



Australian Securities and Investments Commission Industry Funding Model Review

Discussion paper

September 2022

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Consultation Process

Request for feedback and comments

The purpose of this paper is to seek feedback on the Australian Securities and Investments Commission (ASIC) Industry Funding Model (IFM).

While submissions may be lodged electronically or by post, electronic lodgement via email to ASICIFMReview@treasury.gov.au is preferred. For accessibility reasons, please submit responses sent via email in a Word or RTF format. An additional PDF version may also be submitted.

Publication of submissions and confidentiality

All information (including name and address details) contained in submissions may be made available to the public on the Treasury website unless you indicate that you would like all or part of your submission to remain in confidence. Automatically generated confidentiality statements in emails are not sufficient for this purpose. If you would like only part of your submission to remain confidential, please provide this information clearly marked as such in a separate attachment.

Legal requirements, such as those imposed by the *Freedom of Information Act 1982*, may affect the confidentiality of your submission.

Further consultation during the Review

Treasury will consult broadly with representatives from industry, consumer and other interested parties in conducting the Review. This may involve conducting targeted roundtables and other consultations with interested stakeholders on specific issues where the Review requires more information or to seek further views.

Closing date for submissions: 28 October 2022

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The principles, options and examples of potential changes outlined in this paper have not received Government approval and are not yet law. As a consequence, this paper is merely a guide as to how the principles, options or examples of potential changes might operate.

ASIC Industry Funding Model Review

1. Purpose of the Review

On 8 August 2022, the Government announced a review of the ASIC Industry Funding Model (IFM) and released the Terms of Reference to guide the Review (see Appendix A).

The purpose of the Review is to identify any refinements to the IFM that may be required to ensure its settings remain appropriate in the longer-term. Governments' long-standing position is that cost recovery fees and levies attributable to regulated activity are considered as a funding mechanism prior to budget funding (i.e. funding from general taxpayers). Any significant deviations from this principle would raise concerns about equity and fairness, and would not be aligned with the Government's priority for responsible budget repair. The Government is committed to maintaining appropriate industry funding arrangements for ASIC.

The Review will consider:

- the design, legislative framework and flexibility of the IFM;
- the types of costs and activities that are recovered from industry and how these costs are allocated and recovered;
- changes in levy amounts since the commencement of the IFM; and
- the suitability of transparency and consultation mechanisms.

The Review will also have regard to the temporary levies relief provided to personal financial advice licensees in respect of 2020-21 and 2021-22.¹

ASIC's role and regulatory remit, its performance and its independence to allocate resources to deliver on its mandate are not within the scope of the Review. Additionally, the Review will not assess or make recommendations on the appropriate aggregate level of funding provided to ASIC.

The costs associated with ASIC's registry business (that is, the registers for which ASIC is responsible) and the fees for ASIC forms relating ASIC's registry function are not cost recovered through the IFM. Therefore, registry costs and fees are not within the scope of the Review.

The Review is being led by Treasury, in consultation with ASIC, the Department of Finance (Finance) and the Department of the Prime Minister and Cabinet (PM&C).

The Review undertook targeted stakeholder consultation in March 2022. This Discussion Paper draws on feedback provided in that consultation (see Appendix B), as well as stakeholder feedback provided through other avenues (for example, through ASIC's Cost Recovery Implementation Statement process).

As part of this Discussion Paper, stakeholders are invited to consider options, examples of potential changes and questions that are designed to examine and address the issues set out in the Review's Terms of Reference. Options and examples of potential changes presented in this Discussion Paper have not received Government endorsement or approval. Options are intended to provide indicative examples of the types of changes the Review may consider in response to issues that have been identified, and aim to support stakeholders in providing feedback on potential areas for change. The

¹ [2021-22 Mid-Year Economic and Fiscal Outlook](#) measure 'ASIC Industry Levies – fee relief'

Government has not made decisions to make any such changes, and maintaining the status quo remains an option.

Stakeholder feedback received through this process and further consultation will inform the Review's consideration, including considering whether any refinements are required to the IFM to ensure its settings remain appropriate.

This Review is separate to ASIC's 2021-22 levy process, which is currently underway with the collection of data from entities to inform levy amounts. ASIC's 2021-22 levy process will proceed consistent with the existing IFM settings.

2. Background

Overview of the IFM

Following recommendations of the 2014 Financial System Inquiry and the 2014 Senate Economics Committee Inquiry into the performance of ASIC, an industry funding model for ASIC was introduced to recover its regulatory costs from the entities it regulates. Extensive consultation was undertaken to design the IFM, drawing on other comparable financial services and markets regulators such as the United Kingdom's Financial Conduct Authority. However, not all Australian regulators with a significant enforcement function, like ASIC, are industry funded.

Following the passage of legislation, the levy component of the ASIC IFM commenced on 1 July 2017 and the fees-for-service component commenced on 4 July 2018.

The IFM aims to recover ASIC's regulatory costs from entities in the industry sub-sectors that cause the need for regulatory effort by ASIC, rather than general taxpayers. The IFM comprises of industry levies (both cost recovery levies and statutory levies) charged annually to entities across 52 industry sub-sectors (as at 2021-22), and fees-for-service charged to individual entities at the point of initiating certain regulatory services.

The Government (subject to Parliamentary process and oversight) is responsible for the policy settings of the IFM, which are prescribed in a legislative framework comprising several Acts and Regulations (see Appendix C). This includes deciding which of ASIC's regulatory costs are recovered through levies and fees. Changes to the policy settings of the IFM are the responsibility of the Government and will generally require legislative change. ASIC is responsible for administering the IFM in accordance with the Government's policy settings and the legislative framework.

ASIC's total budget to fund its regulatory activities is determined by the Government and funded through appropriations from the Commonwealth budget. Within this total budget, ASIC determines how it allocates its resources to regulate different industry sectors and achieve its statutory objectives. These costs are then recovered from industry in accordance with the IFM's policy and legislative settings. The total funding available to ASIC – and therefore the amount recovered from industry through the IFM – has increased since the commencement of the IFM.

Australian Government Charging Framework

The IFM was designed to meet the requirements of the Australian Government Charging Framework (Charging Framework), which is a policy of the Government that is applied to government charging.

Government charging is where the non-government sector is charged for specific effort of Government, such as the provision of goods, services or regulation, or a combination of these, that the non-government sector has caused. Where Government charging for regulatory activity to the

non-government sector is developed consistent with the Charging Framework, then the charge may not exceed the cost of the specific effort that caused it. The total revenue from such regulatory charging is one of a number of mechanisms that the Government uses to fund government entities that deliver a diverse range of services, support and benefits to the Australian public.

Where the Government charges the non-government sector for a specific activity, it may do so for the following reasons:

- promote equity, whereby the recipients who create the need for a government activity, rather than the general public, bear its costs;
- influence demand for government activities;
- improve the efficiency, productivity and responsiveness of government activities and accountability for those activities;
- increase cost consciousness for all stakeholders by raising awareness of how much a government activity costs;
- improve the fiscal position of government; and
- recognise the value of government resources.

The Charging Framework is a policy of the Government that is applied to Government activities and includes the Charging Policy Statement,² and the charging principles, requirements and considerations. The Charging Policy Statement is the cornerstone to Government charging and provides that where an individual or organisation creates the demand for a Government activity, they should generally be charged for it, unless the Government has decided to fund the activity. These components of the Charging Framework, along with the definition of the type of activity and the policy outcomes sought, inform the Government's decision to charge, or not charge, for an activity.

The Government's Charging Policy and Framework promotes consistent, transparent and accountable charging for government activities, by encouraging a common approach to planning, implementing and maintaining government charging. Its application leads to improved charging and the proper use of public resources.

ASIC, as a non-corporate Commonwealth entity undertaking regulatory charging activities, is subject to the Charging Framework and must apply the requirements that apply to charging for regulatory activities. This includes that all regulatory charging activities must apply the principles of efficiency and effectiveness, transparency and accountability and stakeholder engagement throughout the cost recovery process. It also requires that for each regulatory charging activity, an entity must:

- have policy authority from government to cost recover;
- have statutory authority to charge;
- ensure alignment between expenses and revenue; and
- maintain up-to-date publicly available documentation and reporting.

ASIC's policy authority to charge for its regulatory activities was provided in the 2016-17 Budget and subsequently as various Budgets increased funding for ASIC's regulatory activities. The statutory authority to charge is provided through the *ASIC Supervisory Cost Recovery Levy Act 2017*.

Not all the components of the IFM are governed by the Charging Framework. The IFM includes statutory levies imposed for activities where the Government has decided there should be

² "Where specific demand for a government activity is created by identifiable individuals and groups, they should be charged for it unless the government has decided to fund the activity. Where it is appropriate for the Australian Government to participate in an activity, it should fully utilise and maintain public resources, through appropriate charging. The application of charging should not, however, adversely impact disadvantaged Australians."

cross-subsidisation between or within industry sub-sectors. Statutory levies account for around 20 per cent of estimated total levies for 2021-22. The amount charged via statutory levies and the costing approach is not governed by the Charging Framework, however these levies are being considered in this Review.

Objectives of the IFM

While the IFM was designed to align with the Charging Framework, which includes the Cost Recovery Guidelines (CRGs), it was also designed to support other objectives of the Government, which include objectives in relation to competition and innovation, not disproportionately affecting small businesses, and ensuring that regulated entities receive value for money on cost recovered Government services.³

The IFM is intended to deliver a range of benefits, including:

- improving equity, as only those entities that are regulated by ASIC and create need for regulation bear its costs, rather than general taxpayers;
- encouraging regulatory compliance, as good conduct will drive down supervisory levies;
- improving ASIC's resource allocation, by providing it with richer data to better identify emerging risks; and
- enhancing ASIC's transparency and accountability through publishing its expenditure, explaining its regulatory priorities, and accounting for its performance.

The levies component of the IFM was also refined in accordance with a number of design objectives, informed by stakeholder feedback:⁴

- simplicity – the model should be simple to enable any firm to calculate its applicable levy;
- certainty – the levies should, wherever possible, provide enough certainty for entities to allow them to incorporate the levies into commercial decisions;
- proportionality – levies from each sector should be calculated from readily available metrics of business activity, such as revenue generated or funds under management. Selection of each sector's activity metric should: align to expected regulatory oversight, including the level of anticipated consumer or investor exposure; and ensure that the reporting burden for industry is kept to a minimum;
- commercially-based – sector definitions should group together entities that are providing similar services, and compete in the same market; and
- efficient processing – billing and business activity collection should be done through a web portal that users find simple, clear and fast to use, and that is seamlessly connected to ASIC databases.

³ ASIC Supervisory Cost Recovery Levy Bill 2017, Explanatory Memorandum, page 44.

⁴ ASIC Supervisory Cost Recovery Levy Bill 2017, Explanatory Memorandum, page 6.

Industry Funding Levies

1. Overview

The majority of ASIC's regulatory costs are recovered through industry funding levies imposed on the sub-sectors ASIC regulates.

- **Cost recovery levies** are non-taxation levies charged when a good or service of regulation is provided to a group of individuals or organisations (e.g. an industry sector) rather than to a specific individual or organisation. The amount charged and the costing approach is governed by the Charging Framework.
- **Statutory levies** are general taxes imposed for activities where the Government has decided there should be some level of cross-subsidisation between or within industry sub-sectors. The amount charged and the costing approach is not governed by the Charging Framework.

Cost recovery levies and statutory levies are combined into a single amount charged to regulated entities. For the purposes of this paper, the term 'levies' refers to both cost recovery and statutory levies.

The total funding made available to ASIC by the Government – and therefore the amount recovered through levies under the IFM – has increased since the commencement of the IFM (see Section 4 '*Increases and volatility in levy amounts across years*' for further information). In 2017-18 (when the levy component of the IFM commenced), ASIC recovered \$236.6 million in levies from 45,490 entities.⁵ 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). The Review will not assess or make recommendations on the appropriate aggregate level of funding provided to ASIC.

Table 1: Total ASIC funding, total amounts recovered through levies and total number of leviable entities since the commencement of the IFM

	2017-18	2018-19	2019-20	2020-21	2021-22*
Total ASIC funding (\$ million)	387.5	406.0	441.8	463.2	451.1
Total levy amounts** (\$ million)	236.6	276.7	320.3	314.1	332.3
Total number of leviable entities	45,490	46,148	43,804	43,508	43,077

* Estimated figures for 2021-22.

** The total levy amounts for 2020-21 and 2021-22 includes the levy relief for personal financial advice licensees. This has 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.

⁵ Some entities may be regulated in multiple sub-sectors. The total number of leviable entities represents the unique count of entities, not the total number of entities in each sub-sector.

2. Key features of levies

Costs recovered through levies

The *ASIC Supervisory Cost Recovery Levy Act 2017* (Cost Recovery Levy Act) and the *ASIC Supervisory Cost Recovery Regulations 2017* (Cost Recovery Levy Regulations) set out the regulatory costs ASIC can recover from industry through levies, as well as prescribing activities that do not form part of ASIC's regulatory costs and therefore are not recovered through the IFM.

ASIC's direct and indirect regulatory costs are recovered through levies. Direct costs are those that can be directly traced to a sub-sector and regulatory activity. Indirect costs relate to internal support activities that are essential to enable ASIC to perform its regulatory activities.

The costs of the following activities are recovered through levies. Supervision and surveillance, enforcement, and indirect costs account for the majority of ASIC's regulatory costs – around 90 per cent in 2020-21.

- **Supervision and surveillance:** ASIC conducts supervision and surveillance to test compliance with the laws it administers and to promote positive consumer and investor outcomes.
- **Enforcement:** An activity is classified as enforcement when ASIC considers there has been a breach of the law. Investigations may lead to enforcement action, including punitive, protective, corrective or compensatory action. This includes taking action in relation to unlicensed conduct in a sector to maintain integrity and trust in the licensed sector.
- **Industry engagement:** ASIC's industry engagement activities seek to set and maintain regulatory standards, better inform industry practices, and identify harms and potential harms in the market.
- **Education:** ASIC's educational activities aim to empower Australian investors and consumers to be in control of their financial lives and to promote the protection of consumer interests.
- **Guidance:** ASIC provides guidance to industry on how it will administer the law through regulatory guides, consultation papers and information sheets.
- **Policy advice:** ASIC provides advice to the Australian Government on the operational implications of Government policy initiatives and legislative change, and provides proposals for law reform in response to identified opportunities and risks.
- **Indirect costs:** Indirect costs represent all costs that are not directly attributable to a specific sub-sector or activity, but nevertheless go toward providing internal support that is essential to ASIC in the course of its work as a regulator. These costs relate to ASIC's operations support; IT support; governance, central strategy and legal; property and corporate services; and allowance for capital expenditure.

Generally, the costs of each activity account for broadly the same proportion of total operating costs each year. However, total activity costs have increased over time as ASIC's total budget has increased. For example, enforcement costs (not including indirect costs) account for around 30 per cent of total operating costs each year but actual costs have increased from \$67.6 million in 2017-18 to \$110.0 million in 2020-21 (an increase of 62.7 per cent).

Table 2: Total activity costs* and as a proportion of total operating costs since the commencement of the IFM

Activity	2017-18		2018-19		2019-20		2020-21		2021-22**	
	\$m	%	\$m	%	\$m	%	\$m	%	\$m	%
Supervision / surveillance	50.8	21.8	40.0	15.9	51.4	17.7	50.7	16.8	48.4	15.5
Enforcement	67.6	29.1	75.6	29.9	83.6	28.7	110.0	36.4	109.8	35.1
Industry engagement	5.8	2.5	9.9	3.9	7.8	2.7	9.2	3.0	9.4	3.0
Education	1.3	0.5	1.5	0.6	10.9	3.7	5.0	1.7	5.9	1.9
Financial capability***	7.7	3.3	8.8	3.5	-	-	-	-	-	-
Guidance	3.1	1.3	3.3	1.3	4.5	1.5	7.3	2.4	7.8	2.5
Policy advice	2.7	1.2	2.4	0.9	6.8	2.3	7.7	2.5	7.7	2.5
Indirect costs	93.5	39.5	111.0	40.1	126.3	39.4	112.1	35.7	123.7	39.6
Total operating costs	232.4	100.0	252.5	100.0	291.3	100.0	302.0	100.0	312.8	100.0

* This table does not include costs relating capital expenditure. It does include the levy relief provided to personal financial advice licensees, which has resulted in partial cost recovery of costs from that sub-sector in 2020-21 and 2021-22.

** Estimated costs for 2021-22.

*** The financial capability function moved from ASIC to Treasury in October 2020.

Within these activities, certain costs are recovered via a statutory levy where the Government has decided there should be some degree of cross-subsidisation between or within industry sub-sectors.

These activities are:

- enforcement costs funded by the ASIC Enforcement Special Account (ESA);
- education;
- unclaimed money administration;
- the North Queensland insurance aggregator;
- implementation of crowd-sourced funding regulation;
- the whistle-blower legal framework; and
- the regulation of credit rating agencies.

Government policy is when an organisation creates the demand for a government activity, they should generally be charged for it. If the cost of any aspect of ASIC's regulatory activity is not recovered from industry, it would necessarily be funded by the Commonwealth budget and therefore by general taxpayers. This would present concerns about equity and fairness, and would not be aligned with the Government's priority for responsible budget repair.

However, in some cases, the Government has made decisions that certain regulatory costs will not be recovered through IFM levies. These costs that are not recovered through levies are funded by the Government (i.e. general taxpayers).

- Costs relating to the Superannuation Complaints Tribunal are recovered by the Australian Prudential Regulation Authority (APRA).⁶
- Entities registered under the *Australian Charities and Not-for-profits Commission Act 2012* are exempt from having to pay levies.
- Certain costs do not form part of ASIC's regulatory costs and therefore are not recovered through the IFM. These include the costs of: operating the Companies Auditors Disciplinary Board (CADB); operating the registered liquidators disciplinary committees; maintaining and operating ASIC's public registers; regulating self-managed superannuation fund (SMSF) auditors; and preliminary investigations and reports by registered liquidators into the failure of a company with few or no assets.

Allocation of costs and calculation of levies

ASIC apportions its regulatory costs across its entire regulated population, which is divided into 52 sub-sectors (as at 2021-22). Levies are charged on an ex-post basis to the 52 sub-sectors, with costs recovered based on the regulatory effort incurred by ASIC in respect of each sub-sector.

A time measurement system is used to measure the cost of regulatory activities for each sub-sector. ASIC allocates costs (such as direct employee expenses and direct supplier costs) to the relevant sub-sector and activity. Indirect costs are allocated to stakeholder and enforcement teams in proportion to the internal support they receive, and then allocated to sub-sectors in the same manner as direct costs.

Some activities or costs can impact multiple sub-sectors – for example, certain capital projects that impact multiple sub-sectors or enforcement matters where the issues in a particular matter involve multiple sub-sectors. Where this is the case, costs are apportioned across the relevant sub-sectors based on ASIC's regulatory effort for each sub-sector.

The levy payable by an individual entity is then determined using formulas and metrics for the sub-sector prescribed in the Cost Recovery Levy Regulations. Appendix D provides a catalogue of sub-sector definitions, metrics and formulas.

Entities in a sub-sector may be required to pay a flat levy or a graduated levy.

- Flat levies are prescribed for sub-sectors where the regulatory costs are approximately the same for each entity and the administrative and regulatory burden associated with calculating more tailored levies outweighs the benefits of having additional granularity. The flat levy formula shares the total cost of regulating a sub-sector equally among the entities authorised

⁶ The Superannuation Complaints Tribunal (SCT) ceased operation on 30 December 2020, but ASIC will receive a small amount of funding until 30 June 2023 to address SCT records management, requests for information, freedom of information requests and other post closure expenditures. APRA will continue to recover ASIC's costs relating to the SCT until 30 June 2023.

to operate in that sub-sector. A flat levy will be calculated by dividing ASIC's regulatory costs for a sub-sector between the number of entities in that sub-sector.

- Graduated levies are prescribed for sub-sectors where ASIC's regulatory costs vary significantly across its regulated population. Under the graduated levy formula, all entities in a sub-sector must pay a minimum levy plus an additional graduated component based on different metrics designed as proxies for each entity's share of ASIC's regulatory effort.

ASIC calculates levies for individual entities based on data reported by the entity, which enables ASIC to calculate each entity's share of regulatory costs for the financial year. If entities operate in multiple sub-sectors, all relevant levies for those sub-sectors will be payable, and an entity's invoice will reflect this.

ASIC is required by the Cost Recovery Levy Act to then make an annual legislative instrument specifying the amount of its regulatory costs for the financial year and specifying the costs attributable to each sub-sector.

When cost recovery for a financial year exceeds or falls short of the amount of ASIC's regulatory costs for that year, an upward or downward adjustment to ASIC's regulatory costs will be made in the following financial year, thereby impacting levy amounts in that year. Under or over collection may occur due to a mismatch in the timing of when entities are registered or deregistered and the notification of these activities. It can also occur due to other changes in the prior year's leviable populations, costs or metrics. Adjustments for under and over recoveries are made to the sub-sector in which the under or over recovery occurred, with levies then calculated based on the formula for the sub-sector.

ASIC has the power to waive levies in exceptional circumstances. The amounts that are waived are not recovered from other entities and are borne by the Government (i.e. general taxpayers).

Questions

1. Appendix D provides a catalogue of sub-sector definitions, metrics and formulas. 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?

Note: Changes to sub-sector definitions, formulas and metrics would change the way levies are calculated and distributed amongst entities in a sub-sector and would impact the levy amounts for individual entities, but would not change the total amount recovered from the relevant sub-sector.

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?

3. Principles for levies

Trade-offs between simplicity and equity

The IFM aims to meet the requirements of the Charging Framework and broader design objectives such as simplicity. However, there are trade-offs between these objectives.

The overarching principle of the Charging Framework is that those entities that cause the need for regulation should generally pay for it, rather than general taxpayers. The IFM aims to meet this overarching principle by utilising various components to try and accurately apportion costs to entities. This has been done through allocating costs to industry sub-sectors (52 as at 2021-22) to group entities that are providing similar services or undertaking similar activities; prescribing whether a sub-sector should pay a flat or graduated levy; and prescribing different types of metrics to apportion costs to entities within a sub-sector. This produces a high level of granularity that is intended to promote equity and fairness by having costs met by entities in the sub-sector that causes the need for regulatory effort.

However, in trying to meet this overarching principle, other objectives of simplicity and efficiency of administering the IFM may not always be met. The IFM is complex and expensive for ASIC to administer, and difficult for stakeholders to understand and engage with. The level of complexity also arises from the breadth of ASIC's regulated population.

To mitigate these issues, the IFM could be simplified to make the model less complex and less expensive for ASIC to administer, and easier for industry to understand and engage with. This could be done by combining and reducing the number of sub-sectors, introducing a flat levy for sub-sectors that are currently subject to a graduated levy, and/or introducing a standardised metric for all sub-sectors.

However, there are trade-offs between simplification and equity. Simplifying the IFM would lead to greater cross-subsidisation across entities and different parts of the industry and would mean the model is less targeted in apportioning costs to the entities causing the need for regulation. It would also mean that some entities may benefit from regulatory costs being distributed amongst a wider population, while other entities would be paying more for increased regulatory costs associated with the additional population.

The Charging Framework notes that for a regulatory activity, it is important to consider whether it is efficient to charge for the activity (i.e. the costs of administering the IFM should be proportional to the charges for and potential revenue from the activity). This requires a balance between developing a more precise but more complex and hence more expensive model, and developing a simpler and less expensive but less precise model.

The Government may decide that there should be some level of cross-subsidisation between or within industry sub-sectors. Such decisions would need to be informed by consideration of the balance between different policy objectives and trade-offs. Where the Government decides to do this, costs are recovered from regulated entities via statutory levies. The amount charged via a statutory levy and the costing approach is not governed by the Charging Framework.

1: Examples of simplification⁷

These examples and questions should be considered separately to the questions raised in Section 2 '*Key features of levies*', which seeks stakeholder views about whether the current sub-sector definitions, formulas and metrics remain appropriate. Changes to sub-sector definitions, formulas and metrics within the existing IFM settings aim to better apportion costs to entities in a sub-sector rather than simplifying the model and may not align with the examples below, which would involve more substantial changes to the model.

Option 1: Combine sub-sectors that have similar types of entities and undertake similar types of regulated activity. For example:

- Create two sub-sectors (rather than the existing four) in the financial advice sector with one sub-sector for licensees that provide personal advice to retail clients on relevant financial products and one sub-sector for licensees that do not provide personal advice to retail clients on relevant financial products.
- Combine sub-sectors in the market infrastructure and intermediaries sector, such as:
 - combine all sub-sectors that relate to clearing and settlement facility operators;
 - combine all sub-sectors that relate to securities exchange operators and participants; and/or
 - combine all sub-sectors that relate to futures exchange operators and participants.
- Combine the credit providers, small and medium amount credit providers and credit intermediaries sub-sectors.
- Combine the superannuation trustees, responsible entities, wholesale trustees and investor directed portfolio service operators sub-sectors.

Option 2: Allocate costs at a sector level (rather than sub-sector level) and apportion costs amongst entities using a generalised metric such as a volume-based proxy (for example, revenue or turnover). This would aim to remove or reduce instances of entities undertaking similar activities that fall within multiple sub-sectors and could be done by:

- using the current grouping of sectors under the IFM (corporate sector; deposit taking and credit sector; investment management, superannuation and related services sector; market infrastructure and intermediaries sector; financial advice sector; insurance sector); or
- creating new sectors based on different types of licensing arrangements – that is, a sector for all Australian financial service licence holders, Australian credit licence holders, and market infrastructure licence holders and exempt market operators.
 - Consideration would need to be given to creating sectors where entities do not hold a licence, for example entities currently in the corporate sector.

Option 3: Introduce a standardised metric for all sub-sectors – for example, a volume-based proxy such as revenue or turnover.

- This would mean that regulatory costs are still apportioned to sub-sectors based on the regulatory effort expended by ASIC on each sub-sector, but entities would pay for the regulatory costs for their sub-sector based on a standardised metric.

This paper seeks stakeholders' views on the options identified above. In providing feedback on these options, stakeholders should consider:

- the impact of the options on entities, including the cost to business and regulatory burden, as well as fairness and equity considerations;
- the appropriate levy formula for the proposals presented in Option 1 (i.e. whether a flat or graduated levy should apply to the proposed combined sub-sectors); and
- the appropriate metric to be used for the proposals presented in Options 2 and 3 (i.e. whether costs should be apportioned across entities based on revenue, turnover, or another metric that could be applied across all of ASIC's regulated population).

Questions

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?
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?
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?

Flexibility of the IFM to respond to changes

The Government (subject to Parliamentary process and oversight) is responsible for the policy settings of the IFM, which are prescribed in a legislative framework comprising several Acts and Regulations. ASIC is responsible for administering the IFM in accordance with the Government's policy settings and the legislative framework.

Changes to the policy settings of the IFM are the responsibility of the Government. Making changes to the policy settings of the IFM would, for the most part, require legislative change and would need to go through usual Parliamentary and legislative processes.

Since its commencement, there has been no wholesale change to the levy component of the IFM. However, notable changes made include establishing new industry sub sectors, simplifying levy metrics for certain sub sectors, and changes to levy amounts (such as the temporary relief for financial adviser levies in 2020-21 and 2021-22) – see Appendix C for a list of changes.

⁷ The principles, options and examples of potential changes outlined in this paper have not received Government approval and are not yet law. As a consequence, this paper is merely a guide as to how the principles, options or examples of potential changes might operate.

The legislative framework of the IFM is intended to be flexible. The Explanatory Memorandum to the ASIC Supervisory Cost Recovery Levy Bill 2017 noted that the power to set in regulations formulas and methods for determining levy amounts is broad and allows for significant flexibility in determining amounts of levy for different classes of entities. This flexibility is required because of the number of different sub-sectors and the need to set different methods, formulas or amounts that are appropriate for each of them.

While the IFM is intended to be flexible, the process of making and amending primary legislation or regulations can be lengthy depending on the number and scope of changes required. Some stakeholders have raised concerns about the flexibility of the IFM to respond to changes in industry in a timely manner, in particular to account for emerging industry sectors. However, flexibility needs to be balanced against appropriate Ministerial and Parliamentary oversight.

Questions

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?

Ex-post charging

ASIC is one of the few regulators that recovers regulatory costs via industry levies using an ex-post model – that is, costs are recovered in the financial year after the regulatory costs were incurred. Most other regulators that recover regulatory costs via levies do so on an ex-ante basis – that is, costs are determined and recovered before the costs are expended. This requires regulators to set a budget and determine resource and cost allocations across their regulated population in advance of regulatory activity being undertaken.

While the ex-post model ensures that ASIC only recovers its actual expenditure from each sub-sector, there are trade-offs with the ex-post model. A key challenge for stakeholders is the difficulty to budget for levies as actual levy amounts are not known until after ASIC has undertaken its regulatory activities.

However, this Review considers that the ex-post model remains appropriate for ASIC's industry funding arrangements given the difficulty for ASIC to determine in advance and with relative accuracy how much it will expend on each sub-sector each year. While ASIC can determine its priority areas of regulatory focus in advance (published each year in its Corporate Plan), the key drivers of cost uncertainty are enforcement activity and where ASIC's surveillance may be required due to ASIC's large (and changing) regulated population.

Implementing an ex-ante model would require ASIC to determine in advance its resource allocations for each sub-sector. However, the uncertainty and variations in enforcement and other regulatory costs could lead to significant over/under recovery from sub-sectors in subsequent years.

Therefore, the Review will not consider changes to the ex-post nature of the IFM as it continues to remain appropriate given the nature of ASIC's activities. However, the Review will consider options to address issues associated with the ex-post nature of the IFM.

4. Key issues related to levies

Enforcement

ASIC investigates and takes enforcement action to detect, disrupt and respond to unlawful conduct. In doing so, ASIC prevents and deters actual and future misconduct, improves standards and behaviours within the regulated population, and reduces the risk of harm to Australian consumers and investors. Under the IFM, the costs of ASIC's enforcement activity are recovered from industry. This ensures regulatory costs are recovered from entities in the sub-sectors that create the need for regulation, rather than general taxpayers. The principal issue stakeholders have raised regarding enforcement costs is that these costs are not recovered from those causing the need for regulation.

Allocation of resources to enforcement activity

Since the commencement of the IFM, enforcement costs have accounted for approximately 30 per cent of ASIC's costs that are recovered from industry via levies. In 2020-21, enforcement costs, including costs associated with the Enforcement Special Account (ESA), accounted for 35 per cent of ASIC's costs to be recovered through levies. Indirect costs related to enforcement accounted for a further 17 per cent meaning enforcement costs (direct and indirect) accounted for 52 per cent of ASIC's costs recovered through levies. While the proportion has remained relatively stable, the amount of enforcement activity recovered from industry has been increasing in line with ASIC's increasing budget, from \$67.6 million in 2017-18 to \$110 million in 2020-21.

In recent years, ASIC has received increased funding, including to implement the recommendations of the Financial Services Royal Commission (FSRC). This increased funding has supported ASIC to strengthen and intensify its approach to enforcement and take on expanded responsibilities to address misconduct, resulting in increased enforcement activity in some sub-sectors. This increase in enforcement activity has led to increased amounts being recovered from industry via the IFM.

Enforcement activity has generally been concentrated to a small number of sub-sectors, as opposed to being equally spread across all sub-sectors. Since the commencement of the IFM, around 75 per cent of all enforcement costs have been recovered from less than 10 sub-sectors⁸, with 95 per cent recovered from less than 20 sub-sectors.

The recovery of enforcement costs

Currently, two approaches are taken to the recovery of enforcement costs. Costs for smaller enforcement matters are considered business as usual (BAU) and are recovered via cost recovery levies, while costs for large matters are drawn from the Enforcement Special Account (ESA) and recovered via statutory levies.

- 'Business as usual' (BAU) enforcement costs are allocated to the relevant sub-sector(s) and recovered in the year in which the costs are incurred. These costs are recovered via cost recovery levies consistent with the Charging Framework.
- The Government, as part of its annual appropriation to ASIC, prescribes an amount that is credited to the ESA. This appropriation amount (rather than the annual expenditure from the ESA) is recovered each year from industry. Costs are allocated to the relevant sub-sector(s)

⁸ The following 5 sub-sectors have accounted for the majority of enforcement costs since the commencement of the IFM (average over 4 years from 2017-18 to 2020-21): Listed corporations (29 per cent), Licensees that provide personal advice on relevant financial products to retail clients (14 per cent), Responsible entities (11 per cent), Credit providers (7 per cent) and Superannuation trustees (6 per cent).

based on a three-year rolling average of ESA activity in each sub-sector. This approach aims to reduce the volatility of ESA costs allocated to sub-sectors, by easing the impact of large matters on levies. These costs are recovered via statutory levies.

The IFM attempts to strike the balance between fairness and simplicity by attributing regulatory costs to the sub-sectors to which the enforcement activity relates. However, stakeholders have raised concern that this approach does not meet the overarching principle for government charging that those who cause the need for regulation should pay for it, and leads 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.

Stakeholders have also raised concerns about how the costs of enforcement matters that relate to multiple sub-sectors are recovered. In these cases, costs are apportioned across the relevant sub-sectors based on ASIC's regulatory effort for each sub-sector.

The recovery of enforcement costs solely from entities subject to enforcement activity would introduce additional complexity and administrative costs into the model that would likely outweigh the benefits of more targeted recovery. Additionally, there is broader benefit to industry from ASIC's enforcement action, by maintaining trust and integrity in the financial system and promoting consumer confidence. Stakeholder recognition of this benefit has been mixed.

Recovering costs from entities subject to enforcement action

While the majority of ASIC's enforcement activity costs are recovered from relevant sub-sectors through levies, ASIC actively seeks to recover investigation and litigation costs directly from the entity involved when it is successful in a matter before the courts.

- In some instances, investigation costs may be recovered from the entity involved via section 91 of the *Australian Securities and Investments Commission Act 2001* and section 319 of the *National Consumer Credit Protection Act 2009*. Recovered costs are applied back to relevant sub-sectors, to offset levy amounts and are recorded as own source revenue
- When ASIC pursues a matter in the courts, it seeks to have litigation costs awarded by the court if it is successful. Recovered costs are applied back to relevant sub-sectors, to offset levy amounts and are recorded as own source revenue.

There is likely to be a delay between when costs are incurred and when costs are recovered under these mechanisms, which means levies for one financial year will include ASIC's enforcement costs, but with any crediting of costs likely to occur in another financial year.

Own source revenue (which includes the recovery of investigation and litigation costs) recovers only a fraction of total enforcement costs – recovering between \$4 and \$16 million per year over the life of the IFM. This means the majority of enforcement costs are recovered from the relevant sub-sector, not the individual entity that is the subject of the enforcement activity. The actual amount recovered via these mechanisms will vary on a case-by-case basis, including because not all expenditure is recoverable and in some instances the entity or person ASIC takes action against has insufficient assets to cover ASIC's costs.

Some stakeholders have argued that court-awarded penalties and fines should also be used to offset industry levies in the same manner as own source revenue. Court-awarded penalties and fines are

paid into the Commonwealth Consolidated Revenue Fund. Penalties are imposed for a punitive purpose and as a deterrent for misconduct and bear no relationship to ASIC's regulatory costs. This is consistent with the treatment of penalties and fines across the Commonwealth. The use of penalties and fines to offset industry levies could be perceived as industry 'benefiting' from misconduct and create perverse incentives (for example, the risk that enforcement activity is driven by revenue considerations rather than efforts to reduce non-compliance). The use of fines and penalties to offset ASIC's regulatory costs will not be considered as part of this Review.

Additional stakeholder concerns relating to enforcement costs

In addition to the principal concern surrounding enforcement costs – that is, that enforcement costs are not recovered from those causing the need for enforcement activity – stakeholders have raised a number of other concerns.

Enforcement activity is a key driver of levy volatility year on year and variance between estimated and actual levies. Concerns raised by stakeholders related to the impact enforcement costs have on levy volatility and variance are addressed later in this paper.

Additionally, while industry stakeholders have noted they do not object to paying for some element of enforcement activity, some stakeholders argue that a portion of (if not all) enforcement costs should be government funded. Stakeholders argue that this would better reflect the broader public benefit of ASIC's enforcement activity. However, the aim of the IFM is to recover ASIC's regulatory costs from entities in the industry sub-sectors that cause the need for regulatory effort, rather than general taxpayers. It is important that entities fund the regulation of their sub-sector, given the benefits they receive from ASIC's activities in maintaining integrity and trust in the industry and deterring competition from those engaging in misconduct. The recovery of enforcement costs is also important in aligning incentives, by imposing a price signal for misconduct to encourage compliance.

While this Review does not consider government funding of ASIC's enforcement costs to be a viable option for these reasons, it will consider how the recovery of enforcement costs could be improved and ways to address some of the challenges that arise from the recovery of enforcement costs.

Questions

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?
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?

Unlicensed conduct

ASIC takes action in relation to illegal unlicensed conduct within the financial system. Unlicensed operators are not registered with ASIC and generally have not paid registration fees, nor do they pay annual levies. Nevertheless, ASIC incurs costs in identifying, preventing and sanctioning unlicensed conduct. These costs are recovered from the most 'relevant' sub-sector via levies; for example, regulatory activity relating to an unlicensed financial adviser would be recovered from the financial advice sub-sector.

ASIC action in relation to unlicensed conduct in a sub-sector is in the interests of the licensed participants in that sub-sector because it maintains integrity and trust in the licensed sub-sector and

deters competition from unlicensed and unregulated competitors. Where an enforcement matter relates to unlicensed conduct, costs of that enforcement matter are allocated to the relevant licensed population. This population benefits from ASIC's action to ensure that only licensed participants are providing services. Industry stakeholders in previous consultation have been less convinced of the benefit received.

Questions

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?

Emerging industry sectors and providers

Over the life of the IFM, the Government has made changes to introduce new sub-sectors in response to changes in the regulated population. This is an issue considered by the Government when considering any change to ASIC's regulatory responsibilities.

However, as part of its regulatory function, ASIC must necessarily undertake regulatory activities in respect of products and providers that are subject to a regulatory exemption or are at the regulatory perimeter. This perimeter refers to activities, which are often novel such as crypto assets and buy now pay later (BNPL), that do not sit within the existing system of licensing, registration, and supervision.

This regulatory work supports ASIC's responsibility, alongside Government, to maintain Australia's regulatory framework for financial services and ensure the integrity of the system overall. Regulatory costs associated with this work are, under the current IFM settings, recovered from entities within existing sub-sectors, which are already licensed and regulated.

Industry stakeholders have expressed some uncertainty and concern regarding the recovery of ASIC's costs relating to emerging providers and products, which are not explicitly captured by the existing IFM sub-sectors. ASIC's activity relating to BNPL and crypto assets were the most prominent examples raised by stakeholders.

Questions

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?

Capital expenditure

ASIC allocates its capital expenditure to sub-sectors on a case-by-case basis determined by how many sub-sectors the investment impacts. Certain projects will be recovered from the entire regulated population, with others recovered from a specific subset of sub-sectors.

The recovery of capital expenditure occurs in the year in which the investment is made which means the regulated population in that year bears the cost of investment, despite assets having a useful life over multiple years and benefiting future regulated populations. Some other cost recovery models take a different approach, by recovering capital expenditure over the life of an asset.

Questions

11. 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?

The recovery of other regulatory activities and indirect costs

Stakeholders have expressed some concerns regarding the recovery of costs associated with ASIC's education and policy advice activities. Industry stakeholders have argued they are not causing the need for this regulatory effort; the activities should be considered business as usual for an Australian Government body; and industry does not receive the benefit of the activities.

ASIC's input into policy can help to ensure that new or amended regulatory arrangements can be administered and enforced as intended. Policy is also often made as a response to regulatory problems and issues across sectors or across the market. As such, ASIC providing advice and support to Government policy development is a key part of ASIC's regulatory work.

Stakeholders have also expressed confusion relating to the recovery of indirect costs and how these costs are allocated to sub-sectors and therefore impact levies. Indirect costs relate to internal support activities that are essential to enable ASIC to perform its regulatory activities and are allocated to sub-sectors based on ASIC's analysis of support costs to determine its proportional effort across the regulated population.

Questions

12. 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?
13. What changes could be made to the reporting of indirect costs to improve stakeholder understanding of these costs?

Variance between estimated and actual levies

ASIC calculates and publishes estimated levy amounts in its Cost Recovery Implementation Statement (CRIS) for stakeholder consultation. Generally, ASIC starts preparing and calculating its estimated levies in the middle of the financial year (i.e. around November each year) based on information and data at a point in time, which can be 'out-of-date' at the time the draft CRIS is consulted on. This means that actual levies will generally vary from these estimates, sometimes by a substantial degree.

The key driver of variability between estimated levies and actual levies is the difficulty to accurately estimate in which sub-sector enforcement costs will occur. This is due to the changing nature of enforcement matters as they progress through the stages of investigation and litigation, which can sometimes be a lengthy process. Other factors that impact variance between estimated and actual levies include:

- changes in ASIC's operating environment in response to emerging issues;

- conduct of ASIC’s regulated population during the year that requires ASIC to adapt to new developments and emerging threats and harms;
- structural changes in ASIC’s regulated population, such as changes in the number of regulated entities in each sub-sector; and
- business activity metrics submitted by entities.

Variance between total estimated regulatory costs to be recovered through levies and the actual regulatory costs recovered through levies has been less than 10 per cent each year. For example, in 2019-20, ASIC estimated its total regulatory costs to be recovered through levies would be \$293.5 million while actual regulatory costs were \$320.3 million – a difference of 9 per cent.

However, at the sub-sector level, the level of variance between estimated and actual levies can be much greater and more prominent. All sub-sectors will experience some level of variance between estimated and actual levies each year or in multiple years – that is, either an increase or decrease between their estimated and actual levies. Stakeholders have raised concerns where there have been significant increases between their estimated and actual levies.

Since the commencement of the IFM, 35 different sub-sectors have experienced an increase of 20 per cent or more between their estimated and actual levies. Of the 35 sub-sectors, 13 sub-sectors have experienced an increase of more than 20 per cent between their estimated and actual levies in multiple years.⁹

Enforcement costs are a key and persistent driver of variance, followed by supervision and surveillance costs. For instance, of the sub-sectors that experienced an increase of 20 per cent or more between their estimated and actual levies, enforcement was the single greatest contributor of variance in 50 per cent of cases, followed by supervision and surveillance in 25 per cent of cases.¹⁰

The sub-sectors that experience consistent concentration of enforcement costs each year (see *Enforcement* section above) also experience consistent variance between estimated and actual levies each year, with enforcement being a key driver.

While enforcement and supervision and surveillance costs are the key drivers of variance, other regulatory activities can also contribute to variance, as well as other factors such as changes in the number of regulated entities in a sub-sector. ASIC calculates the majority of estimated levies based on the number of entities and submitted metrics in each sub-sector as at the end of the previous financial year. However, the number of entities in a sub-sector may change across the levy period and will impact levy amounts paid by individual entities (even if the total regulatory costs for the sub-sector do not change).

Improve the accuracy and timing of estimated levies

A key challenge for entities is the sometimes-significant variance between estimated and actual levies each year, which makes it hard for entities to budget for the actual levy. Therefore, some entities do not find the estimated levies useful and do not engage with the draft CRIS. The inconsistent timing of

⁹ These sub-sectors are: Large proprietary companies, Small and medium amount credit providers, Deposit product providers, Superannuation trustees, Managed discretionary account providers, Small securities exchange operators, Established specialised market operators, Exempt market operators, Securities dealers, Retail over-the-counter derivatives issuers, Licensees that provide personal advice on relevant financial products to retail clients, Licensees that provide personal advice to retail clients on only products that are not relevant financial products, Insurance product distributors.

¹⁰ In this case, ‘single greatest contributor of variance’ means the activity cost that comprises the largest proportion of the net variance affecting a sub-sector in a given year.

when estimated levies are released for consultation with stakeholders can also make it difficult for entities to budget for the actual levies.

ASIC calculates estimated levies using point-in-time data and information. To enable more accurate estimated levy amounts reflecting more up-to-date data, ASIC could undertake these calculations later in the financial year. For example, instead of starting to calculate estimated levies in November (with 5 months of financial year data and information), ASIC could start the process in March (with 9 months of financial year data and information). This would mean that the draft CRIS is released around June and around 6 months before final levy invoices are sent to entities.

While this would mean estimated levies would reflect more up-to-date information, there would still be some variability in actual levy amounts. This would also mean that the release of the draft CRIS would be delayed.

Questions

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

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

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

Increases and volatility in actual levy amounts across years

The total funding available to ASIC – and therefore the amount recovered through levies under the IFM – has increased since the commencement of the IFM. The increase in ASIC's total regulatory costs recovered through levies is primarily due to the increase in funding provided by the Government to ASIC to regulate the financial sector, including to implement the recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

This increased funding is supporting ASIC to strengthen and intensify its approach to enforcement and take on expanded responsibilities to address misconduct in the financial sector. As a result, certain sub-sectors have required increased supervision and surveillance, and increased enforcement. This has meant ASIC has dedicated greater resources to regulating these sub-sectors, and therefore has led to some sub-sectors facing significant increases in their actual levies. This has occurred alongside other increases in the overall cost burden for some industry sub-sectors, such as the costs associated with regulatory reforms.

The Government has intervened in response to significant increases in levies in the personal financial advice licensee sub-sector. The per adviser levy component for this sub-sector has been capped at its 2018-19 level in respect of 2020-21 and 2021-22. The cost of this relief is borne by the Government (through general taxpayers) and is not recovered through levies charged to other sub-sectors.

Actual levies charged for a sub-sector will vary between years, driven by factors including the regulatory effort incurred by ASIC in relation to that sub-sector and the population of the sub-sector. In some cases, the changes in levy amounts between years have been significant.

Key drivers of volatility in levy amounts across years are:

- regulatory effort expended by ASIC, which will vary across sub-sectors as ASIC focuses its resources where they are needed most;

- structural changes in ASIC’s regulated population, such as changes in the number of regulated entities in each sub-sector; and
- enforcement activity and the associated increase/decrease in indirect costs.

Since the commencement of the IFM, the amount recovered through levies has increased by \$77.5 million or 33 per cent (as at 2020-21), with the population of leviable entities declining by 4 per cent across the period.

Since the commencement of the IFM, 50 different sub-sectors have experienced either a decrease or increase of 20 per cent or more in their levy amounts year-on-year, with 40 sub-sectors experiencing this level of volatility in multiple years. Volatility is more prominent in certain sub-sectors. Since the commencement of the IFM, 17 different sub-sectors have experienced more than a 100 per cent increase in their levy compared to the previous year.

The key driver of volatility is enforcement and the associated indirect costs that support enforcement activity, followed by capital expenditure. Of the 50 sub-sectors that have experienced either an increase or decrease of 20 per cent or more in their levy amounts year-on-year, enforcement was the single greatest contributor to sub-sector volatility in 40 per cent of cases, followed by supervision and surveillance in 23 per cent of cases.¹¹

The sub-sectors that experience a consistent concentration of enforcement costs each year (see *Enforcement* section above) also experience consistent volatility in levies each year, with enforcement being the key driver.

While certain sub-sectors have consistently experienced significant volatility in levy amounts since the commencement of the IFM, this could change going forward subject to ASIC’s regulatory priorities which could divert resources and costs to other sub-sectors.

Other factors not associated with ASIC’s regulatory activity can also contribute to fluctuations in levy amounts such as changes in the number of regulated entities in a sub-sector. That is, if the number of entities in a sub-sector changes year-on-year, this will impact levy amounts paid by individual entities (even if the total regulatory costs for the sub-sector do not change across years).

Managing and reducing volatility

Some Government agencies have mechanisms built into their industry funding models to manage volatility in levy amounts by spreading costs over wider population groups or over time. Generally, costs recovered through this approach are not governed by the Charging Framework as they would be considered a statutory levy (that is, where the Government has decided there should be cross-subsidisation). However, this approach allows for simple administration and price stability.

For example, the Australian Prudential Regulation Authority (APRA) smooths the allocation of costs using a four-year rolling average, before costs are allocated to industry sectors and levies are calculated for entities. This reduces the volatility in levies charged to industry.

There are various ways costs could be spread in the ASIC IFM to help manage or reduce volatility. For example, spreading costs over time, across a wider population or only spreading certain volatile costs such as ‘business as usual’ enforcement costs (noting ESA costs are recovered using a three-year rolling average).

This would result in increased cross-subsidisation over time or across different parts of ASIC’s regulated population. That is, introducing this approach to manage volatility in levy amounts would

¹¹ In this case, ‘single greatest contributor of volatility’ means the activity cost that comprises the largest proportion of the total volatility affecting a sub-sector in a given year.

change where the cost burden sits and would result in entities paying for the cost of regulation for entities in the past or other entities across industry.

While the examples provided below are aimed at managing and reducing volatility for entities (that is, making levy amounts more stable across years), any approach taken to spread costs would result in either a levy reduction or increase for different entities relative to the current approach. Additionally, while the examples below are aimed at addressing volatility for sub-sectors that have been the focus of strong regulatory oversight and enforcement action (and have therefore faced higher costs) in recent years, this focus may shift in future to other sub-sectors.

Furthermore, while the degree of volatility would be reduced, there would still be a level of volatility in levy amounts for entities each year impacted by factors such as the level of ASIC's funding and regulatory focus, and the total number of leviable entities within the relevant population.

2: Examples of alternative approaches to distribute costs¹²

Example 1: Spread costs for a sub-sector over time

Spread all regulatory costs (including all direct and indirect costs) for a sub-sector based on the average proportion of effort expended in the sub-sector in previous years (e.g. a three-year rolling average) relative to total regulatory effort.

- This would result in levy amounts for sub-sectors being based on the costs relating to regulatory activity which occurred in the past.
 - Sub-sectors would also be subsidising the costs of other sub-sectors in any given year to enable ASIC's total regulatory costs to be recovered each year.
- While this would mean ASIC's total regulatory costs are recovered each year, it is unlikely to have a significant impact on volatility as sub-sectors will still be subject to fluctuations in their levy amounts year-on-year. These fluctuations may be more, less or about the same relative to the current approach depending on the amount of regulatory costs directed to the sub-sector across the relevant time period.
- Other factors, such as ASIC's total funding from Government and the number of entities in the sub-sector, would also impact the volatility in levy amounts each year.

Example 2: Spread certain costs across a wider population each year

Spread all enforcement costs (including all direct and indirect costs) across all of ASIC's population using a generalised metric, such as a volume-based proxy (for example, revenue or turnover). All other costs would continue to be allocated to sub-sectors and levies would be calculated for an individual entity consistent with the current IFM settings.

¹² The principles, options and examples of potential changes outlined in this paper have not received Government approval and are not yet law. As a consequence, this paper is merely a guide as to how the principles, options or examples of potential changes might operate.

- As enforcement costs are the key driver of volatility and have consistently been concentrated to certain sub-sectors each year, this option would seek to remove the volatility that comes from fluctuations and concentration of enforcement costs.
- This would result in increased cross-subsidisation of enforcement costs across the whole regulated population in any given year.
- Entities that would likely benefit the most from this approach are smaller entities in sub-sectors subject to high enforcement costs as these costs would be spread across a wider population and may result in lower and more stable levy amounts each year.
 - If this mechanism was in place in previous years, preliminary analysis suggests that smaller entities in the personal financial advice licensee sub-sector and credit intermediaries sub-sector, would likely have paid lower and more stable levies.
- Conversely, larger entities and those entities in sub-sectors that are not subject to high regulatory costs would likely face a sustained increase in their levies.
 - If this mechanism was in place in previous years, preliminary analysis suggests that larger entities in the corporate sector and deposit taking and credit sector (such as banks and large corporations) would likely have paid higher levies relative to the amount they are paying under the current settings.
 - Similarly, entities in sub-sectors that have not been subject to a large proportion of ASIC's enforcement activity or no enforcement activity (such as entities in sub-sectors for clearing and settlement facility operators, and the registered liquidators sub-sector) would likely have paid higher levies relative to the amount they are paying under the current settings.
- While certain sub-sectors have been a focus for enforcement action to date, another sub-sector or sub-sectors might be in the future. This approach would mean all entities pay a more stable amount, but that amount would not directly relate to misconduct in the sub-sector they operate in.
- Other factors, such as ASIC's total funding provided by Government, the total number of leviable entities, and an entity's business activity metrics would also impact the volatility in levy amounts each year.
- Alternatively, this mechanism could be applied to all regulatory costs. If all regulatory costs were to be spread across all of ASIC's regulated population, this would achieve broadly the same outcomes set out above, as other regulatory costs are not as volatile or concentrated as enforcement costs.
- While enforcement costs could be spread at a sector level, this would not have as large an impact on levy volatility, compared with spreading costs across the entire regulated population.

This paper seeks stakeholders' views on the examples identified above. In providing feedback on these examples, stakeholders should consider:

- any reduction/increase in levies faced by one sub-sector would be offset by equivalent increases/reductions in other sub-sectors to continue to recover the full amount of ASIC's regulatory costs;

- the impact of the examples on entities, including the cost to business and regulatory burden, as well as fairness and equity considerations;
- if there are other certain activities or costs that should/should not be spread across years or a wider population;
- whether it would be preferable to spread costs over entities within a sector, or over the entire regulated population;
- for Option 1, the appropriate time period for costs to be averaged over – for example, a three-year average or a four-year average; and
- for Option 2, whether any maximum caps or other safeguards should be set to ensure that entities are not disadvantaged by higher levy amounts.

Questions

15. 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?
16. 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?

Fees-for-service

1. Overview

As part of the IFM, ASIC charges cost recovery fees-for-service for user-initiated and transaction-based activities where ASIC provides a specific service to individual entities. These fees are charged when a good, service, or regulatory activity is provided directly to an individual or organisation. The fee amount charged, and the costing approach is governed by the Charging Framework. Fees account for a small proportion of the total amount recovered from industry under the IFM – typically between 3-5 per cent each year. The fees-for-service component of the IFM commenced on 4 July 2018.

Table 3: Fee revenue compared to industry levies

	2018-19	2019-20	2020-21	2021-22*
Amount recovered via industry levies (\$ million)	276.7	320.3	314.1	332.3
Amount recovered via fees-for-service (\$ million)	13.6	11.2m	14.5m	16.9
Fees revenue as a proportion of total amount recovered (%)	4.7	3.4	4.4	4.8

*Estimated figures for 2021-22.

ASIC also charges registry fees, attached to forms relating to updating ASIC's registry databases. These fees are not part of the IFM and are not charged within the Charging Framework, and therefore are not within the scope of this Review.

2. Key features of the fees-for-service model

There are 419 fees currently charged under the IFM. Fee amounts are set by the Government in legislation (see Appendix C), at a level based on the cost to ASIC of undertaking the relevant activity to facilitate full cost recovery of these activities. Fee amounts recover both direct and indirect costs relating to the provision of the relevant service. No aspect of ASIC's capital costs is recovered via fees.

Activities that are cost recovered through fees-for-service include:

- **License application or variation services:** Licensing or otherwise authorising people to operate or participate in the markets and industries that ASIC regulates.
- **Registration application services:** Registering or otherwise authorising people to operate or participate in the markets and industries that ASIC regulates.
- **Compliance review of documents lodged with ASIC:** Undertaking compliance reviews of documents related to commercial transactions to identify disclosure deficiencies and whether the disclosure complies with the law.
- **Requests for changes to market operating rules:** Assessing changes to the operating rules of a licensed market or licensed clearing and settlement facility.
- **Applications for relief:** Assessing and determining applications for relief from certain provisions in the legislation that ASIC is responsible for administering.

Flat fees are charged for services related to some licensing and professional registrations, processing applications for relief, requests for changes to market operating rules, and ASIC's formal compliance review of documents lodged by entities under the Corporations Act.

Tiered fees are charged for regulatory activities that vary in complexity; that is, whether certain applications and notices are of low, medium or high complexity. This aims to align fee amounts with actual regulatory effort and therefore costs. Tiered fees are applied to AFS licence applications, credit licence applications, market licence applications, notices of changes to market and clearing and settlement (CS) facility operating rules, and CS facility licence applications.

The fees-for-service framework is implemented via several pieces of legislation.

The *Corporations (Fees) Act 2001* sets out the matters for which a fee can be charged and who is liable to pay the fee. The types of fees and fee amounts are set by the Government and prescribed in the *Corporations (Fees) Regulations 2001*. Fees relating to self-managed super fund auditors and credit activities are provided for in other legislation (at Appendix C).

Fees are payable to ASIC at the time that the regulatory activity occurs. For example, an application fee for an Australian Financial Services licence would be payable at the time of application.

Questions

17. In relation to the design, structure and legislative framework for fees-for-service:
 - 17.1. Are any changes required to ensure it remains fit for purpose in the longer-term and/or can respond to changes in industry?
 - 17.2. Are there opportunities to simplify the design, structure, and legislative framework for fees-for-service?
18. Are there any costs currently recovered through fees-for-service that would be more appropriate to recover through industry levies? If so, why?

3. Key issues related to fees

Full cost recovery through fees

The fees-for-service component of the IFM is underpinned by the policy principle of cost reflective fees; that is, fees reflect ASIC's regulatory efforts, and ASIC can charge for the services it provides to a specific entity.¹³ In line with this, fees should be charged at a level that fully recovers the cost of ASIC providing the relevant service. However, fee amounts have not been updated since the commencement of the fees-for-service component of the IFM (2018-19), and consequently, in most cases the fee amount no longer aligns to the cost to ASIC. Total fee revenue now only partially recovers ASIC's costs of providing these services. The deficit per year between fee revenue and ASIC's costs in providing the services since the commencement of the fees-for-service component of the IFM has ranged between approximately \$10 million and \$18 million, with the shortfall funded by the Government (i.e. general taxpayers).

¹³ Treasury Laws Amendment (ASIC Fees) Regulations 2018, Explanatory Statement, page 3.

Table 4: Fee for service revenue relative to costs

	2018-19	2019-20	2020-21
Fee revenues (\$ million)	13.6	11.3	14.5
Fee costs (\$ million)	23.5	29.4	25.5
Deficit (\$ million)	9.9	18.1	11.0

3: Examples of fee adjustment¹⁴

Option 1: Adjust fee amounts to a level which facilitates full cost recovery of ASIC’s cost relating to fees-for-service. Setting fee amounts at full cost recovery level would mean the majority of fee amounts would increase.

Questions

19. If fee amounts are to be changed, should this be amended via a one-off increase or staged to spread the impact over multiple years?

Flexibility of the IFM to respond to changes

While ASIC administers and charges fees-for-service, the types of activities ASIC can charge fees for are set in primary law, with specific chargeable matters and fee amounts set in regulations by the Government (subject to Parliamentary processes). This provides a high degree of government oversight on what activities fees can be charged for and fee amounts, however limits the flexibility to make changes.

Updating fee amounts in Regulations can be a lengthy process and resource intensive. The length of this process impacts the ability to keep fee amounts up-to-date and ensure fees fully recover the costs of ASIC providing services.

Since commencement of the IFM, there has been no wholesale change to the framework of the fees component of the ASIC IFM. However, there have been legislative amendments to enable ASIC to charge new fees – see Appendix C for a list of these changes.

The Australian Prudential Regulation Authority (APRA), which also operates an industry cost recovery model, has been delegated the authority to set fee amounts for its regulated population. This provides APRA more flexibility to regularly update fees. APRA, like ASIC, charges fees for user-initiated and transaction-based activities services such as licensing and application fees.

¹⁴ The principles, options and examples of potential changes outlined in this paper have not received Government approval and are not yet law. As a consequence, this paper is merely a guide as to how the principles, options or examples of potential changes might operate.

4: Examples of improving flexibility¹⁵

Option 1: Delegate to ASIC the power to determine what activities ASIC is able to charge fees for, rather than the Government prescribing the activities.

Option 2: Delegate to ASIC the power to set and adjust fee amounts in legislative instruments, rather than the Government setting fee amounts in regulations, but with the Government continuing to determine the activities for which ASIC is able to charge fees.

Questions

20. Is it appropriate for ASIC to have the power to determine which of its regulatory activities/services it can charge a fee for?
21. Is it appropriate for ASIC to have the power to set fee amounts, or should this power remain with the Government?
 - 21.1. If ASIC were provided the power to set fee amounts, should there be any limitations on what fees it can adjust, or by how much? For example, setting caps on specific fees in primary law or regulations, or setting principles to guide ASIC's setting of fee amounts?
22. What transparency and accountability mechanisms would be appropriate if ASIC were setting fee amounts?

Fees charged for licence and registration cancellations

ASIC charges fees for licence and registration cancellations. There are six flat fees which relate to licence and registration cancellations for Australian Financial Service Licence (AFSL) holders, benchmark administrators, Self-Managed Super Fund (SMSF) auditors and liquidators. There are also three licence cancellation activities that have no fee, which relate to clearing and settlement facility, trade repository and Australian market licenses.

ASIC undertakes a number of steps before cancelling a licence which can include consultation with APRA (if the entity is APRA-regulated), a review of open disputes with the Australian Financial Complaints Authority (AFCA), confirming there are no outstanding financial statements or auditor's reports and conducting intelligence searches to identify if there are any reasons not to cancel the licence.

Some stakeholders have expressed concerns about these fees. In some cases, these concerns arise from a lack of understanding of the work involved for ASIC. Stakeholders have also raised concerns that licence cancellation fees are not universal, with some significantly more expensive than others, and some charged no fee at all. Stakeholders have also suggested that charging fees for this type of service may function as a disincentive for entities to engage with the process, potentially leading to individuals and businesses retaining a licence unnecessarily.

¹⁵ The principles, options and examples of potential changes outlined in this paper have not received Government approval and are not yet law. As a consequence, this paper is merely a guide as to how the principles, options or examples of potential changes might operate.

Questions

23. Do fees for licence and registration cancellations provide a disincentive to cancel licenses and registrations? If so, would a lower fee or no fee remove this disincentive?
24. Would it be more appropriate for the costs associated with licence and registration cancellations to be recovered through industry levies (noting that there are wider benefits to ensuring entities and individuals that are no longer undertaking a particular licensed activity do not continue to hold a licence for that activity)?

Fees charged for relief applications

ASIC charges fees to consider individual applications for the exercise of discretionary powers to grant relief from certain provisions in the legislation that ASIC is responsible for administering. Relief can be provided on an individual basis or to a class of entities. Some stakeholders raised confusion about the recovery of costs relating to relief provided to a class of entities.

Although relief can be granted either on an individual basis or to a class of entities, only individual applications for relief attract a fee for service. ASIC's regulatory effort relating to relief provided to a class of entities is recovered via industry levies from the relevant sub-sector. Such relief has a benefit that is spread across a class of entities, and it would therefore be inappropriate to charge a single entity.

Questions

25. Is it appropriate for ASIC's work on individual relief applications to be recovered via fees, with the costs associated with ASIC's work on relief provided to a class of entities to be recovered through industry levies?

Reporting, transparency and consultation

1. Overview

Reporting, transparency and consultation arrangements for the ASIC IFM are intended to ensure key information is available to stakeholders to enable an appropriate level of scrutiny of ASIC's activities, decisions and processes. However, it is important to ensure that transparency mechanisms are appropriately balanced with ASIC's independence to set its regulatory priorities.

Legislation (such as the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), *Australian Securities and Investments Commission Act 2001* and *Cost Recovery Levy Act*), as well as the Australian Government Charging Framework requires ASIC to make available key information about its regulatory activities, regulatory costs and charges.

More broadly, ASIC is also subject to a range of external accountability and oversight mechanisms. The Parliamentary Joint Committee on Corporations and Financial Services has oversight of ASIC. ASIC also appears before other parliamentary committees and inquiries as required, including the Senate Standing Committee on Economics and the House of Representatives Standing Committee on Economics.

In relation to the IFM, ASIC's current reporting, transparency and consultation arrangements consist of:

- producing and consulting on an annual Cost Recovery Implementation Statement (CRIS) which outlines how the costs of ASIC's regulatory activities will be recovered from industry;
- reporting on its expenditure for each regulated sub-sector by regulatory activity via the CRIS, legislative instruments and an Annual Dashboard;
- publishing an annual Corporate Plan which outlines ASIC's priorities for future years; and
- publishing an Annual Report which outlines ASIC's performance and financial statements each financial year.

In addition to its Corporate Plan and Annual Report, ASIC uses a number of other mechanisms to provide information to stakeholders about its activities. This includes quarterly enforcement and regulatory updates.

2. Key features of reporting, transparency and consultation

Cost Recovery Implementation Statement (CRIS)

The Charging Framework requires that cost recovered regulatory activities are documented in a CRIS before cost recovery can commence.¹⁶ This requirement is put into practice through ASIC consulting on and publishing a CRIS on an annual basis. The Charging Framework sets out the type of information that must be included in a CRIS and stipulates that the level of information in the CRIS be proportional to the complexity, materiality and sensitivity of the activity.

The CRIS outlines ASIC's estimated regulatory costs and activities by sub-sector for each financial year and provides details on how ASIC allocated its costs in the previous year. The CRIS is the key process through which industry can engage with ASIC on the IFM. Industry has an opportunity to comment on

¹⁶ [RMG-304 Australian Government Cost Recovery Guidelines](#).

proposed charges in the draft CRIS and ASIC must summarise and respond to the issues raised in the final published CRIS.

An indicative timeline of the CRIS process relating to the IFM is at Table 5. The CRIS process commences when ASIC publishes estimated levies via a draft CRIS to give regulated entities an indication of what levy costs to expect. The estimated levies each year are ASIC’s best estimate based on available information. Entities can use the data in the draft CRIS to estimate their invoice for that year, noting that the figures remain an estimate and are likely to change.

A final CRIS is published that summarises the stakeholder feedback ASIC received during the consultation process and ASIC’s response to stakeholder feedback. The final CRIS also includes ASIC’s annual dashboard report, which sets out information about ASIC’s regulatory costs for the previous financial year.

Table 5: Indicative timeline of CRIS and levies process for 2021-22

Key event	Indicative Date
ASIC publishes the draft CRIS for stakeholder feedback, which includes estimated regulatory costs for each sub sector itemised by each of ASIC’s regulatory activities	June 2022
ASIC’s portal opens for entities to enter their 2021-22 annual returns, which includes their business metrics.	July – September 2022
ASIC publishes the final CRIS for 2020-21 which summarises stakeholder feedback on the draft CRIS. The levy amounts included remain unchanged from the draft CRIS and are therefore still only estimates.	September 2022
ASIC makes legislative instruments with business activity details and final regulatory costs, and publishes annual dashboard report.	December 2022
ASIC sends invoices to entities for 2021-22 levies.	January – March 2023

Corporate Plan

ASIC is required (under the PGPA Act) to publish a Corporate Plan, which sets out its strategic planning framework, priorities and actions for future years. This strategic planning process supports ASIC in planning its regulatory action and allocating regulatory costs. Of particular relevance to the IFM, the Corporate Plan provides information on ASIC’s strategic priorities which may assist industry in understanding ASIC’s areas of focus and resource allocation, and therefore where costs may be recovered from industry.

As part of ASIC’s strategic planning process, ASIC consults with the ASIC Consultative Panel, the ASIC Consumer Consultative Panel, APRA, the RBA and Treasury. ASIC’s Corporate Plan is the culmination of this process.

Annual Report

ASIC is required (under the PGPA Act) to publish an Annual Report each year which outlines ASIC's performance and financial statements for the reporting period. The report provides an analysis of ASIC's activities and outcomes achieved in each IFM sector – thereby assisting regulated entities and other stakeholders to understand the regulatory effort ASIC expended in each sector. Consultation is not undertaken on the Annual Report.

Quarterly enforcement and regulatory updates

On a quarterly basis, ASIC releases an enforcement and regulatory update report. This report provides a summary of enforcement outcomes, regulatory changes and other areas of activity – and can therefore support regulated entities and other stakeholders in understanding ASIC's activities over the course of the year.

Government consultation

The Government is responsible for the policy settings of the IFM, which is prescribed in a legislative framework comprising several Acts and Regulations and subject to Parliamentary processes and oversight. The Government is also responsible for making changes to the IFM and subsequent amendments to the legislation to give effect to any changes. If the Government proposes to make changes to the IFM and amend legislation, it would consult with stakeholders as part of its legislative processes.

3. Key issues related to reporting, transparency and consultation

Purpose of engagement with stakeholders

Engagement with stakeholders on the IFM can serve transparency and/or consultation purposes. Both transparency and consultation are important for industry-funded activities.

Currently, the CRIS is the key means for information and industry engagement on the IFM and operates as both a transparency mechanism and a means of industry consultation. However, stakeholder feedback has indicated relatively low levels of engagement on the CRIS, with one of the contributing factors being stakeholders viewing the consultation aspect of the CRIS as having little benefit, noting that past feedback has not led to changes to levies or the IFM more broadly. Several factors contribute to this, including:

- Feedback submitted by stakeholders often relates to matters outside of ASIC's remit – stakeholders often raise concerns related to the design of the IFM, which are matters for the Government.
- The nature of consultation in an ex-post cost recovery model – levy amounts and the allocation of regulatory costs to sub-sectors are determined based on the regulatory effort ASIC has expended, and there is therefore little capacity for change in response to stakeholder feedback

Noting stakeholder feedback and the constraints on ASIC acting on feedback received via the CRIS process, the CRIS may not be the most appropriate mechanism for consultation on the IFM and there may be merit in reframing the CRIS as a transparency document.

Other aspects of existing arrangements – such as ASIC’s Corporate Plan and Annual Report – primarily serve transparency purposes in helping stakeholders to understand ASIC’s activities and costs.

However, there are limits to the extent of transparency and consultation that is feasible and appropriate. For example, it is not feasible or appropriate for ASIC to provide highly granular ‘line-by-line’ information about its costs to stakeholders. There are also limits to the extent to which ASIC can and should consult with stakeholders on its activities (in particular its enforcement activities), given the need to maintain clear independence from its regulated population.

It is also important to ensure that transparency and consultation mechanisms are proportional to the nature of cost recovery. The provision of additional information or new consultation or transparency mechanisms would impose additional demands and costs on ASIC and would need to be appropriately balanced with the potential benefits for regulated entities and other stakeholders.

Information provided to stakeholders

A wide range of information about the IFM and ASIC’s activities and costs is made available to stakeholders across the CRIS, Corporate Plan and Annual Report. However, stakeholder feedback on the information provided has been mixed.

In particular, the CRIS attracts mixed views from stakeholders. Many stakeholders have commented that the document is too complex, lengthy and difficult to navigate. However, stakeholders have also sought more granular information and data on ASIC’s activities and costs to help them understand the drivers of levy amounts, including changes between years and how levies are calculated. Such conflicting feedback makes achieving the right balance difficult. It is also important to note that the complexity of the CRIS is in part a product of the complexity of the IFM and the breadth of ASIC’s regulated population; and that some content in the CRIS is driven by requirements of the Charging Framework.

Timing of engagement with stakeholders

Engagement with stakeholders on the IFM occurs at different times for different mechanisms, and stakeholders have provided a range of feedback on this timing.

The timing for the release of ASIC’s draft and final CRIS has not been consistent over the life of the IFM. Stakeholder feedback has indicated that a more consistent approach would be preferred, specifically so entities are able to budget consistently by knowing in advance when estimated levies will be released. This Review recognises the timing of the CRIS has varied significantly, and that more consistent timing will provide more certainty to stakeholders. The trade-off between timing and accuracy of estimates is addressed in the discussion of levy variance earlier in this paper.

Stakeholders have also raised concerns about the timing for the publication of information explaining material variances between estimated and actual levies. Currently, ASIC uses the CRIS to outline the variance between its levy estimates and actual levies for the previous financial year. Additional commentary is provided for sub-sectors which experience a material variance (that is, if the difference between the total actual costs and the estimated costs for the sub-sector is greater than 10 per cent of the estimated costs and greater than \$2 million in total). Stakeholder feedback has indicated that this timing is too late, noting that it occurs after the relevant invoices have been issued and paid. Stakeholders have suggested this information should be provided at the same time as ASIC publishes final levies.

5: Examples of adjustments to reporting, transparency, and consultation¹⁷

Option 1: Reframe the purpose and role of the CRIS to focus on transparency (rather than also consultation) and publish only one CRIS each year (rather than a draft and final), with other mechanisms used for industry consultation (such as Option 2).

Option 2: Introduce other industry consultation mechanisms – for example, less frequent but more substantive consultation on the IFM’s policy settings undertaken jointly by ASIC and Treasury.

Option 3: Ensure the CRIS is published at a more consistent time each year.

Option 4: Publish the explanations for material variances between estimated and actual levies soon after the actual levies are determined (these are currently reported in the following year’s CRIS).

This paper seeks stakeholders’ views on the options identified above.

Questions

26. How do regulated entities and other stakeholders engage with ASIC’s transparency and consultation mechanisms relating to the IFM? What aspects are most useful?
 - 26.1. What do stakeholders seek from mechanisms to engage with the IFM? Is it more important for these mechanisms to provide transparency, or to allow for stakeholder consultation and feedback?
27. Are the existing transparency and consultation mechanisms in relation to the IFM appropriate?
 - 27.1. Would changes to existing mechanisms or alternative mechanisms be beneficial? If so, what changes could be adopted and what benefits would they provide?
28. How is the CRIS used by regulated entities and other stakeholders, and do stakeholders find the information in the CRIS useful?
 - 28.1. Could improvements be made to the CRIS, including the form/format and nature of information provided? If so, what improvements and what benefits would they provide?
 - 28.2. At what time is it most beneficial for the CRIS to be published?
29. Noting that changes to the IFM are for the most part decisions for the Government, is annual consultation by ASIC via the CRIS useful? Would less frequent but more substantive consultation be preferable?
30. Are changes required to the criteria determining material variance? If so, what should be changed – the percentage and/or dollar value amount, or be based on the number of entities impacted?
 - 30.1. When should information regarding material variations be published?
31. What other information would be useful to regulated entities or other stakeholders to understand how ASIC sets its regulatory priorities and/or to understand the relationship between ASIC’s costs and the amounts recovered from industry? What benefits would additional information provide?

Appendix A: Terms of Reference

Purpose of the Review

The Australian Securities and Investments Commission (ASIC) Industry Funding Model (IFM) commenced in July 2017, following a recommendation of the Financial System Inquiry that the Government introduce a cost recovery model for ASIC.

The IFM is intended to meet the Australian Government's 2015 Charging Framework objectives, requirements and Charging Policy Statement.

In addition, Governments' long-standing position is that cost recovery fees and levies attributable to regulated activity are considered as a funding mechanism prior to statutory charges (taxation) or budget funding.

The IFM determines which costs incurred by ASIC are recovered from which regulated sub-sectors, such that the cost is met by entities in the sub-sectors that create the need for regulation. Prior to the introduction of the IFM, ASIC was primarily funded by taxpayers through government appropriations. Costs are recovered in proportion to the costs incurred by ASIC in respect of each regulated sub-sector. Under the IFM, costs are recovered through a combination of cost recovery levies, cost recovery regulatory fees-for-service, and statutory levies/charges.

The Government is committed to maintaining appropriate industry funding arrangements for ASIC. Treasury will lead the Review in consultation with ASIC, Department of Finance and the Department of the Prime Minister and Cabinet to ensure the settings of the IFM remain appropriate in the longer term.

It is appropriate to review the IFM at this point given it has now been in place for five years, and over this period there has been substantial regulatory and structural changes within industry sectors resulting in increased cost pressures within certain sub-sectors.

The Review will be forward looking and focused on identifying any changes to the IFM that may be required to ensure the settings remain appropriate.

Scope of the Review

1. The Review will consider and, where appropriate, make recommendations regarding:
 - a. The types of costs and nature of ASIC's activities that are recovered from industry, how those costs are recovered and who they are recovered from. This will include considering costs recovered through levies and regulatory fees-for-service, but will not include a detailed examination of individual fees-for-service. This will also include considering whether some or all costs for certain activities such as enforcement and capital expenditure remain appropriate to be recovered through the IFM.
 - b. How ASIC allocates costs to sub-sectors, with a focus on regulatory activity that impacts multiple sub-sectors, the consequences of time lags between regulatory action and cost allocation, and the changes to sub-sector composition, including due to firm exits.

¹⁷ The principles, options and examples of potential changes outlined in this paper have not received Government approval and are not yet law. As a consequence, this paper is merely a guide as to how the principles, options or examples of potential changes might operate.

- c. Changes in levy amounts since the commencement of the IFM; with a focus on those sub-sectors that have faced significant increases in levies, volatility in levies between years, and variance between estimated and actual levies. This will include considering the impact of the cost burden on different types and sizes of regulated entities.
 - d. Whether key aspects of the design and legislative framework for the IFM remain appropriate, including in light of structural changes in parts of industry. This will include considering whether changes are required to any sub-sector definitions and/or levy metrics, and whether any opportunities exist for simplification.
 - e. The flexibility of the IFM to respond to changes in industry, including emerging industry sectors.
 - f. The suitability of transparency and consultation mechanisms, including the Cost Recovery Implementation Statement (CRIS), and how ASIC could improve the accuracy of its estimates of costs to sub-sectors.
2. As relevant, the Review will have regard to:
 - The level of funding recovered from industry since the commencement of the IFM.
 - The temporary levies relief provided to personal financial advice licensees in respect of 2020-21 and 2021-22.
 - The Australian Government Charging Framework, noting Governments' long standing position that fees and levies consistent with the Framework should be considered prior to considering other funding options.
 - The regulator costing reviews being undertaken by the Department of Finance.
 - The impact of any potential changes to the IFM on the incentives faced by ASIC and regulated entities.
 3. The Review will not assess or make recommendations on:
 - ASIC's role and regulatory remit.
 - ASIC's performance.
 - The appropriate aggregate level of funding for ASIC.
 - How ASIC allocates its resources to deliver on its mandate.
 - Registry fees currently collected by ASIC, which are not within the scope of the IFM.

Appendix B: Summary of stakeholder feedback (March 2022 consultations)

Treasury undertook targeted stakeholder consultation in March 2022. A number of concerns about the ASIC IFM were consistently raised.

Industry funding levies

Variations between estimated and actual levies

- A key challenge for stakeholders is the significant variance between estimated and actual levies each year.
- Some stakeholders raised concern that they are not able to understand why there has been a significant increase in the final levy amount.
- There was also concern that the variances between estimated and actual levies make it difficult for regulated entities to budget for the actual levy amounts, and therefore some entities did not find the estimated levies useful and did not engage with the draft Cost Recovery Implementation Statement (CRIS).

Volatility in levy amounts across years

- Another key concern for stakeholders is the volatility in levy amounts across years, which makes it hard for entities to budget for the upcoming year.
- Increases in the levies result in entities passing these costs to clients (although it was noted the ex-post nature of the IFM makes this more difficult).

Types of costs recovered

- Stakeholders consistently raised concerns about the recovery of costs relating to enforcement. In particular, stakeholders do not consider it appropriate that the cost of enforcement action against a specific entity is recovered from all entities in an industry sub-sector.
 - Regulated entities also have concerns about being charged for the cost of enforcement activity in relation to unlicensed or unregulated operators.
- Stakeholders also raised concerns about the recovery of costs relating to emerging industry sectors (for example, crypto assets and buy-now-pay-later); the lack of transparency as to how ASIC's indirect costs contribute to levies; and the recovery of certain other regulatory activities, specifically policy advice and education.

Industry sub-sectors definitions and levy metrics

- Stakeholders had a range of suggestions and concerns about the sub-sector definitions and levy metrics. In some cases, stakeholders feel the definitions and metrics do not appropriately reflect the nature of the sub-sector and do not apportion costs amongst entities in a sub-sector in a way that is reflective of the risk associated with regulated entities or ASIC's regulatory effort.

Fees-for-service

- Generally, stakeholders did not have any concerns with the fees-for-service model and considered the transaction-based model was appropriate.
- Some stakeholders raised concerns about fees for licence and registration cancellation. Stakeholders did not necessarily understand the regulatory effort associated with these fees.

- Some stakeholders also raised concerns about the charging of fees for relief applications.

Consultation and transparency

Cost Recovery Implementation Statement (CRIS)

- Stakeholders raised concerns that the CRIS is not released at the same time each year, which makes it difficult for entities to plan and budget for levy costs.
- Some stakeholders noted that while they were engaging in the consultation process on the CRIS, they did not see it as meaningful consultation as they did not believe their feedback would lead to changes.
- There was consensus that the CRIS is a long and complicated document, and generally entities either were not aware of the CRIS or did not engage with it.

Increased transparency about costs

- Generally, stakeholders sought a more granular understanding of (and data on) the drivers of ASIC's costs for each sub-sector, as well as more information about the reasons for variance between estimated and actual levies. For example, stakeholders sought more detail on the enforcement activities that have contributed to costs for certain sub-sectors as well as how those costs have been allocated between sub-sectors where an enforcement matter relates to multiple parts of the industry.

Appendix C: Legislative framework and amendments

Levies (effective from 1 July 2017)

- *ASIC Supervisory Cost Recovery Levy Act 2017*— imposes a levy on persons ASIC regulates to recover its regulatory costs.
- *ASIC Supervisory Cost Recovery Levy (Collection) Act 2017* — empowers ASIC to collect the levy and requires entities to submit annual metrics so that ASIC can calculate the levy.
- *ASIC Supervisory Cost Recovery Levy Regulations 2017* — sets out the criteria for determining the sub sectors an entity is a part of and the metrics to be used for calculating the levy payable by entities in each sub sector. The Regulations also require ASIC to make an annual legislative instrument setting out, for each sub sector, its regulatory costs and the total amount of activity (the sub sector metric) for the financial year.
- *Corporations (Review Fees) Regulations 2003* — ASIC’s regulatory costs for small proprietary companies are recovered through annual review fees for proprietary companies.

Fees framework (effective from 4 July 2018)

- *Corporations (Fees) Act 2001* — enables ASIC to charge tiered fees, based on whether a chargeable matter is low, medium or high complexity; places statutory caps on fees; and enables ASIC to charge a different fee for certain chargeable matters based on the type of entity.
- *Corporations (Fees) Regulations 2001* — prescribes the cost recovery fees (including tiered fees) ASIC can charge for services it provides to a specific entity.
- *The Superannuation Industry (Supervision) Act 1993* and the *Superannuation Industry (Supervision) Regulations 1996* — provide for ASIC to charge fees for applications for registration to be an approved SMSF auditor, or applications to vary or revoke the conditions or cancel the registration of an approved SMSF auditor.
- *National Consumer Credit Protection (Fees) Act 2009* and the *National Consumer Credit Protection (Fees) Regulations 2010* — allow ASIC to charge different fees depending on: whether or not the applicant is an individual; and the credit activities they engage in.
- *Superannuation Auditor Registration Imposition Act 2012* and the *Superannuation Auditor Registration Imposition Regulation 2012* — state the maximum amount of the fee that can be prescribed in the regulations so ASIC can recover the costs it incurs when providing regulatory services to SMSF auditors.

Key amendments (since commencement of IFM)

Corporations (Fees) Act 2001

- *Corporations (Fees) Amendment (Hayne Royal Commission Response) Act 2020*
 - Allow ASIC to charge a fee for an application by an entity to be exempted from the deferred sales model.

ASIC Supervisory Cost Recovery Levy Regulations 2017

- ASIC Supervisory Cost Recovery Levy Amendment (Enhancements) Regulations 2018
 - Establish new industry sub-sectors to reflect the recently introduced licencing schemes for crowd-sourced funding intermediaries and financial benchmark administrators;
 - Create separate industry sub-sectors for small and large credit rating agencies; and
 - Simplify the levy metric for the large securities exchange participants industry sub-sector.
- Treasury Laws Amendment (ASIC Cost Recovery and Fees) Regulations 2019
 - Create a new sub-sector to enable ASIC to recover its regulatory costs incurred from its close and continuous monitoring of Australia's largest institutions.
- ASIC Supervisory Cost Recovery Levy Amendment (Corporate Insolvency Reforms) Regulations 2021
 - Allow ASIC to recover costs from its regulation of activities undertaken by a small business restructuring practitioner in the new formal debt restructuring process.
- ASIC Supervisory Cost Recovery Levy Amendment (Claims Handling and Settling Services Providers) Regulations 2021
 - Allow ASIC to recover costs from its regulation of activities undertaken by people who handle insurance claims, by creating the 'claims handling and settling services providers' sub-sector in the insurance sector.
- ASIC Supervisory Cost Recovery Levy Amendment (Levies Relief) Regulations 2021
 - Set the maximum cost of the graduated levy component per adviser to the level it was at in 2018-19 (i.e. \$1,142) for the sub-sector that is licensees that provide personal advice on relevant financial products to retail clients.

National Consumer Credit Protection (Fees) Act 2009

- *National Consumer Credit Protection (Fees) Amendment (ASIC Fees) Act 2018*
 - Allow ASIC to charge different fees depending on whether or not the applicant is an individual; and the credit activities they engage in.

Superannuation Auditor Registration Imposition Act 2012

- *Superannuation Auditor Registration Imposition Amendment (ASIC Fes) Act 2018*
 - Increase the maximum amount of the fee that can be prescribed in the regulations so ASIC can recover the costs ASIC incurs when providing regulatory services to SMSF auditors.

Appendix D: Catalogue of sub-sector definitions, formulas and metrics

Sub-sector	Definition	Levy calculation ¹⁸
<i>Corporate sector</i>		
Listed corporations	An entity that, at any time in the financial year, is a listed corporation.	Minimum levy (\$4,000) + graduated levy based on market capitalisation above \$5 million. Graduated levy is capped for entities with a market capitalisation of or greater than \$20 billion.
Registered liquidators	An entity that, at any time in the financial year, is a registered liquidator.	Minimum levy (\$2,500) + graduated levy based on the total number of external administration appointments and notifiable events in a financial year.
Auditors of disclosing entities	An entity that, at any time in the financial year, is or has consented to be, an audit entity for a disclosing entity with quoted securities.	Graduated levy based on audit fee revenue (per \$10,000 of revenue).
Unlisted public companies	An entity that, at any time in the financial year, is a public company that is not listed.	Flat levy
Large proprietary companies	An entity that, at any time in the financial year, is a large proprietary company.	
Registered company auditors	An entity that, at any time in the financial year, is a registered company auditor.	
<i>Deposit taking and credit sector</i>		
Credit providers	An entity that holds an Australian credit licence (credit licence) authorising it to engage in credit activities as a credit provider.	Minimum levy (\$2,000) + graduated levy based on the gross amount of credit provided above \$100 million under credit contracts (other than small and medium amount credit contracts) in a financial year.
Small and medium amount credit providers	An entity that holds a credit licence and provides credit under a small amount credit contract or a medium amount credit contract.	Graduated levy per \$10,000 of gross credit provided under small and medium amount credit contracts in a financial year.
Credit Intermediaries	An entity that holds a credit licence authorising it to engage in credit activities other than as a credit provider.	Minimum levy (\$1,000) + graduated levy based on the number of credit representatives that the entity has at the end of the financial year.

¹⁸ Full levy calculations for each sub-sector are outlined in the *ASIC Supervisory Cost Recovery Levy Regulations 2017*.

Sub-sector	Definition	Levy calculation ¹⁸
Deposit product providers	Authorised deposit-taking institutions that provide deposit products to consumers, such as deposit accounts, certificates of deposit, and foreign currency deposits.	Minimum levy (\$2,000) + graduated levy based on the total value of deposits held at the end of the financial year above \$10 million in deposit products issued by the entity.
Payment product providers	Australian Financial Services (AFS) licensees that deal in financial products through which, or through the acquisition of which, non-cash payments can be made.	2017-18: flat levy 2018-19 onwards: minimum levy (\$2,000) + graduated levy based on the gross revenue received in the financial year from payment product provider activity less expenses from dealing in non-cash payment facilities.
Margin lenders	AFS licensees with an authorisation to deal in a financial product by issuing margin lending facilities.	Flat levy based on the number of days in the financial year on which the entity holds the prescribed AFS licence authorisation.
<i>Investment management, superannuation and related services sector</i>		
Superannuation trustees	An entity that is a registrable superannuation entity (RSE) licensee.	Minimum levy (\$18,000) + graduated levy based on the total value of assets above \$250 million in all RSEs operated by the entity at the end of the financial year.
Responsible entities	An entity that holds an AFS licence authorising them to operate a registered scheme.	Minimum levy (\$7,000) + graduated levy based on the total value of assets above \$10 million in all registered schemes operated by the entity at the end of the financial year.
Operators of notified foreign passport funds and regulated former notified funds	An entity that, at any time in the financial year, was the operator of a notified foreign passport fund or a regulated former notified fund.	Minimum levy (\$1,000) + graduated levy based on the total value of Australian assets in all notified foreign passport funds/regulated former notified funds operated by the entity at the end of the financial year.
Investor directed portfolio service (IDPS) operators	An entity that holds an AFS licence authorising them to operate an IDPS.	Minimum levy (\$10,000) + graduated levy based on total gross revenue from IDPS activity and any amount paid or payable in the financial year from the IDPS for the performance of obligations imposed on an entity as an operator of the IDPS.
Wholesale trustees	An entity that holds an AFS licence authorising them to deal in a financial product by issuing interests in, or arranging for the issue of interests in, a managed investment scheme to wholesale clients.	Minimum levy (\$1,000) + graduated levy based on the total value of assets.
Custodians	An entity that, at any time in the financial year, holds an AFS licence that authorises the holder to provide a custodial or depository service.	Flat levy

Sub-sector	Definition	Levy calculation ¹⁸
Managed discretionary account (MDA) providers	AFS licensees authorised to deal in a financial product by issuing financial products in respect of interests in managed investment schemes or miscellaneous financial investment products, limited to MDA services.	Flat levy based on the number of days in the financial year on which the entity holds the prescribed AFS licence authorisation.
Traditional trustee company service providers	An entity that holds an AFS licence authorising them to provide traditional trustee company services.	
<i>Financial advice sector</i>		
Licensees that provide personal advice to retail clients on relevant financial products	An entity that holds an AFS licence that authorises it to provide financial product advice on relevant financial products to retail clients.	Minimum levy (\$1,500) + graduated levy based on the number of advisers on the financial advisers register at the end of the financial year (noting that the graduated levy per adviser has been fixed for 2020-21 and 2021-22 financial years).
Licensees that provide personal advice to retail clients on products that are not relevant financial products	An entity that holds an AFS licence that authorises it to provide financial product advice to retail clients only on basic banking products, general insurance products and consumer credit insurance.	
Licensees that provide only general advice to retail or wholesale clients	an entity that holds an AFS licence authorising it to provide financial product advice that is general advice only.	
Licensees that provide personal advice to wholesale clients only	An entity that holds an AFS licence authorising it to provide financial product advice to wholesale clients only.	
<i>Market infrastructure and intermediaries sector</i>		
Large securities exchange operators	An entity that operates a market where 10 million or more transactions in securities are entered on the market in the financial year, and the market is not an overseas market.	Graduated levy based on the total value of all transactions that are entered into on, or reported to, the large securities exchange(s) operated by the entity in the financial year; are within the operating rules of the exchange(s); and are not invalid or cancelled.
Large futures exchange operators	An entity that operates a market where 10 million or more futures transactions are entered into on the market in the financial year, and the market is not an overseas market or a large securities exchange.	
Small futures exchange operators	An entity that operates a market where less than 10 million transactions in futures contracts are entered into on the market in the financial year, and the market is not an overseas market, a small securities (self-listing) exchange or a small securities exchange.	

Sub-sector	Definition	Levy calculation ¹⁸
Small securities exchange operators with self-listing function only	An entity that operates a market where less than 10 million transactions in ordinary shares are entered into the market during a financial year, only ordinary shares of the market operator can be traded on the market, and the market is not an overseas market.	
Small securities exchange operators	An entity that operates a market where less than 10 million transactions in securities are entered into on the market in the financial year, the market is a prescribed financial market, and the market is not an overseas market or a small securities (self-listing) exchange.	
Overseas market operators	Entities that operate an overseas market that are licensed under s795B(2) of the <i>Corporations Act 2001</i> .	Flat levy based on the number of days in the financial year on which the entity operated their market(s).
Exempt market operators	An entity that operates a market that is exempt from the operation of Part 7.2 of the <i>Corporations Act 2001</i> .	
Exempt clearing and settlement (CS) facility operators	An entity that operates a market during a financial year that is exempt from the operation of Part 7.3 of the <i>Corporations Act 2001</i> .	Flat levy based on the number of days in the financial year on which the entity operated their facility(s).
Tier 1 CS facility operators	An entity that holds a licence that was granted for a CS facility that is systemically important in Australia and has a strong connection to the Australian financial system.	Flat levy based on the number of days in the financial year on which the entity operated their facility(s).
Tier 2 CS facility operators	An entity that holds a licence that was granted for a CS facility that is systemically important in Australia but does not have a strong domestic connection to the Australian financial system.	
Tier 3 CS facility operators	An entity that holds a licence that was granted for a CS facility that is not systemically important in Australia and does not have a strong domestic connection to the Australian financial system.	
Tier 4 CS facility operators	An entity that holds a licence that only authorises the entity to operate a CS facility for the sole purpose of clearing and settling trades in the entity's own shares.	
Australian derivative trade repository operators	An entity that operates a licensed derivative trade repository.	Flat levy based on the number of days in the financial year on which the entity operated each of their trade repository(ies).
Credit rating agencies (CRAs)	An entity that holds an AFS licence that authorises it to provide general advice by issuing a credit rating.	2017-18: Flat levy 2018-19 onwards: Minimum levy (\$2,000) + graduated levy based on the number of days on which the entity holds the prescribed AFS licence

Sub-sector	Definition	Levy calculation ¹⁸
		authorisation and there is a supervisory college for the entity.
Benchmark administrator licensees	Entities that hold a licence to administer a financial benchmark.	Flat levy based on the number of days the entity administers each of the financial benchmark(s) it is licensed to administer.
Large securities exchange participants	An entity that is a participant in a large securities exchange during the financial year.	Minimum levy (\$9,000) + graduated levy based on total number of messages sent and transactions entered or reported to a large securities exchange that are recognised by ASIC's markets surveillance system.
Large futures exchange participants	An entity that is a participant in a large futures exchange.	Minimum levy (\$9,000) + graduated levy based on the total number of messages sent and lots entered or reported to a large futures exchange that are recognised by ASIC's markets surveillance system.
Securities dealers	AFS licensee that is authorised to deal in securities at any time during the financial year; is not a participant in a large futures exchange or a large securities exchange; and more than \$250,000 in transactions for the entity has been executed on, or reported to a large securities exchange in the financial year.	Minimum levy (\$1,000) + Graduated levy (per \$1 million of annual transaction turnover) based on the annual transaction value attributable to each securities dealer.
Corporate advisers	An entity that holds an AFS licence or is exempt from the requirement, provides corporate advisory services (such as on takeover bids or mergers), and deals in a financial product in Australia by underwriting the issue, acquisition or sale of the product.	Minimum levy (\$1,000) + Graduated levy (per \$10,000 of revenue above the \$100,000 threshold) based on gross revenue from providing the prescribed financial services.
Over the counter (OTC) traders	An entity that holds an AFS licence or is exempt from the requirement and deals in OTC products by acquiring, disposing, or issuing OTC products to or from professional investors; and forms part of, or is a related body corporate of, an entity that forms part of the corporate advisers sub-sector.	Minimum levy (\$1,000) + graduated levy based on the total number of FTE staff engaged in prescribed activities during the financial year.
Retail OTC derivatives issuers	AFS licensees authorised to deal in a financial product by issuing derivatives and making a market in derivatives but is not regulated by APRA.	Flat levy based on the number of days in the financial year on which the entity holds the prescribed AFS licence authorisation.
Wholesale electricity dealers	an entity that deals in, or makes a market in, OTC derivatives that relate to the wholesale price of electricity but is not regulated by APRA or is a participant in a financial market.	Flat levy
New specialised market operators	An entity that is operating a new market that has not been previously operated in Australia or overseas, and the entity has never previously held	

Sub-sector	Definition	Levy calculation ¹⁸
	an Australian market licence. An entity will fall within this sub-sector for two years after it is licensed to operate a specialised market.	Flat levy based on the number of days in the financial year on which the entity operated the specialised market(s).
Established specialised market operators	An entity that operates a market in Australia that has been previously operated by it or another entity in Australia or overseas; or operates a new type of market that has never been previously operated in Australia or overseas, but the entity holds or previously held an Australian market licence; or has already operated a new market that has never been previously operated in Australia or overseas for more than two years.	
<i>Insurance sector</i>		
Insurance product providers	An entity that holds an AFS licence with an authorisation to deal in general insurance, life insurance products or investment life products.	Minimum levy (\$20,000) + graduated levy based on the gross amount of premiums written or net revenue received above \$5 million, less any reinsurance expenses, in relation to business covered by the entity's AFS licence.
Claims handling and settling services providers	An entity that holds an AFS licence with an authorisation to provide claims handling and settling services.	Minimum levy (\$500) + graduated levy based on the number of claims under insurance products in relation to which the entity provides claims handling and settling services in the financial year.
Insurance product distributors	An entity that holds an AFS licence with an authorisation to deal in general insurance, life insurance products or investment life products and is not an insurance product provider.	Flat levy
Risk management product providers	Entities that hold an AFS licence with an authorisation to deal in a financial product for managing financial risk.	Flat levy based on the number of days in the financial year the entity held the required AFS licence authorisation.

Appendix E: List of stakeholder questions

Stakeholders are invited to consider options, examples of potential changes and questions that are designed to examine and address the issues set out in the Review's Terms of Reference.

The principles, options and examples of potential changes outlined in this paper have not received Government approval and are not yet law. As a consequence, this paper is merely a guide as to how the principles, options or examples of potential changes might operate.

A list of consolidated questions is set out below. This paper also sets out additional questions for stakeholders to consider that are targeted to specific options and examples of potential changes. In providing feedback on the options and examples of potential changes, stakeholders should consider:

- the impact of the options and examples of potential changes on entities, including the cost to business and regulatory burden, as well as fairness and equity considerations; and
- targeted questions in relation to specific options and examples of potential changes set out in:
 - Box 1: Examples of simplification (page 15);
 - Box 2: Examples of alternative approaches to distribute costs (page 26);
 - Box 3: Examples of fee adjustment (page 31);
 - Box 4: Examples of improving flexibility (page 32); and
 - Box 5: Examples of adjustments to reporting, transparency, and consultation (page 38)

Industry funding levies

1. Appendix D provides a catalogue of sub-sector definitions, metrics and formulas. 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?

Note: Changes to sub-sector definitions, formulas and metrics would change the way levies are calculated and distributed amongst entities in a sub-sector and would impact the levy amounts for individual entities but would not change the total amount recovered from the relevant sub-sector.

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?
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?
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?
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?

6. Does the design, structure and legislative framework of the levy component of the IFM have sufficient flexibility to respond to changes in markets, sectors and products ASIC has oversight of? If not, what aspects require more flexibility and what changes could be made?
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?
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?
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?
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?
11. 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?
12. 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?
13. What changes could be made to the reporting of indirect costs to improve stakeholder understanding of these costs?
14. Do regulated entities find estimated levies useful, and how is this information used by entities?
 - 14.1. Noting the trade-off between timing and accuracy, when is it most beneficial for entities to receive estimated levy amounts?
 - 14.2. Would alternative information, such as a range for estimated levies, be more useful?
15. 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?
16. 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?

Fees-for-service

17. In relation to the design, structure and legislative framework for fees-for-service:
 - 17.1. Are any changes required to ensure it remains fit for purpose in the longer-term and/or can respond to changes in industry?
 - 17.2. Are there opportunities to simplify the design, structure, and legislative framework for fees-for-service?
18. Are there any costs currently recovered through fees-for-service that would be more appropriate to recover through industry levies? If so, why?
19. If fee amounts are to be changed, should this be amended via a one-off increase or staged to spread the impact over multiple years?
20. Is it appropriate for ASIC to have the power to determine which of its regulatory activities/services it can charge a fee for?

21. Is it appropriate for ASIC to have the power to set fee amounts, or should this power remain with the Government?
 - 21.1. If ASIC were provided the power to set fee amounts, should there be any limitations on what fees it can adjust, or by how much? For example, setting caps on specific fees in primary law or regulations, or setting principles to guide ASIC's setting of fee amounts?
22. What transparency and accountability mechanisms would be appropriate if ASIC were setting fee amounts?
23. Do fees for licence and registration cancellations provide a disincentive to cancel licenses and registrations? If so, would a lower fee or no fee remove this disincentive?
24. Would it be more appropriate for the costs associated with licence and registration cancellations to be recovered through industry levies (noting that there are wider benefits to ensuring entities and individuals that are no longer undertaking a particular licensed activity do not continue to hold a licence for that activity)?
25. Is it appropriate for ASIC's work on individual relief applications to be recovered via fees, with the costs associated with ASIC's work on relief provided to a class of entities to be recovered through industry levies?

Reporting, transparency and consultation

26. How do regulated entities and other stakeholders engage with ASIC's transparency and consultation mechanisms relating to the IFM? What aspects are most useful?
 - 26.1. What do stakeholders seek from mechanisms to engage with the IFM? Is it more important for these mechanisms to provide transparency, or to allow for stakeholder consultation and feedback?
27. Are the existing transparency and consultation mechanisms in relation to the IFM appropriate?
 - 27.1. Would changes to existing mechanisms or alternative mechanisms be beneficial? If so, what changes could be adopted and what benefits would they provide?
28. How is the CRIS used by regulated entities and other stakeholders, and do stakeholders find the information in the CRIS useful?
 - 28.1. Could improvements be made to the CRIS, including the form/format and nature of information provided? If so, what improvements and what benefits would they provide?
 - 28.2. At what time is it most beneficial for the CRIS to be published?
29. Noting that changes to the IFM are for the most part decisions for the Government, is annual consultation by ASIC via the CRIS useful? Would less frequent but more substantive consultation be preferable?
30. Are changes required to the criteria determining material variance? If so, what should be changed – the percentage and/or dollar value amount, or be based on the number of entities impacted?
 - 30.1. When should information regarding material variations be published?
31. What other information would be useful to regulated entities or other stakeholders to understand how ASIC sets its regulatory priorities and/or to understand the relationship between ASIC's costs and the amounts recovered from industry? What benefits would additional information provide?

Appendix F: ASIC IFM Data

Historical cost and levy data has been provided for stakeholders to assist with answering questions and considering options proposed in this discussion paper. The data has been consolidated predominantly from publicly available sources with some additional data to assist stakeholders.