Senior Adviser
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Via email: ASICIFMReview@treasury.gov.au

Dear Senior Adviser,

Submission – ASIC Industry Funding Model Review Discussion Paper

Thank you for the opportunity to provide feedback on the discussion paper for the Australian Securities and Investments Commission (ASIC) Industry Funding Model (IFM) Review.

FinTech Australia is the peak industry body for financial technology businesses and represents over 400 fintech Startups, Hubs, Accelerators and Venture Capital Funds across the nation. Our membership includes businesses currently part of a sub-sectors subject to the IFM, such as credit providers, intermediaries and advice providers, as well as emerging sectors which are not, like buy now pay later (BNPL) and crypto asset companies, including digital currency exchanges (DCEs).

We understand the Government's longstanding position that cost recovery fees and levies attributable to regulated activity should be considered as a funding mechanism prior to budget funding. FinTech Australia strongly encourages the Government to ensure the design of the IFM continues to align with the Government's objectives to support competition and innovation and not disproportionately affect small businesses. As many of our members are innovative small businesses, the design objectives of certainty and proportionality are also highly relevant.

In this submission we make three broad recommendations in relation to the future operation of the IFM:

- The IFM should continue to be extended to introduce new and emerging sub-sectors in response to legislated changes to the regulated population, rather than preempt the Government's decision to expand ASIC's regulatory responsibilities;
- Greater consideration should be given to the impact of significant increases in levy costs and levy volatility in recent years on small businesses and innovative fintechs;
- Consultation mechanisms should be improved to ensure the regulated population understands the IFM and has more certainty about indicative levies.

Extending the IFM to emerging industry sectors and providers

The Discussion Paper raises the possibility of recovering costs from emerging industry sectors and providers which do not sit within the existing system of licensing and registration with ASIC. Two sub-sectors are given as examples: BNPL and crypto.

FinTech Australia notes specific regulation and licensing are on the Government's policy agenda for these sub-sectors. Specifically, in relation the Government has announced a 'token mapping' consultation process to help identify how crypto assets and related services should be regulated. The Government also suggested it will soon progress work on a licensing framework, review innovative organisational structures, consider custody obligations for third party custodians of crypto assets, and provide additional consumer safeguards. Separately, in relation to BNPL the Government has indicated it will consider options to regulate these products under the credit legislation.

FinTech Australia submits it would be premature for the IFM to be expanded to these emerging sub-sectors when the Government is soon to consult on how to define the regulatory perimeter. Preempting the outcomes of this work would create uncertainty and inconsistencies. It is also inconsistent with the approach typically taken when expanding the IFM. The Government typically makes changes to introduce new IFM sub-sectors in response to changes to the regulated population (i.e. the issue of IFM coverage follows a decision of Government to expand ASIC's regulatory responsibilities).

The Government should provide broader regulatory certainty before new sub-sectors are defined for the purposes of cost recovery. FinTech Australia supports a dedicated consultation on expanding the IFM to these sub-sectors, once the perimeters of regulation is known, to ensure cost recovery is proportionate and innovation is not stifled. Although only BNPL and crypto are given as examples of novel activities which create regulatory work for ASIC, bringing these in would blur the regulatory perimeter and create uncertainty for other novel and innovative products and providers in Australia.

ASIC calculates levies based on data reported by the entity, which enables ASIC to calculate each entity's share of regulatory costs for the financial year. However, these are generally entities which do not formally report to ASIC and it would be difficult to define a sub-sector and equitably levy it where it is not clearly regulated by ASIC.

Further, once there is regulatory certainty ASIC's regulatory activity will likely become more targeted and less exploratory in nature. With the law being clearer, the costs incurred through ASIC's regulatory activities may be reduced. ASIC will be able to provide education and guidance to encourage compliance, which will drive down supervisory levies. Without this clarity, attributing these costs to an amorphous grouping of entities which are not clearly within ASIC's remit is likely to result in inequitable outcomes.

Care should be taken to avoid penalising new and emerging sectors. Innovative products are more likely to require exploratory surveillance by ASIC, as well as more guidance and education. If new regulatory requirements are legislated, there is also likely to be more ASIC policy work to assist the Government with implementation (e.g. new regulatory guides, consultation papers and INFO sheets)

Some members also note they provide these novel products but also already hold an AFSL or credit licence, either for related regulated activities or in preparation for reform. This means that in some cases these providers do already pay a levy and contribute to cost recovery under the IFM indirectly.

FinTech Australia supports maintaining graduated levies if these sub-sectors become subject to the IFM. However, greater consideration could be given to alternative ways to determine the size of the entity and their share of ASIC's regulatory effort. Tiering of levy amounts could be based on different metrics which reflect differences between sub-sectors. For example, BNPL would not be easily integrated with the credit provider calculation formula which is based on the gross amount of credit provided under credit contracts.

Impact of levies on small businesses

FinTech Australia members already subject to IFM levies have raised concerns about the impact of rapid increases to levies in recent years. These members, mostly small credit providers, intermediaries and financial advice providers, have also highlighted the importance of accurate indicative levies. These members have raised concerns they are disproportionately impacted by the costs of the IFM and suggest these costs are an unsustainable overhead in difficult market conditions.

The current experience of these members is inconsistent with the IFM's original design objectives of ensuring certainty and proportionality. The volatility of these charges make it particularly for small fintechs to budget for them, as actual levy amounts can vary significantly from estimates and previous years. This issue is also more acute for new and emerging sectors which do not have a record of historical levies as a guide.

We support any measures which can provide more certainty and guidance about expected costs as well as measures to minimise volatility, particularly for sub-sectors comprised of smaller operators which have been the focus of strong regulatory oversight and enforcement action. Although variance overall is said to be less than 10% each year, members report that at the sub-sector level the level of variance between estimated and actual levies can be significant. We have reports from some members that in 2018-2019 to 2019-2020 there was an increase in the Graduated Fee of more than 85% and 2019-2020 to 2020-2021 there was a compounded increase of an additional >145%. Given that some credit providers are capped via legislation, these are fees they cannot pass on nor recoup. These members suggest the fees are unjustified, financially destructive for small businesses and unaffordable on an ongoing basis. Generally, members prefer proposals to reduce levies for small businesses or to spread cost recovery across time, using a rolling average to smooth them, rather than proposals to spread costs across a wider regulated population.

Improving stakeholder engagement and consultation on indicative levies

FinTech Australia appreciates the inherent difficulties in increasing stakeholder engagement with the IFM and providing accurate indicative levies. However, we agree with the Discussion Paper that there is scope to improve industry understanding of how levies are calculated, why they can vary and how ASIC is providing entities with value for money through regulatory activities, guidance and education.

Consistent with the Discussion Paper, few FinTech Australia members report they engage the CRIS document. The detailed information provided in this document is undoubtedly important for transparency purposes but there are likely better ways to communicate important data points to different audiences.

We agree there is merit in reframing the CRIS or creating a new transparency document that is tailored to specific sub-sectors or smaller entities. There may also be a role for 'stakeholder' teams in ASIC to play a more proactive role in informing their regulated populations about the IFM and the contents of the CRIS. These teams often engage in proactive compliance activities, including education and guidance, and may be able to better demonstrate the link between levies and the value in ASIC's regulatory activities.

We suggest that through this review process, particular consideration should be given to how to meaningfully engage with small businesses which have fewer resources and capacity to engage with or understand how the IFM affects them. These stakeholders are seeking more certainty around what to expect and budget for. FinTech Australia also supports proposals to introduce new industry consultation mechanisms. For example, targeted consultation on the IFM's policy settings could be undertaken jointly by ASIC and Treasury in relation to new sub-sectors and sub-sectors experiencing significant levy volatility or variance.

We note the inconsistent approach to reporting indicative levies and agree a more consistent approach will help with budgeting if these entities know in advance when estimates will be released. The current timing for the publication of explanations of material variances between estimated and actual levies could also be improved. The CRIS reporting of these variances for the previous financial year is too late and occurs well after the relevant invoices have been issued and paid. We agree with the suggestion in the Discussion Paper that this information should be provided when ASIC publishes final levies.