

29 June 2022

Australian Securities and Investments Commission

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

Dear Sir/Madam,

Cost Recovery Implementation Statement: ASIC industry funding model (2021-22)

Chartered Accountants Australia and New Zealand welcome the opportunity to comment on ASIC's Cost Recovery Implementation Statement – 2021-22 (for feedback), the 'draft CRIS'. Throughout this submission, we use 'estimates' in reference to the figures provided in a draft CRIS for comment and replicated in the final CRIS and 'actual' in reference to the levies charged and recovered.

We iterate our key concerns, already expressed in many conversations and submissions over the past few years, that:

- the release of the draft CRIS near to or after the end of the financial year to which it relates defeats the aim of the CRIS, to 'help entities plan and budget for the levies and fees to be charged'¹;
- the estimates provided, as history has shown, cannot be relied upon as indicative of the actual levy that will be charged further diminishing the value of a CRIS to the regulated population for planning and budgeting purposes;
- where there is a significant change between the estimated and the actual levy, no explanation is provided;
- the release of a draft CRIS and a final version does not constitute genuine consultation as, historically, the estimates and commentary provided in the draft are replicated in the final CRIS; and
- there are inconsistencies between fees for service for activities undertaken by the same population.

Timing of release of draft CRIS

The release of the draft CRIS for 2021-22 three weeks prior to the close of the financial year 2021-22 means ASIC's regulated population has been unable to plan and budget for any estimated significant changes in the ASIC levies from the financial year 2020-21. At best, the regulated population may have budgeted for a levy based on last year's levy plus a percentage increase, that percentage being nothing more than a guess.

For some subsectors, this draft CRIS indicates a significant change from the levies charged for the previous financial year. Looking at the cost recovery by subsector and comparing the estimates for 2021-22 to the levies for 2020-21, ASIC expects to reduce costs allocated to margin lenders by over 97 per cent and increase costs allocated to deposit product providers by more than 86 per cent.

Extensive feedback from our members indicates that the random timing for the release of a CRIS, and the other concerns raised in this submission, are having a disproportionate impact on small and medium as well as regional practices. To enable ASIC's regulated population to prepare for an estimated change to levies from the previous financial period, we seek the draft CRIS to be released within the first month of the financial year to which it relates.

¹ Cost Recovery Implementation Statement: ASIC Industry Funding Model 2021-22, paragraph 3, June 2022

Unreliable estimates

Historically, not only is a CRIS for comment released too late to be useful, but the estimates within it have also borne little resemblance to the actual levies charged. This reflects our member's position that they need estimates of levies to be charged for a financial year at the commencement of that financial year to plan for the expense in their budget. Equally, they need these estimates to realistically represent the actual levy charged.

As an example, for the financial year 2020-21: overall, actual costs were more than 13 percent higher than the estimates provided. Even greater variations can be seen drilling down to the activities, see Figure 1. Enforcement costs were 72 percent more than estimated, education more than 289 percent more than estimated and property and corporate less than 24 percent than estimated.

ASIC advise that it is difficult to estimate costs for enforcement as it depends on how the other party challenges the charge, which is reasonable. However, it is more difficult to understand how ASIC could underestimate their costs for education by nearly 300 percent, guidance by more than 34 percent, when it is entirely at ASIC's discretion what education and guidance activities occur.

Figure 1

		CRIS (final) Estimates 2020-21	Dashboard Actual 2020-21	Change final CRIS to Actual
		Cost recovery		
Activity				
	Supervision and surveillance	\$ 50.376	\$ 50.700	0.6%
	Enforcement	\$ 63.828	\$ 110.010	72.4%
Other				
	Industry engagement	\$ 7.094	\$ 9.210	29.8%
	Education	\$ 1.293	\$ 5.041	289.9%
	Guidance	\$ 4.579	\$ 7.303	34.8%
	Policy advice	\$ 8.899	\$ 7.698	-13.5%
	Sub-total	\$ 21.865	\$ 29.252	
Indirect costs				
	Governance, strategy, legal	\$ 36.060	\$ 30.000	-16.8%
	IT	\$ 28.629	\$ 27.828	-2.8%
	Operations Support	\$ 20.348	\$ 20.846	2.4%
	Property and Corporate	\$ 44.297	\$ 33.403	-24.6%
	Sub-total	\$ 129.334	\$ 112.077	
Total		\$ 265.403	\$ 302.039	13.8%

Looking specifically at the sub-sectors relevant to our members with additional licences, Figure 2, highlights the disconnect between the estimates and the actual levies. For example, for our registered company auditors, the final levy for 2018-19 was 4 per cent lower than estimated, for 2019-20, 29 per cent higher than estimated and for 2020-21, 56 per cent lower than estimated.

Figure 2

Sub-sector	Metric	2020-21			2019-20			2018-19		
		Change	Actual	Estimate	Change	Actual	Estimate	Change	Actual	Estimate
Registered company auditors	per auditor	-56%	\$494	\$ 1,127	29%	\$811	\$628	-4%	\$208	\$217
Registered Liquidators Min \$2500 plus	per notifiable event	-41%	\$75.12	\$127	-22%	\$79.16	\$101	17%	\$97.42	\$83
Financial advisers to retail	per adviser *capped	0%	\$1,500	\$1,500	31%	\$2,064	\$1,571	26%	\$1,142	\$907

Of particular concern is the lack of transparency over the category 'Indirect Costs' which consistently represents 50 percent of all costs allocated, Figure 3. It is unclear how known ASIC activities are captured and allocated. For example, were the costs for seeking feedback on cyber security awareness allocated as 'Other – industry engagement' or 'Indirect costs – strategy'? Are the costs for legal actions captured under 'Enforcement' or 'Other – Legal'?

Figure 3

		CRIS (draft) Estimates 2021-22	% of total	CRIS (final) Estimates 2020-21	% of total	CRIS (final) Estimates 2019-20	% of total
		Cost recovery		Cost recovery			
Activity							
	Supervision and surveillance	\$ 47.075	19%	\$ 50.376	19%	\$ 53.885	23%
	Enforcement	\$ 52.525	21%	\$ 63.828	24%	\$ 54.129	23%
Other							
	Industry engagement	\$ 9.267	4%	\$ 7.094	3%	\$ 7.861	3%
	Education	\$ 0.290	0%	\$ 1.293	0%	\$ 0.718	0%
	Guidance	\$ 7.702	3%	\$ 4.579	2%	\$ 4.329	2%
	Policy advice	\$ 7.692	3%	\$ 8.899	3%	\$ 4.528	2%
	Sub-total	\$ 24.951	10%	\$ 21.865	8%	\$ 17.436	7%
Indirect costs							
	Governance, strategy, legal	\$ 33.565	14%	\$ 36.060	14%	\$ 28.752	12%
	IT	\$ 32.116	13%	\$ 28.629	11%	\$ 27.496	12%
	Operations Support	\$ 21.402	9%	\$ 20.348	8%	\$ 18.251	8%
	Property and Corporate	\$ 35.015	14%	\$ 44.297	17%	\$ 36.159	15%
	Sub-total	\$ 122.098	50%	\$ 129.334	49%	\$ 110.658	47%
Total		\$ 246.649		\$ 265.403		\$ 236.108	

To be transparent, to provide confidence that ASIC is performing as a regulator, ASIC's population also need to know the cost of each activity that made up their levy. Currently, the final CRIS simply replicates the estimates provided in the draft CRIS. This means ASIC's regulated population are unaware of the activity, or the issue that triggered that activity, which resulted in their actual levy changing significantly from the estimated levy.

ASIC's regulated population need certainty that their actual levies will be within a reasonable margin of the estimated levies and should be informed of the actual costs allocated to their population for activities during a financial year. We seek for a draft CRIS to be issued with estimates based on ASIC's budget within the first month of a new financial year and a final CRIS with actuals to be issued at the same time as the ASIC (Supervisory Cost Recovery Levy-Annual Determination) Instrument is registered.

Lack of transparency around changes to cost allocations

Further, based on an analysis of the cost recovery by regulatory activity for all industry sectors and comparing the estimates for 2021-22 to the estimates for 2020-21, Figure 4, ASIC expects to reduce costs allocated to enforcement by over 18 percent, reduce costs allocated to education by 78 percent and increase costs allocated to guidance by 68 percent. However, it is not transparent which sub-sector(s) will benefit from reduced enforcement activities or increased guidance activities.

Figure 4

		CRIS (draft) Estimates 2021-22	% change	CRIS (final) Estimates 2020-21
		Cost recovery		Cost recovery
Activity				
	Supervision and surveillance	\$ 47.075	-7%	\$ 50.376
	Enforcement	\$ 52.525	-18%	\$ 63.828
Other				
	Industry engagement	\$ 9.267	18%	\$ 7.094
	Education	\$ 0.290	-78%	\$ 1.293
	Guidance	\$ 7.702	68%	\$ 4.579
	Policy advice	\$ 7.692	-14%	\$ 8.899
	Sub-total	\$ 24.951		\$ 21.865
Indirect costs				
	Governance, strategy, legal	\$ 33.565	-7%	\$ 36.060
	IT	\$ 32.116	12%	\$ 28.629
	Operations Support	\$ 21.402	5%	\$ 20.348
	Property and Corporate	\$ 35.015	-21%	\$ 44.297
	Sub-total	\$ 122.098		\$ 129.334
	Total	\$ 246.649		\$ 265.403

Looking at the registered liquidator sub-sector for example, the estimates for 2021-22 compared to the estimates for 2020-21 show a decrease of 70 percent in enforcement activities, a decrease of 60 percent in education activities and an increase of 134 percent in guidance activities. Which specific actions were undertaken and how they varied from the previous financial year is opaque.

The information that is provided in the CRIS documents does not detail the actions that drive significant shifts between activities undertaken by ASIC. Continuing with the example of registered liquidators, activities for 2020-21 as outlined at paragraph 112 in the final CRIS were a *'focus on independence, competence and on ensuring that registered liquidators do not improperly gain from their appointments.'*, paragraph 113 *... to identify breaches of the law or professional standards and take appropriate action. We will also work with the sector to improve the competence of registered liquidators.'*

In 2021-22, outlined in the draft CRIS in the table on page 38, ASIC continued with the same activities being to *'identify and take appropriate regulatory action against high-risk liquidators, focusing on lack of independence or competence, and improper gain.'*

It is unclear how the continuation of the same activities for the same population has resulted in a significant change in cost allocation between activities. As raised by our members:

- Does this mean we were overcharged previously...? Will we get a refund?
- 'Guidance' has gone up by 134 percent - what does this mean?
- Are we not entitled to know the reasons?

We seek for the commentary in the draft CRIS to communicate the specific actions that ASIC estimates will result in a significant change to the costs allocated to a particular activity from the costs allocated in the previous period. The final CRIS should then detail only the actions that resulted in the costs allocated to an activity being significantly different to the estimated costs at the start of the financial year.

Genuine consultation

ASIC indicates that a draft CRIS is released to gain feedback from its regulated population to measure if the commentary provides adequate detail in respect of the allocation of resources and costs incurred. Yet, though numerous submissions are made every year by industry, we have not observed any change in the commentary or metrics disclosed between a CRIS for consultation and the related final CRIS.

We refer to the final CRIS for the financial period 2019-20 which was released in March 2021. Even nine months after the financial year-end, the figures in the final CRIS (2019-2020) replicated the estimates provided in the draft CRIS released in June 2020. These estimates bore little relation to the actual levies recovered.

It does raise the question, what is the purpose of ASIC consulting on a draft CRIS when there appears to be no changes made to the final CRIS? We do not consider our requests around transparency and timeliness of information to be unreasonable.

We understand that ASIC must provide an explanation to Parliament where actual costs exceed budget by more than \$2 million or 10 percent. We seek the same explanations for, and on behalf of, ASIC's regulated population. As voiced by many stakeholders, the final CRIS should report actual figures and the broad outline of activities be supplemented in the commentary for each sub-sector with a detailed explanation of what drove variances greater than 10 percent from the estimates provided earlier.

Fees for service

On behalf of registered auditors we raise our concern that some fees appear disproportionate to the service provided. In particular, changes in auditor circumstances which are very high. For example, the fees charged by ASIC to prospective self-managed superannuation funds (SMSF) auditors and those auditors wanting to be removed from the SMSF auditor register. These fees have not changed much in recent years but are unreasonably high and are distorting the market.

Conclusion

For ASIC to maintain, facilitate and improve Australia's financial system it must be transparent with, and accountable to, its regulated population. That regulated population seeks transparency through estimates of levies being provided in the first month of a financial year and actual levies detailed across activities for each subsector in the final CRIS.

Appendix A provides more information about Chartered Accountants Australia and New Zealand. Should you have any questions about the matters discussed above or wish to discuss them further, please contact [REDACTED] via email at [REDACTED] or phone [REDACTED]

Yours sincerely

Appendix A

About Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand (CA ANZ) represents 131,673 financial professionals, supporting them to make a difference to the businesses, organisations and communities in which they work and live. Chartered Accountants are known as Difference Makers. The depth and breadth of their expertise helps them to see the big picture and chart the best course of action.

CA ANZ promotes the Chartered Accountant (CA) designation and high ethical standards, delivers world-class services and lifelong 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 mentored 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 boldly for the public good. Our thought leadership promotes prosperity in Australia and New Zealand.

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 15 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 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.

We employ more than 500 talented people across Australia, New Zealand, Singapore, Malaysia, Hong Kong and the United Kingdom.