ARITA
AUSTRALIAN RESTRUCTURING INSOLVENCY & TURNAROUND ASSOCIATION

25 October 2022

Senior Adviser
Financial System Division
The Treasury
Langton Crescent
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By email: ASICIFMReview@treasury.gov.au

Dear Madam/Sir

ASIC Industry Funding Model Review

Thank you for the opportunity to make a submission in the response to the ASIC industry Funding Model (**IFM**) Review discussion paper (**Discussion Paper**). It should be noted that we intend to raise some of the issues discussed here with the Joint Parliamentary Committee on Corporations and Financial Services during its current inquiry into corporate insolvency.

This submission is being made by the Australian Restructuring Insolvency and Turnaround Association (**ARITA**). As the leading association for professionals specialising in insolvency, this submission focuses on the imposition of the IFM on registered liquidators. There are 646 registered liquidators[1] and ARITA represents more than 80% of them. Further information about ARITA is at the end of this letter.

Fundamental issues

Liquidators' relationship with AISC

According to the material provided on the IFM, an "industry pays" model means that the funding of regulatory activities undertaken by the Australian Securities and Investments Commission (**ASIC**) is met by those creating the need for regulation, rather than the Australian taxpayer.

[1] As at 30 June 2022, 2021/22 ASIC Annual Report

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While we don't disagree with this general concept, liquidators – the professionals who deal with corporate insolvencies – are unique amongst all the industries that ASIC regulates.

This uniqueness stems from their legal requirement to do work for ASIC whether or not there are funds available to remunerate them for this work. A basic overview of this requirement is set out as follows:

1. Liquidators' work is paid for from funds recovered from the work they undertake, including any money left in the insolvent company.
2. The law requires liquidators to undertake certain tasks on behalf of ASIC, including investigating the history of the company and reporting on possible misconduct by company directors.
3. If there are not sufficient funds left in the liquidation to pay for a liquidator's work, they don't get paid (or not in full).

Prior research by ARITA found that liquidators do around $100 million of unpaid work on ASIC's behalf each year[2]. That works out to over $150,000 per liquidator – more than many liquidators earn, especially those who service distressed small-to-medium businesses.

On top of this $100 million worth of unpaid work, liquidators are now being asked to pay nearly $5 million a year in fees to ASIC – over $7,100 per liquidator[3]. This is alongside the substantial cost paid to ASIC to conduct ASIC registry searches as part of their duties that are required by ASIC

Common sense suggests that an 'industry pays model' must take into account contributions made by the industry to the regulator – these are effect "payment in kind" to ASIC. Not only is the current arrangement unfair it is also inefficient and will, over time, deter people from working as registered liquidators (note there are 10% fewer liquidators since the inception of the IFM - as we predicted).

Given their special role in the insolvency system – effectively working as an extension of the regulator for free – liquidators should be exempted from the IFM.

Ex-post model

We are deeply disappointed that a conclusion has been reached that the ex-post model remains appropriate for ASIC's IFM prior to this review even being conducted. This conclusion is fundamentally incorrect.

The ex-post nature of the IFM continues to cause issues and concerns due to the extreme lack of certainty of the quantum of levies facing all of ASIC's regulated populations.

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[2] 2 ARITA "State of the Profession" survey 2017
[3] $4.778 million paid by 668 liquidators as estimated in the 2021-22 ASIC CRIS, $7,153 per liquidator on average.

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The difficulties of the ex-post model for registered liquidators are reflected in ASIC's inability to accurately estimate the cost per metric event[4] since the implementation of the IFM, as set below.

Financial year	Draft CRIS* metric	Final CRIS* metric	Variance	% variance
2017-18	$125.00	$77.00	↓ $48.00	38%
2018-19	$83.00	$97.42	↑ $14.42	17%
2019-20	$101.00	$79.16	↓ $21.84	22%
2020-21	$127.00	$75.12	↓ $51.88	41%
2021-22	$77.64	?	?	?

* CRIS - Cost Recovery Implementation Statement[5]

This uncertainty contrasts significantly with the funding model utilised by the Australian Financial Securities Authority (**AFSA**), which regulates registered trustees who undertake personal insolvency appointments which is quite similar in nature.

Unlike ASIC, AFSA utilises a 'realisations charge' levy to fund the cost of certain activities undertaken by AFSA that benefit the personal insolvency system. The applicable rate for the realisations charge is set in advance of the applicable financial year and provides transparency and certainty to registered trustees, many of whom are also registered liquidators. Fluctuations in the amounts recovered compared to actual costs incurred are smoothed over the subsequent year, but again this is known in advance.

The draft Cost Recovery Implementation Statement (**CRIS**) for 2021/22 states that there is a risk of levies invoiced differing significantly from the estimates provided due to changes in ASIC's operating environment. We do not understand how this can occur when for the years 2019-20, 2020-21 and 2021-22 the draft CRIS was not issued until the end of the financial year that the estimates relate to – by the time the CRIS is issued, most of the financial year has already passed and one would assume that by this point ASIC should know with some certainty what its costs have been for the vast majority of the financial year.

We could understand some variance if the estimate were provided before, or early in the applicable financial year, but as the estimates are not provided until the end of the financial year, we cannot understand why there is such a high level of inaccuracy.

This inability to accurately estimate the metric event cost is of particular issue for insolvency practitioners:

- Liquidators are unlike other professionals as they must undertake their duties even if they will not be paid. The increasing activity of dodgy, unregulated advisors reported

[4] Liquidators are charged a flat fee of $2,500 plus the cost per metric event multiplied by the number of events they have during the financial year. The total amount paid by each liquidator varies depending on the liquidator's activity level.

[5] The Cost Recovery Implementation Statement (CRIS) provides information on how ASIC will implement the IFM and recover regulatory costs and fees for service.

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to us by our members is seeing a rise in phoenix activity and related asset dissipation. These activities are also seeing an increase in the destruction of books and records and lack of co-operation with liquidators which leads to increase costs for registered liquidators. Thus the assets available to meet the cost of the liquidation process and provide a return to creditors is decreasing.

As noted above, where there are insufficient assets, liquidators are still required to undertake their statutory duties, including investigations and reporting to ASIC.

- The obligation to carry out significant, often unpaid work on behalf of ASIC and the government means registered liquidators are effectively being double taxed by the IFM when they are already subsidising the work of ASIC to oversee company and director activities.

  This duplication is further exacerbated for practitioners who are regulated by both ASIC and AFSA and are levied for the oversight of both regulators for requirements that are the same or similar for both registered liquidator and registered trustees.

- Unlike other regulated populations, liquidators must seek to recover estimated IFM levies from short-term, one-off appointments and the levy estimates provided by ASIC have proven to be very unreliable. There is no ongoing relationship which can facilitate adjustments for any variation in the actual IFM. High estimates disadvantage creditors and low estimates disadvantage registered liquidators and their ability to properly recover their costs.

- Registered liquidators must have their remuneration approved by creditors or the Court who may not take into consideration the cost impact of the IFM – this is why liquidators prefer to pass on the cost of the IFM directly rather than reflecting it in their hourly charge rate as an overhead of doing business.

- The IFM is considerably unjust given the very high cost per liquidator compared to other similar regulated populations and international comparatives[6], noting that the majority of registered liquidators work in small to medium sizes practices where this impost will be keenly felt.

If liquidators are to continue to be levied the IFM, we again call for the Government to reconsider the inefficiencies of the ex-post model and change the model to one which sets a fee at the start of the financial year based on ASIC's budget and then smooths costs in subsequent financial years, replicating the approach taken by AFSA.

We note that notwithstanding the ex-post nature of the IFM, this model does not achieve the objective of ensuring that each regulated population pays the actual cost of its regulation for that year due to:

[6] Registered company auditors are estimated to pay $269 per person in the 2021-22 ASIC CRIS.

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- "Adjustments for prior year (under or over recovery)" occurring for most regulated populations,
- statutory levies unrelated to regulation of approximately 20% of the estimated IFM levy for 2021-22[7], and
- own source revenue which is bought to account in subsequent years (for example when costs in court actions are recovered)[8].

If the IFM levy is to continue to be paid by liquidators, then a levy set in advance of the financial year, that provides certainty for budgeting and cost recovery purposes would be much more palatable to liquidators – and we are sure all of ASIC's other regulated populations.

Separating out enforcement costs

We understand from the Discussion Paper and round table discussions, it is enforcement activities that are the most difficult for ASIC to determine in advance how these costs will be allocated between sub-sectors. Enforcement activities account for approximately 60% of the IFM costs.

If enforcement activity costs are the barrier to implementing an ex-post model, we suggest consideration be given resolving this issue by:

- splitting costs between enforcement and other costs
- setting the IFM levy for other cost on the basis of ASIC's budget
- allocating enforcement costs to the relevant sub-sector on a rolling three or five year average in the same way is done for the Enforcement Special Account.

Although this will not result in exact costs for the year being recovered, as set out above, the current recovery model does not either.

Reality for ASIC versus the regulated population

As a heavily regulated population with many statutory lodgement and reporting obligations, our members are very aware of the level of reporting that ASIC expects from them and the scrutiny if it is not adequately undertaken or completed late. Our members find it hard to reconcile this position with the high level, late reporting provided by ASIC.

One of the cited benefits of the IFM is "enhancing ASIC's transparency and accountability through publishing its expenditure, explaining its regulatory priorities, and accounting for its performance".

It is our view that the current level of reporting provides no transparency or accountability at all – it is too high level and provides no specifics about how the money is spent. Regulated populations are entirely reliant on ASIC "getting it right" as there is no way for any regulated

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[7] Page 8 of Discussion Paper
[8] Page 19 of Discussion Paper

population to check that allocations are correct, that ASIC has provided what they said they have or how much it cost to determine whether that was reasonable.

Where a regulated population is providing a regulator with millions of dollars of funding, they have a right to properly understand how the money is being spent.

We note that ASIC's stance on this is that they are an "independent regulator". Being independent does not obviate the need for transparency nor for the fundamental right of regulated population to know why it is being charged and what regulation is being undertaken. While we accept that as a regulated population we cannot direct or control ASIC's approach (and nor should we) we do have a right to use accountability methods to advocate for changes to government policy.

ASIC places a high level of scrutiny on registered liquidators. ASIC cannot be relieved of scrutiny in how it does that and what it charges for it.

Reporting timeframes

We consider it completely unacceptable that the draft CRIS providing estimates for the 2021-22 financial years was not provided for consultation until 8 June 2022 – just 22 days before the end of the financial year that it relates to. This follows on from similar late provision of information in 2021 and 2020.

Even someone who has studied the most basic levels of accounting appreciates that a draft budget for a financial year is a document completed before the start of that financial year. ASIC is, in our professional expert opinion, a complete outlier for any organisation by only having a draft budget completed in the 11th month of a financial year (ie when it is over 90% finished). Indeed, our members would suggest that if this were a private entity, it would be exhibiting signs of likely insolvency and a subsequent statutory report to ASIC would tick the box for "inadequate financial management".

How is any business meant to budget for and manage this uncertainty – heightened by the current economic times?

The release date of the draft CRIS and final CRIS continues to drift as the below table sets out:

Financial year	Draft CRIS	Final CRIS	Invoice issued
2017-18	October 2017	March 2018	January 2019
2018-19	March 2019 *(was to be October 2018)*	June 2019	January 2020
2019-20	June 2020 *(was to be January 2020)*	March 2021	March 2021
2020-21	July 2021 *(was to be April 2021)*	November 2021 *(proposed October 2021)*	February 2022 *(proposed January 2022)*
2021-22	June 2022	*Proposed July to August 2022 – not released yet*	*Proposed between January and March 2023*

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No incentive to be financially responsible

The IFM has created a perverse situation in that ASIC has no real incentive to responsibly manage its own costs – it simply passes them on to its regulated populations with no ability for the regulated populations to question the amount allocated or the appropriateness of the tasks undertaken.

In an environment where an organisation has a capacity to spend what it likes, productivity, efficiency and frugality do not tend to feature strongly. Regulated populations do not have bottomless wallets, especially those like ours who are largely small businesses. There urgently needs to be a mechanism put in place to review and moderate ASIC's spending, especially where that spending yields little in the way of enforcement outcomes.

Regulation activities

In the last four years, there have been only two known examples of truly egregious liquidator behaviour brought to real justice. Those were two cases of significant fraud that were uncovered and reported to both the police and ASIC by the firms where those individuals worked – these occurrences were not exposed by any regulatory oversight activity.

In addition to the above, since the commencement of specific powers implemented as part of the *Insolvency Law Reform Act 2017* (**ILRA**), ARITA has lodged six 'Form RL35 - Notice by industry body of possible grounds for disciplinary action' with ASIC having identified significant concerns regarding the conducted of registered liquidators. It is our understanding that the lodgement of these notices has resulted in four matters being subject to investigation and action by ASIC.

Given ARITA's activities in upholding professional standards, including its statutory ability to report concerns regarding the conduct of both members and non-members to ASIC, we believe that much of work associated with ASIC's regulation of liquidators is obviated.

This is further evidenced given there has been little evidence of other successful administrative actions against liquidators in this period around substandard work or not meeting their statutory obligations.

Public versus regulated population benefit

The discussion paper queries how certain costs should be allocated to regulated populations (for example, for emerging sectors, education, policy work, unlicenced conduct and enforcement action). We strongly disagree with the claim that these costs should be allocated based on a remote benefit to the regulated population. Costs should be allocated on the basis of who actually obtains the benefit – which may in fact be the public or the Government, or in the case of insolvency – the creditors.

In some circumstance there is an equal or greater benefit to the public from the work undertaken by ASIC. In ASIC's regulations of insolvency (as opposed to registered liquidators), it is generally the creditors who are the beneficiaries of their work, yet the IFM that covers that benefit is imposed on registered liquidators. As a regulator, part of ASIC's

role is to assist, inform and protect the public. It is reasonable that the Government (and thus the taxpayer) meet the cost of these services.

We make the following comments about cost allocation:

- Where ASIC is unsuccessful in enforcement activity - costs should be apportioned between government and industry - this will better focus ASIC on the actions undertaken. It is unfair for the regulated population to have to solely bear the burden of unsuccessful enforcement activity – this type of allocation also means that the party that was successful in defending the enforcement action will be forced to meet part of the costs of that action via the IFM levy, even though they successfully defended it, which is grossly unreasonable.
- Where ASIC is successful in its enforcement action and costs orders are made against the other party, but the other party does not pay, this should not be levied against the regulated population. ASIC should take action to recover the costs orders, and should the other party end up bankrupt or in liquidation as a result, ASIC (and as a result, the government) will be in the same position as other creditors of insolvent entities. It is grossly unfair that regulated populations should have to meet these costs where costs orders are made specifically against a non-compliant entity.
- Licenced populations should not have to pay for misconduct of unlicenced operators that don't contribute towards costs of regulation. This is a cost that should properly be paid for by the government. One of the cited benefits of the IFM is "encouraging regulatory compliance, as good conduct will drive down supervisory levies". It is impossible for the regulated population to control or influence entities that choose to operate illegally or while unlicensed. Although registered entities would get some benefit, the principal benefit is to the public who are protected by ASIC's regulatory activity. As such, this is a cost properly born by Government.

  An example of this is ASIC's involvement with anti-phoenixing activity. Almost invariably, dodgy, unregulated phoenix advisers interfere with a business prior to the appointment of a registered liquidator. Perversely, under ASIC IFM model, liquidators pay for ASIC's limited attempts to reign in these dodgy advisers. ASIC have never taken a successful action against a registered liquidator for involvement in this type of nefarious activity.
- The overarching principle of the Charging Framework is that those entities that cause the need for regulation should generally pay for it, rather than Australian taxpayers. If an emerging sector is not covered by the IFM settings, then costs associated with the emerging sector should not be recovered from regulated populations as that would be against the overarching principle of the Charging Framework.
- The appropriate area for education costs to be allocated depends on who is obtaining the benefit of the education. Education activities for specific regulated populations should be cost recovered from that population. Education of the public to improve their understanding, for example of legislated processes or financial education, is a benefit for the public and thus should be paid for by the Government.

- If a complaint results in an educative outcome, it is not a complaint, it is education and should be paid for by the Government not passed onto a regulated population who has no ability to influence this lack of education. The allocation of these costs to regulated populations is not encouraging ASIC to improve the information available on its website to reduce these types of complaints. The ASIC website is not easy to use – information about insolvency is complex and not user friendly.

  The recently updated AFSA website is much better at explaining personal insolvency and consideration should be given making a similar style of information available on the ASIC website for corporate insolvency.

  In particular, ASIC data indicates that almost 86% of insolvency related complaints it receives result in an educative outcome for the complainant or there is insufficient evidence to support the allegation[9]. It is not reasonable that registered liquidators should bare the cost of these complaints.
- Policy advice is advice provided to the government and thus is most appropriately paid for by the Government. However, we do note that we are told by ASIC that they are not responsible for policy and policy issues are a matter for Government.

Lack of financial information

It is difficult to respond to many of the questions in the Discussion Paper when we don't have any visibility as to how much it costs ASIC to administer the IFM. This is reflective of the fact that ASIC's reporting gives no transparency as to costs and how money is allocated. What is evident to us, is that the financial management of ASIC appears to involve largesse and inefficiency. Looking at prior disclosures, we cannot reconcile property costs, staffing costs and administrative/IT costs against what we know similar commercial entities would operate within.

Alternative model

If liquidators are to continue to be charged an IFM levy, we suggest that an alternative model be considered.

At the time of initial consultation on the IFM in 2015, alternative models were put forward, including a percentage of assets realised as utilised by AFSA.

We had some concerns about this proposal but offered an alternative that was similar to this. As noted previously, registered liquidators already face massive losses from unfunded work. Stripping an additional percentage from assets realised would only further reduce the potential cost recovery for registered liquidators. There was also the issue of whether ASIC held the necessary information in order to calculate and set the percentage.

As an alternative, we suggested the use of a percentage of dividends paid to unsecured creditors, which is the same model used by the Canadian regulator. Changes implemented by ASIC following the commencement of the IFM enables them to capture information

[9] Report REP 658 ASIC regulation of registered liquidators: July 2018 to June 2019

regarding dividends paid via Annual and Final Administration Returns (Forms 5602 and 5603) required as part of all insolvency administrations.

A payment from dividends to unsecured creditors also protects the proper prioritisation of secured creditors and employees, rather than further impacting the Government's Fair Entitlements Guarantee (**FEG**) scheme – where a realisations model would see ASIC taking money from assets that could create or increase a shortfall to employees (possibly funded by the FEG scheme).

The alternative model in an ex-post environment

Should the levy continue to be applied under an ex-post environment, distributions would not be able to be paid to creditors until after the determination by ASIC of the percentage to be remitted. Practitioners would have to report on funds held to distribute to creditors to enable ASIC to determine the percentage to be applied.

This may result in dividends being held over a for a period of 18+ months until ASIC is able to provide the requisite percentage.

The alternative model in a prospective environment

If the model were instead to be changed to a prospective, or smoothed environment, the percentage would be set before the start of the financial year based on ASIC's budget and historical dividends. Then as liquidators prepare to pay dividends, they remit the required percentage of available funds to ASIC prior to paying the dividend.

There would be no delay in the payment of dividends to creditors.

Benefits and design objectives of the IFM

We have consistently expressed that the IFM in its current form does not provide the intended benefits and does not meet all of the design objectives.

Benefits	
Cited benefit	***ARITA Comment***
Improving equity, as only those entities that are regulated by ASIC and create need for regulation bear its costs, rather than general taxpayers	Due to statutory levies, adjustments for prior years, recovery of enforcement actions against unregistered and non-compliant entities, entities are not bearing the cost of regulation for needs they create.
Encouraging regulatory compliance, as good conduct will drive down supervisory levies	The ever-increasing ASIC budget, notwithstanding a reduction in the number of entities that are regulated, shows that the IFM is either not encouraging regulatory compliance, or if it is the costs of running ASIC are not tied to the behaviour of the regulated populations.

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Benefits	
Cited benefit	***ARITA Comment***
Improving ASIC's resource allocation, by providing it with richer data to better identify emerging risks	We are unsure how tracking notifiable events in external administrations provides richer data to better identify emerging risks in the liquidator population. Or how turnover would provide richer data in other regulated populations. Data gathered is simply a way to apportion costs – not improve ASIC understanding of emerging risks. Feedback from our members indicates that the data captured by ASIC is often incorrect and requires adjustment.
Enhancing ASIC's transparency and accountability through publishing its expenditure, explaining its regulatory priorities, and accounting for its performance	The reporting currently provided by ASIC is at too high a level to provide any transparency to its regulated populations. From information provided it is also clear that as an independent regulator, ASIC is not accountable to any of its regulated population.

Design objectives	
Cited objective	***ARITA Comment***
Simplicity – the model should be simple to enable any firm to calculate its applicable levy	The model is not simple as it is simply impossible for a firm to calculate its applicable levy until approximately 18 months after the first day of the financial year that the levy relates to. For liquidators, the levy depends on notifiable events occurring throughout the financial year. While liquidators can track the number of notifiable events, without the levy amount, they have only one part of the equation.
Certainty – the levies should, wherever possible, provide enough certainty for entities to allow them to incorporate the levies into commercial decisions	The ex-post nature of the levy means that entities are unable to incorporate the levies into commercial decisions because the model is completely uncertain by design. There is no true visibility of the levy amount until the accounts are rendered by ASIC.

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Design objectives	
Cited objective	***ARITA Comment***
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	There is no proportionality in the current model. It lumps the burden disproportionately onto liquidators who do higher-volume, lower cost insolvencies of SMEs and less onto those who do fewer, but generally higher paid large entity insolvencies. In no way does this tie to regulator risk either.
Commercially-based – sector definitions should group together entities that are providing similar services, and compete in the same market	We fail to see how this goal is achieved given that, for example, registered liquidators have part of the completely unrelated North Queensland Reinsurance Pool added to their IFM costs.
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	

Ongoing consultation

The Discussion Paper posed questions around future consultation. ARITA currently dedicates significant resources to responding to each, annual draft CRIS consultation and has responded to all consultations since the commencement of the IFM. A full list of our submissions relating to the IFM are attached at Appendix A.

As a small organisation with limited resources, ARITA would like to ensure that time spent on consultations has a genuine opportunity for change. This has not been our experience to date in respect of the IFM. Indeed, we've seen not one change or acknowledgement of our balanced, deeply considered and reasonable CRIS submissions. Our view is that ASIC does not approach CRIS submissions with any sincere intent to improve its practices from those submissions.

ARITA would prefer genuine consultation every two to three years, where the effectiveness of the model is considered, rather than the current annual CRIS consultation which has proven to be ineffective at bringing about change.

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Fees for service

ARITA supports a fee for service model where reasonable fees are charged for the services that ASIC provides.

Our members have experienced one area of concern in respect of fees for services and that is where applications are made for corporate groups. We offer two examples, outlined below, to demonstrate this issue. We do not object to the imposition of a fee for service, but in situations where the same issue is dealt with in respect of entities in a corporate group, we do not accept that the appropriate fee is simply to multiply the fee by the number of entities.

Applications for financial reporting relief

An application for financial reporting relief may be made in respect of corporate groups, where a single application may be made to ASIC for relief (for example, an application for relief made pursuant to Regulatory Guide 174) in favour of a group of companies which may be in receivership or subject to a deed of company arrangement. In this situation there is generally a single substantive application for review and assessment by ASIC, but the fee is levied across each company within the corporate group in respect of which the relief is sought. This situation is illustrated in example below:

A corporate group consisting of 15 companies has gone into administration and receivership. The group involves a listed entity as its head company and the group also operated 5 managed investment schemes (through entities within the group).

At the end of the administration a DOCA is put in place and the voluntary administrators become deed administrators to administer a deed fund and give effect to a restructure which will retain jobs and has a better outcome than liquidation.

To support that process an application is made to ASIC under RG 174 for relief against financial reporting obligations in respect of the listed head company, the companies subject to DOCAs and the reporting obligations of the managed investment schemes. The relief is sought for a period of 24 months to allow time for the DOCA to be effectuated and the restructure to take place.

A single detailed submission is prepared by the deed administrators for ASIC's consideration which addresses the relevant factors in support of the relief sought. Because the application relates to each entity within the group, a separate request and ASIC Form is completed for each entity and managed investment scheme in the group.

The total ASIC fees for this application is ***$69,740*** ($3,487 x 20).

In the example set out above, it is difficult to see how the actual costs to ASIC in reviewing and considering one application for relief (even though there are multiple entities included in the application) could accumulate to nearly $70,000.

Expenditures of this magnitude in circumstances where companies are operating within the statutory structures designed to provide for restructure and maximising the prospects of business continuation, supporting jobs and improving returns to creditors are likely to result

in negative outcomes and have a very strong detrimental and deterrent effect on pursuing restructuring outcomes.

Applications relating to schemes of arrangement

Similar concerns to those expressed above concerning the disproportionality of the ASIC charges for relief applications in corporate groups also apply in relation to the fees to be charged by ASIC for their statutory role in reviewing schemes of arrangement.

An example of the operation of these fees in the context of a scheme of arrangement for a corporate group is illustrated below:

> *A large corporate group consisting of 6 companies is subject to liquidation. As part of the distribution process for the corporate group it is determined that 4 of the 6 entities will enter into a scheme of arrangements for the orderly and efficient distribution of dividends to certain groups of creditors.*
>
> *The 4 companies within the group will be entering into a single scheme of arrangement, as such there is a single draft Explanatory Statement.*
>
> *Notwithstanding that there is a single scheme of arrangement and single set of documents which are to be the subject of ASIC's review, under the updated fee arrangements the charges for ASIC review of scheme materials in this instance will be **$35,108** (($5,290 x 4) + ($3,487 x 4)).*

Like the matters noted above concerning applications for reporting relief, the apparent unfairness and disproportionality of the fees charged in respect of schemes is particularly highlighted when the process is applied to a corporate group which may be entering into a scheme of arrangement.

We would be available to discuss any aspect of our submission further. Any queries should be directed to Ms Kim Arnold, ARITA Policy & Education Director, on 02 8004 4340.

Yours sincerely

John Winter
Chief Executive Officer

About ARITA

The Australian Restructuring Insolvency and Turnaround Association (ARITA) represents professionals who specialise in the fields of restructuring, insolvency and turnaround.

We have more than 2,200 members and subscribers including accountants, lawyers and other professionals with an interest in insolvency and restructuring.

Around 80% of Registered Liquidators and Registered Trustees choose to be ARITA members.

ARITA’s ambition is to lead and support appropriate and efficient means to expertly manage financial recovery.

We achieve this by providing innovative training and education, upholding world class ethical and professional standards, partnering with government and promoting the ideals of the profession to the public at large. In 2021, ARITA delivered 82 professional development sessions to over 7,100 attendees.

ARITA promotes best practice and provides a forum for debate on key issues facing the profession.

We also engage in thought leadership and public policy advocacy underpinned by our members’ knowledge and experience. We represented the profession at 19 inquiries, hearings and public policy consultations during 2021.

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Annexure A

Summary of ARITA submissions and feedback on IFM

Date	Summary of feedback
9 October 2015	- First round of consultation on implementation of industry funding model (IFM). - Letter to Treasury expressing concerns over IFM, including detailing the risks of significant negative market consequences.
14 December 2016	- Letter to (then) Minister for Revenue and Financial Services, the Hon Kelly O'Dwyer MP expressing concerns over proposed IFM and its implicants for the insolvency profession
16 December 2016	- Second round of consultation on implementation of IFM. - Letter to Treasury reiterating concerns over IFM and providing responses to consultation queries.
10 March 2017	- Letter to Treasury providing feedback on exposure drafts of ASIC Supervisory Cost Recovery Levy Bill 2017 and related bills.
25 May 2017	- Letter to Treasury providing feedback on the ASIC Supervisory Cost Recovery Levy Regulations 2017.
10 July 2017	- Letter to ASIC and Treasury expressing concerns over IFM and Public Notices Website (PNW) charges.
10 December 2018	- Letter to ASIC regarding changes to the ASIC fees and impact of calculation approach to ASIC fees for service.
7 February 2019	- Letter to Treasury, submission on ASIC IFM and Registry Search Fees.
March 2019	- Correspondence with ASIC regarding application of IFM to companies in external administration
26 April 2019	- Submission on 2018-19 CRIS
18 September 2019	- Letter to Treasury, ASIC Industry Funding and the impact on registered liquidators
28 April 2020	- Letter to Hon Michael Sukkar, Assistant Treasurer, re late release of the 2019/20 draft CRIS and the impact on regulated populations.
7 July 2020	- Submission on 2019-20 CRIS
12 August 2021	- Submission on 2020-21 CRIS
16 September 2021	- Letter to Hon Josh Frydenberg, Treasurer, re impact of IFM on registered liquidators during COVID
23 June 2022	- Submission on 2021-22 CRIS