feedback provided on the CRIS (as it is unable to change the model) and the estimates have been largely inaccurate. However, on a general basis, the CRIS is useful in understanding the estimated levies that are charged and what business activity metrics are required for reporting in the annual returns.

We consider that the following key matters are the most important for reporting, transparency and consultation for all leviable entities:

- The CRIS is a long and complex document. A summary page at the beginning of the document containing key data points (ie the levy amount) would increase the usability of the document.
- Greater transparency is required on:
 - ASIC's methodology for how the costs of activities are used to calculate and determine the estimated and final levy metric rates
 - the drivers for the movements between the final and estimated metric rates as well as the prior period metric rates for each subsector.
- The CRIS and the final invoice should be provided at a consistent time each year to assist users in their commercial decision making.
- Work must be undertaken by ASIC to reduce the disparity between the estimate and the final invoice.

Conclusion

If you require additional information or wish to discuss this submission in greater detail please do not hesitate to contact SIAA's policy manager, Michelle Huckel, at michelle.huckel@stockbrokers.org.au.

Yours sincerely



Judith Fox
Chief Executive Officer