



Australian Government  
The Treasury



# Review of the Australian Securities and Investments Commission Industry Funding Model

Final Report

June 2023

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# 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<sup>1</sup> objectives, requirements and Charging Policy Statement.<sup>2</sup>

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

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- 1 The Australian Government Charging Framework incorporates the Australian Government Cost Recovery Guidelines.
  - 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."



## 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.
  - 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.<sup>3</sup>
  - 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.

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3 [2021-22 MYEFO](#) measure 'ASIC Industry Levies – fee relief'.

## Glossary

Abbreviation	Definition
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
Budget funding	Funding from the Commonwealth Budget – that is, from general taxpayers.
Charging Framework	<p>Australian Government Charging Framework 2015</p> <ul style="list-style-type: none"> <li>The Charging Framework and the Australian Government Cost Recovery Guidelines 2014 (see ‘CRGs’) are policies of the Australian Government with CRGs applying specifically to regulatory charging by ASIC. References in this Report to the ‘Charging Framework’ should be read to include the relevant elements of the CRGs.</li> </ul>
Corporations Act	<i>Corporations Act 2001</i>
Cost Recovery Levy Act	<i>ASIC Supervisory Cost Recovery Levy Act 2017</i>
Cost Recovery Levy Regulations	ASIC Supervisory Cost Recovery Levy Regulations 2017
Credit Act	<i>National Consumer Credit Protection Act 2009</i>
CRF	Consolidated Revenue Fund
CRGs	Australian Government Cost Recovery Guidelines 2014
CRIS	Cost Recovery Implementation Statement required by the CRGs
ESA	<p>Enforcement Special Account</p> <ul style="list-style-type: none"> <li>The ESA is used to fund legal or administrative proceedings in the exercise of ASIC’s functions and powers, in relation to suspected breaches of the law that are of significant public interest.</li> </ul>
ESA Determination	PGPA Act Determination (Enforcement Special Account 2016) – Establishment
Ex-ante charging	Costs are determined and recovered ahead of the financial year in which the costs are incurred.
Ex-post charging	Costs are determined and recovered in the financial year after the regulatory costs are incurred
Fees	<p>Fees-for-service / cost recovery fees</p> <ul style="list-style-type: none"> <li>Under the Charging Framework, a fee is charged when the activity and its costs can be linked to a specific individual or organisation that requests the regulatory service or creates the need for it. This ensures that fees can be allocated to those that create the need for the regulatory effort.</li> </ul>
FRAA	Financial Regulator Assessment Authority
IFM	Industry Funding Model
Levies	<p>Industry funding levies</p> <ul style="list-style-type: none"> <li>There are two components to ASIC’s industry funding levies:</li> </ul>

Abbreviation	Definition
	<ul style="list-style-type: none"> <li>○ Cost recovery levies are non-taxation levies (governed by the Charging Framework) charged when a good or service of regulation is provided to a group of individuals or organisations rather than to a specific individual or organisation.</li> <li>○ Statutory levies are general taxes (not governed by the Charging Framework) imposed for activities where the Government has decided there should be some level of cross-subsidisation between or within industry sub-sectors.</li> <li>● References in this Report to 'levies' refers to both cost recovery and statutory levies unless specified. Cost recovery and statutory levies are combined into a single amount charged to regulated entities.</li> </ul>
Regulated entities	Entities that are regulated by ASIC and are subject to levies.
Stakeholders	Industry stakeholders outside of Government that have an interest in the ASIC IFM.
SIS Act	<i>Superannuation Industry (Supervision) Act 1993</i>
The Review	Review of the Australian Securities and Investments Commission Industry Funding Model (this review)

## Executive Summary

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.

The policy settings of the ASIC IFM are determined by Government and prescribed in a legislative framework comprising several Acts and Regulations. The IFM comprises of industry funding levies charged annually to entities across 52 industry sub-sectors, and fees-for-service charged to individual entities at the point of initiating certain regulatory services provided by ASIC.

The ASIC IFM was designed to meet two key Government principles:

1. cost recovery fees and levies attributable to regulated activity are considered as a funding mechanism prior to budget funding (that is, funding from general taxpayers)
2. those who create the need for a government activity or regulation, should be charged for it, rather than general taxpayers

The design of the ASIC IFM is unique to reflect ASIC's wide statutory mandate and therefore, the vast range of activities it undertakes (including a significant enforcement function) and the different type and sizes of entities it regulates.

This Review has provided an opportunity to seek feedback on whether the ASIC IFM settings remain appropriate or whether changes are required to ensure it remains fit-for-purpose in the longer term.

The Review has considered submissions received from various stakeholders, including ASIC-regulated entities and consumer advocacy organisations as well as feedback received through other consultation mechanisms. The key issues raised by stakeholders included the appropriateness of recovering certain costs through the IFM (in particular, enforcement costs); increasing cost pressures as a result of increasing levies; the volatility in levies across years; and the inability to properly budget for the levies due to the variances between estimated and actual levies.

Stakeholders generally supported the current approach of the IFM framework that aims to achieve equity by targeting costs to those entities in sub-sectors causing the need for ASIC's regulatory effort. Stakeholders generally did not support changes to the IFM that would increase cross-subsidisation.

The Review's overall finding is that broadly the settings of the ASIC IFM remain appropriate and substantial changes to the model should not be made. The principles that underpin the IFM should be expanded to also acknowledge and account for the benefit entities receive from ASIC's regulatory activities. In line with this, the Review finds that the costs recovered through the IFM (including enforcement costs) remains appropriate and should not be removed from the model to be budget-funded instead.

The Review makes 10 recommendations in total. Six of the recommendations are directed to the Government and focus on making refinements to improve the levies and fees framework and improve the way certain regulatory costs are recovered. Four of the recommendations are directed to ASIC and focus on streamlining ASIC's reporting, transparency and consultation requirements as well as improving how ASIC's industry funding arrangements are communicated to stakeholders.

It is important to note that making changes to the ASIC IFM is a 'zero-sum game' and would result in a reallocation of costs among ASIC's regulated population. That is, if costs increase or decrease for a sub-sector, there would need to be an equivalent offset elsewhere in ASIC's regulated population.

# List of recommendations

## Industry funding levies

### Recommendation 1

Spread the recovery of regulatory costs relating to unlicensed activity across the relevant sector/s based on ASIC's total regulatory effort for each sub-sector (within the relevant sector).

### Recommendation 2

Spread the recovery of regulatory costs relating to emerging sectors outside the existing regulatory framework across ASIC's entire regulated population based on ASIC's total regulatory effort for each sub-sector.

### Recommendation 3

The Government should consider (at the time of approving a new policy proposal) whether to prescribe capital expenditure costs to be recovered over time either based on the useful life of the asset or another time period.

### Recommendation 4

Following public consultation, changes should be made to certain sub-sector definitions, entity metrics and levy formulas set out in Regulations to ensure they remain fit-for-purpose.

## Fees-for-service

### Recommendation 5

The Government should reaffirm its commitment that regulatory fees should be charged at a level which enables full cost recovery. In line with this, the Government should adjust regulatory fee amounts to a level which facilitates full cost recovery of ASIC's cost in providing these services, unless the Government has made a decision that no fee or a partial fee should be charged.

### Recommendation 6

The Government should delegate to ASIC the power to set and adjust fee amounts in subordinate legislation, with fee amounts to be reviewed every three years to reflect full cost recovery.

## Reporting, transparency and consultation

### Recommendation 7

ASIC should remove the consultation component from the CRIS process so that the CRIS is a transparency and budgeting tool for ASIC stakeholders. ASIC and Treasury to establish an alternative consultation process with industry stakeholders on a five yearly basis to examine the policy settings of the ASIC IFM.

### Recommendation 8

ASIC should cease the release of a draft CRIS for consultation and only release a final CRIS.

### Recommendation 9

ASIC should pilot and consider ways to:

- consolidate information regarding ASIC's industry funding arrangements
- provide more simple explanations regarding ASIC's cost recovery methodology and the operation of the IFM, including addressing any key gaps in information
- enhance and streamline the structure of the CRIS to reduce complexity for stakeholders

### Recommendation 10

ASIC should release the CRIS in June each year to enable more accurate estimated levies and a more consistent CRIS timeframe each year.

# Chapter 1: Context and background

## Introduction

- 1.1 This chapter provides context and background to the Review. It outlines the role the ASIC IFM has in recovering ASIC's regulatory costs from entities in the industry sub-sectors that ASIC regulates. The chapter also discusses the establishment of the IFM, legislative framework that underpins the IFM, the role of Government and ASIC, purpose and scope of the Review and the approach taken by the Review.

## Establishment of the ASIC IFM

- 1.2 Prior to the establishment of the IFM, ASIC was primarily funded by taxpayers through government appropriations from the Commonwealth budget. Only a small proportion of ASIC's total funding (around 15 per cent of its total operating budget) was recovered directly from industry participants through the Financial Institutions Supervisory Levies administered by APRA, fees for market supervision, and fees for certain services provided by ASIC.
- 1.3 Therefore, there was a limited relationship between the costs of ASIC's regulatory activities and the fees paid by industry participants who were creating the need for these activities. It was also inconsistent with the CRGs and the Charging Framework which states that "where appropriate, non-government recipients of specific government activities should be charged some or all of the costs of these activities".
- 1.4 In response to this and 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 the costs of its regulatory activities from the entities it regulates, through statutory charges such as industry funding levies and fees-for-service.
- 1.5 Following the passage of legislation, the industry funding levies component commenced on 1 July 2017 and the fees-for-service component commenced on 4 July 2018.

## Design of the ASIC IFM

- 1.6 The policy settings of the ASIC IFM are prescribed in a legislative framework comprising several Acts and Regulations – see Appendix A. The IFM comprises of industry funding levies (both cost recovery levies and statutory levies) charged annually to entities across 52 industry sub-sectors, and fees-for-service charged to individual entities at the point of initiating certain regulatory services provided by ASIC.
- 1.7 Domestically and internationally, ASIC's statutory mandate is one of the broadest for a regulator. ASIC has a wider regulatory remit than other comparable financial services and

market conduct regulators in overseas jurisdictions, including the United States, United Kingdom (UK), Germany, Netherlands, Hong Kong and New Zealand.<sup>4</sup> This means that:

- ASIC's total operating budget and therefore the amount it recovers from industry via the IFM is one of the largest compared to other Australian regulators
- the range of regulatory activities ASIC undertakes is vast, which includes a significant enforcement function
- ASIC has one of the largest regulated populations and the type and size of entities ASIC regulates can be vastly different

1.8 While extensive consultation was undertaken to design the IFM, which included drawing on other comparable financial services and markets regulators such as the United Kingdom's Financial Conduct Authority, the design of the ASIC IFM is unique given ASIC's wide regulatory remit and large regulated population.

- ASIC is one of the few Australian regulators with a significant enforcement function that is industry-funded.
- ASIC is one of the few Government agencies that recovers its regulatory costs via levies on an ex-post basis.
- While most other Government agencies divide their regulated population into certain groups or sectors only, ASIC has one of the most detailed methods of dividing its regulated population into sectors and sub-sectors, leading to ASIC having the largest number of sub-sectors.

## Design principles, objectives, and benefits

1.9 There are two key principles that the ASIC IFM aims to meet.

1. **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.
2. **The overarching principle of the Charging Framework** is that those who create the need for a government activity or regulation, should be charged for it, rather than general taxpayers.

1.10 While the IFM was designed to align with these principles, 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.

1.11 ASIC's 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

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<sup>4</sup> Financial Regulator Assessment Authority, *Effectiveness and Capability Review of the Australian Securities and Investments Commission 2022*, page 19.



- improving ASIC's resource allocation, by providing it with richer data to better identify emerging risks
- enhancing ASIC's transparency and accountability through publishing its expenditure, explaining its regulatory priorities, and accounting for its performance

1.12 Appendix A provides further information about the Charging Framework and how it applies to the ASIC IFM as well as the broader design objectives of the IFM.

## Role of Government

### Setting ASIC's budget

- 1.13 Each year, the Government is responsible for determining ASIC's total operational budget to fund its regulatory activities and what aspects of that funding should be recovered from industry via the IFM. At the time of considering ASIC's operational budget, the Government also determines the appropriation amount for ASIC's ESA and ASIC's capital expenditure budget for the financial year – there is limited flexibility to reallocate ASIC's operational expenditure budget to capital expenditure or the ESA (or vice versa).
- 1.14 ASIC's operational budget (including for the ESA and capital expenditure) is funded through appropriations from the Commonwealth budget, which is then recovered from industry via the IFM.

### Determining policy settings of the IFM

- 1.15 The Government (subject to Parliamentary process and oversight) is responsible for the policy settings of the IFM, which are prescribed in several Acts and Regulations (at Appendix A). Changes to the policy settings of the IFM are the responsibility of the Government and will generally require legislative change. Where the Government intends to make changes to the legislative framework, it would consult with stakeholders as part of its legislative processes.
- 1.16 The Government decides which of ASIC's regulatory costs are to be recovered through levies and fees and are identified in the legislative framework. The Government also decides whether some aspects of ASIC's regulatory costs are not suitable for recovery even though they may otherwise be recoverable under the policy settings of the IFM. Some of these costs are prescribed in the legislative framework while other costs are determined on a case-by-case basis – usually determined by Government at the time of legislating new or expanded responsibilities for ASIC and/or providing additional funding for ASIC.

### General oversight of ASIC's industry funding arrangements

- 1.17 The Government also has responsibility for the ongoing oversight of ASIC's industry funding arrangements. Treasury supports Government in this role by regularly engaging with ASIC in its administration of the IFM, providing advice to Government on any emerging issues and supporting both the Government and ASIC on general IFM processes.
- 1.18 Under the Charging Framework, Treasury is also responsible for conducting five-yearly reviews of all its existing and potential charging activities within the Treasury portfolio (Portfolio Charging Review), which includes ASIC's charging activities. The Portfolio Charging Review is

an opportunity for Treasury (among other things) to evaluate the performance of cost recovered activities, identify charging for potential new and existing activities, or identify opportunities to amend or discontinue cost recovered and other charging activities, and make recommendations to the Government.

## Role of ASIC

### Determining allocation of resources

- 1.19 Within the total operating budget set by the Government each year, ASIC has discretion to determine how it allocates its resources to regulate different industry sectors and achieve its statutory objectives.

### Administering the IFM

- 1.20 ASIC is responsible for administering the IFM in accordance with the Government's policy settings (including the requirements of the Charging Framework) and the legislative framework. This includes determining how it apportions its cost to sub-sectors to meet the overarching design objectives of the ASIC IFM (determined by the Government).
- 1.21 ASIC is then responsible for collecting revenue via levies and fees, which is then returned to the Government via the CRF. The total amount ASIC can recover via the IFM is capped by the total operational budget set by the Government.
- 1.22 ASIC uses a time measurement system to record time spent on each specific regulatory activity which is used to determine regulatory costs for each sub-sector. Therefore, it is important that ASIC staff are trained appropriately to ensure time allocated to the affected sub-sectors is correct.

### Reporting, transparency and accountability


- 1.23 Legislation (such as the PGPA Act, the ASIC Act and the Cost Recovery Levy Act), as well as the Charging Framework requires ASIC to make available key information about its regulatory activities, regulatory costs and charges. The key document through which ASIC provides this information and engages with stakeholders is through its annual CRIS.
- 1.24 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.
- 1.25 In addition, ASIC is also responsible for communicating its industry funding arrangements to stakeholders and ensuring its communication remains appropriate.

## Scope of the Review

- 1.26 On 8 August 2022, the Assistant Treasurer announced a review of the ASIC IFM and issued a Terms of Reference to guide the Review.
- 1.27 Under the Terms of Reference, the Review is required to 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
  - the suitability of transparency and consultation mechanisms
- 1.28 The Review has not considered the following, which were determined to be out of scope for the Review:
- ASIC's role and regulatory remit
  - ASIC's performance, including how efficiently ASIC administers and delivers its regulatory activities
  - ASIC's independence to allocate resources to deliver on its mandate
  - the appropriate aggregate level of funding provided to ASIC
- 1.29 While these out-of-scope activities have an impact on the amount that is recovered through the ASIC IFM, there are other mechanisms in place to assess these activities. For example, on 25 August 2022, the FRAA released its first report on ASIC's effectiveness and capability in relation to certain aspects of ASIC's operations.

## The approach undertaken by the Review

- 1.30 The Review has been led by Treasury, in consultation with ASIC, the Department of Finance and the Department of the Prime Minister and Cabinet.
- 1.31 The Review has considered a range of feedback, including from regulated entities, industry associations, consumer advocacy organisations and government agencies.
- 1.32 On 28 September 2022, a Discussion Paper on the Review was released for consultation which ended on 28 October 2022. Eight roundtable sessions were held with key stakeholders from each industry sector and a total of 39 written submissions were received.
- 1.33 As part of the Discussion Paper and roundtable sessions, stakeholders were invited to consider options, examples of potential changes and questions that were designed to examine and address issues set out in the Review's Terms of Reference. To inform responses, Treasury consolidated and released historical cost and levy data (both from public sources and internal ASIC data) to assist with stakeholder feedback.
- 1.34 The Review has also considered material and feedback provided through other avenues, for example, through ASIC's annual CRIS process.

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- 1.35 Stakeholder feedback received through these processes has informed the Review’s consideration, including whether any refinements are required to the IFM to ensure its settings remain appropriate.
  - 1.36 The Review recognises that there are other reviews, Government policies and legislation which may be impacted by changes to the ASIC IFM – for example, the proposed Compensation Scheme of Last Resort (CSLR) aligns CSLR levies to certain ASIC IFM sub-sectors. The Government will need to consider the impact any changes that are made to the ASIC IFM may have on related matters.

## Chapter 2: Industry funding levies

### Introduction

- 2.1 The Review's Terms of Reference requires the Review to consider whether the design and legislative framework for levies remains appropriate, and the types of costs and nature of ASIC's activities that are recovered from industry through levies and whether some or all costs for certain activities (such as enforcement and capital expenditure) remain appropriate to be recovered through the IFM.
- 2.2 This chapter examines the design and flexibility of the levies framework, the principles that underpin the levies framework, and whether the costs recovered through levies remain appropriate.

### Industry funding levies framework

- 2.3 As part of the IFM, most of ASIC's regulatory costs are recovered through levies imposed on the sub-sectors ASIC regulates. As of 2021–22, there are 52 sub-sectors from which ASIC recovers its regulatory costs through levies. Each sub-sector is grouped into one of the following sectors:
- Corporate – 6 sub-sectors
  - Deposit taking and credit – 6 sub-sectors
  - Investment management, superannuation and related services – 8 sub-sectors
  - Market infrastructure and intermediaries – 24 sub-sectors
  - Financial advice – 4 sub-sectors
  - Insurance – 4 sub-sectors
- 2.4 Prior to the commencement of the levies framework, the majority of ASIC's regulatory costs was budget-funded. The levies component of the IFM commenced on 1 July 2017 and accounts for the majority of the total amount recovered from regulated entities under the IFM. The amount and proportion being recovered via levies has generally been increasing each year – see Chapter 3 for further information on ASIC's funding profile and levy amounts.

**Table 2.1: Levies compared to total ASIC funding 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 amount recovered via levies (\$ million)	236.6	276.7	320.3	348.3*	347.2*
Levies as a proportion of total ASIC funding (%)	61	68	72	75	77
Total number of leviable entities	45,490	46,148	43,804	43,508	43,077

\* The total levy amounts for 2020–21 and 2021–22 does not include the levy relief for personal financial advice licensees (which resulted in \$34.2 million and \$33.9 million not being recovered from the personal financial advice licensee sub-sector for 2020–21 and 2021–22 respectively).

## Costs recovered through levies

2.5 Both 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.

- **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 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 and property and corporate services.

Table 2.2: ASIC activity costs\* 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	55.4	16.6	54.0	15.6
Enforcement	67.6	29.1	75.6	29.9	83.6	28.7	124.4	37.2	130.5	37.3
Industry engagement	5.8	2.5	9.9	3.9	7.8	2.7	9.5	2.8	10.1	2.9
Education	1.3	0.5	1.5	0.6	10.9	3.7	5.5	1.6	5.7	1.6
Financial capability**	7.7	3.3	8.8	3.5	-	-	-	-	-	-
Guidance	3.1	1.3	3.3	1.3	4.5	1.5	7.8	2.3	8.5	2.5
Policy advice	2.7	1.2	2.4	0.9	6.8	2.3	8.2	2.4	6.5	1.9
Indirect costs	93.5	39.5	111.0	40.1	126.3	39.4	123.9	37.0	129.0	37.5
Total operating costs	232.4	100.0	252.5	100.0	291.3	100.0	334.7	100.0	344.3	100.0

\* This table does not include costs relating to capital expenditure or the levy relief provided to personal financial advice licensees in 2020–21 and 2021–22.

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

## Methodology

- 2.6 ASIC apportions its regulatory costs across its entire regulated population, which is divided into 52 sub-sectors. The sub-sectors were designed to group similar entities together to minimise cross-subsidisation across the regulated population.
- 2.7 Levies are calculated and invoiced at the end of a financial year (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. See Chapter 3 for further analysis on the ex-post nature of the levies framework.
- 2.8 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.
- 2.9 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. Entities in a sub-sector may be required to pay a flat levy or a graduated levy.
- 2.10 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.
- 2.11 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, or when an entity fails to pay a levy invoice (without seeking a waiver). Adjustments for under and over recoveries are made to the sub-sector in which the under or over recovery occurred.

## Levy waivers

- 2.12 Under the Cost Recovery Levy Act, ASIC has the power to waive levies and penalties in exceptional circumstances – examples of exceptional circumstances include natural disasters, serious illness, court caused delays etc.
- 2.13 There is no limit to the amount that can be waived – ASIC can waive the payment in full or partially. The amounts that are waived are not recovered from other entities or recovered in subsequent years, and instead are borne by the Government (that is, general taxpayers).

## Principles of the levies framework

- 2.14 The levies framework aims to meet the two key principles of the Government and Charging Framework (see Chapter 1) by utilising various components to try and accurately apportion and recover costs from regulated entities, rather than general taxpayers.
- 2.15 This has been done through allocating costs to industry sub-sectors 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.

## Analysis and findings

- 2.16 The current levies framework 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 ASIC's regulatory effort. However, in trying to achieve this, other objectives of simplicity and efficiency of administering the IFM are not always met. Due to the granularity of the levies framework, the IFM is complex which makes it difficult for stakeholders to understand and engage with.
- 2.17 The Review has considered whether the levies framework should prioritise simplicity (which would increase cross-subsidisation) or equity (which better targets the apportioning of costs to entities causing the need for regulation).
- 2.18 A simpler approach would be expected to be more easily understood and easy to navigate for stakeholders, and could be achieved by:
- spreading all of ASIC's regulatory costs across its entire regulated population using a standardised metric to apportion costs to entities
  - combining and reducing the number of sub-sectors
  - removing sub-sectors and recovering costs at a sector level
- 2.19 There are trade-offs associated with simplification which impact equity and fairness. Simplifying the levies framework would increase cross-subsidisation across entities and different parts of ASIC's regulated population. That is, the model would be less targeted in apportioning costs to the entities causing the need for regulation and entities would



- increasingly subsidise the regulatory costs of other entities causing the need for ASIC's regulatory effort.
- 2.20 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.
- 2.21 The level of complexity in the current framework also arises from the breadth of ASIC's regulated population. Achieving a simple model relies on being able to identify a standardised metric that could apply across a wider population to apportion costs to entities. This is difficult as the types and sizes of entities that ASIC regulates can be vastly different.
- 2.22 During consultation, stakeholders were asked whether they preferred a simpler model or a more equitable model. Stakeholders generally did not support a simpler model or changes which lead to increased levels of cross-subsidisation, and instead preferred more granularity to better target costs to entities.
- 2.23 The Review finds that the levies framework should be aimed at achieving equity and targeting costs to those entities in sub-sectors causing the need for ASIC's regulatory effort. This means that the model will remain complex, however, the Review has considered ways it can be better navigated by and communicated to stakeholders – see Chapter 5.
- 2.24 The Review has also considered how the model could be more targeted, however, finds that any changes that lean towards ASIC calculating individual entity levies would not be feasible and more administratively burdensome and costly for ASIC to administer than the current framework, and likely impose additional regulatory burdens and costs on regulated entities.
- 2.25 During consultation on the Review, stakeholders raised concerns that the cost of certain activities did not align with the overarching principle of the Charging Framework. For example, costs associated with unlicensed conduct.
- 2.26 The Review recognises that while the costs of some activities may not be targeted to those entities in the sub-sectors causing the need for ASIC's regulatory effort, the sub-sector and wider regulated population does receive benefit, and this should be recognised in the levies framework.
- 2.27 Therefore, the Review finds that a third principle should be applied in the levies framework when considering in which sub-sector(s) ASIC should recover its costs.
- **Principle 1 (Governments' long-standing position):** Cost recovery levies (and fees) attributable to regulated activity are considered as a funding mechanism prior to budget funding.
  - **Principle 2 (Charging Framework):** Those who create the need for a government activity or regulation, should be charged for it, rather than general taxpayers.
  - **Principle 3:** Where ASIC's regulatory costs cannot directly be attributed to entities in sub-sectors causing the need for ASIC's regulatory effort, costs should be apportioned to the sub-sector(s) that benefit from the regulated activity.

- 2.28 The application of Principle 3 may result in certain costs being recovered from a wider population – that is, from multiple sub-sectors, at a sector level, or at a whole of population level. This is because the associated activity is deemed to provide broader benefit to ASIC’s regulated population, as opposed to benefitting just one sub-sector. This is explored below.

### Key finding

The existing levies framework remains appropriate and should continue to be focussed on achieving equity and recognising the broader industry benefits of ASIC’s regulatory activities.

Simplification of the IFM would result in winners and losers by reallocating costs across entities. The Review does not consider that any perceived benefits of such simplification outweigh the costs.

## Activities and costs recovered through levies

- 2.29 The Cost Recovery Levy Act sets out the amounts that ASIC can recover via levies and includes:
- costs relating directly or indirectly to the regulation of leviable entities
  - costs relating to surveillance, education, guidance, engagement with industry and policy advice
  - costs relating to amounts that are debited from the ESA
  - capital expenditure costs
- 2.30 The majority of ASIC’s costs for its regulatory activities are recovered through levies, unless the Government has decided not to cost recover (see sections below).

### Analysis and findings

- 2.31 During consultation, stakeholders generally supported the concept of regulated entities paying for its regulation, however, suggested that the costs for certain activities should be removed from the IFM and be budget-funded instead – in particular:
- regulatory activities that stakeholders have argued they are not causing the need for
  - regulatory activities that should be considered business as usual for an Australian Government body
  - regulatory activities that the regulated population does not benefit from
- 2.32 The appropriateness of recovering the costs of the following activities were consistently raised by stakeholders:
- enforcement action
  - unsuccessful enforcement action
  - enforcement action against unlicensed operators

- regulating emerging sectors
  - education of the public
  - policy advice provided to the Government
  - capital expenditure
- 2.33 Some stakeholders also raised whether the operation of sub-section 10(4) of the Cost Recovery Levy Act excludes certain costs (such as costs relating to unlicensed activity and emerging sectors) from being recovered. Sub-section 10(4) states that ASIC cannot recover costs relating to the regulation of persons and entities that are not 'leviable entities'. For the purposes of the Cost Recovery Levy Act, a leviable entity is a regulated entity and includes persons who contravene certain provisions in the Acts ASIC administers (for example, unlicensed operators) as well as persons ASIC regulates (for example, entities in emerging sectors).
- 2.34 The Review finds that the recovery of ASIC's regulatory activities that are currently recovered through levies remains appropriate and aligns with the Charging Framework which identifies the types of costs that can be recovered through levies.
- 2.35 The Review notes that the removal of costs from the IFM would not align with the Governments' position that cost recovery levies and fees attributable to regulatory activity are considered as a funding mechanism prior to budget funding. In line with this and consistent with the principles of the levies framework, the Review recognises that ASIC's regulated population and in particular, the relevant sub-sectors to which these costs are attributed to also receive benefit.

### Key finding

The types of costs and nature of ASIC's activities that are currently recovered through levies remains appropriate and aligns with the principles of the levies framework.

## Costs not recovered through levies

- 2.36 The government has made decisions that certain regulatory costs will not be recovered through IFM levies. Costs that are not recovered through levies are budget-funded.
- 2.37 Entities registered under the *Australian Charities and Not-for-profits Commission Act 2012* are exempt from having to pay levies.
- 2.38 The Cost Recovery Levy Regulations outline where the Government has decided that certain amounts are not 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
- preliminary investigations and reports by registered liquidators into the failure of a company with few or no assets

### Analysis and findings

- 2.39 Stakeholders in the financial advice sector noted some inconsistency in decisions to exclude costs from the IFM. For example, costs relating to the Single Disciplinary Body for financial advisers established within ASIC are recovered through the IFM, however, the costs of ASIC operating registered liquidator disciplinary committees are not recovered through the IFM.
- 2.40 The Review notes that the Government has full discretion to decide what costs will or won't be recovered via the IFM. However, the Review acknowledges stakeholder concerns and finds that the Government should consider these decisions more consistently – see section below.

## Cost recovery policy

- 2.41 The Charging Framework requires that for each cost recovered activity, the responsible Government entity must have policy approval from the Government to cost recover. Government entities should seek approval:
- to undertake a specific activity on a full or partial cost recovery basis, whether a new or existing activity
  - for a new recovery model, or to make significant changes to an existing model
  - to bring forward new legislation or amend existing legislation to provide authority to charge or change charges

## New policy measures and proposals

- 2.42 Where the Government legislates a new policy measure and/or provides additional funding to ASIC, it is the responsibility of ASIC (with Treasury's support) to ensure that there is policy authority from the Government to cost recover via the IFM.
- 2.43 It is also the responsibility of ASIC and Treasury to provide advice to Government about the impact the new policy measure and/or additional funding will have on the IFM and the sub-sector(s) from which costs will be recovered from. This includes consideration of whether the costs should be fully or partially recovered from industry, or not recovered at all.
- 2.44 The Government has in the past made decisions to not recover costs for new policy measures or additional funding where it would have an adverse impact on existing or new sub-sectors.

### Analysis and findings

- 2.45 Generally, where the Government is considering a new policy measure or determining whether additional funding should be provided to ASIC, it should consider the implications of cost recovery for the affected regulated population.
- 2.46 While authority for cost recovery remains a decision for Government, the Government should ensure decisions are made most consistently. ASIC and Treasury remain responsible for

advising the Government on what factors to consider when making decisions about cost recovery. These factors generally include:

- whether costs are recoverable under the legislative framework
- whether costs can be recovered from an existing sub-sector or sub-sectors
- how costs should be recovered to minimise any adverse impacts, such as impacts on competition and innovation

2.47 The cost recovery decision-making process at Appendix B sets out what the Government should consider when a new policy measure or additional funding is provided to ASIC.

2.48 It is also important that decisions made by the Government that have an impact on cost recovery is communicated effectively to industry. For example, in 2021, new laws were introduced to prescribe that certain debt management and credit repair services were considered a 'credit activity'. During consultation on this Review, stakeholders in the deposit-taking and credit sector noted that they were unaware of how this change would impact cost recovery via the IFM, particularly on levy amounts, and would have liked more information regarding the impacts ahead of costs being recovered.

## Existing activities

2.49 While the Government generally makes decisions regarding cost recovery before the costs are incurred by ASIC, there may be instances where the cost of ASIC's existing activities increase substantially during the financial year.

2.50 While not common, the Government may decide to not recover certain costs after it has been incurred by ASIC and would have an adverse impact on the sub-sector costs are being recovered from. For example, in 2021, temporary levy relief was provided to the personal financial advice licensee sub-sector for 2020–21 and 2021–22 levies in recognition of the increasing levies faced by this sub-sector.

## Analysis and findings

2.51 It is appropriate for the Government to continue determining whether cost recovery is suitable on a case-by-case basis.

2.52 While it is ideal for these decisions to be made by the Government before costs are incurred by ASIC (so that there is certainty for industry), there may be instances where a matter arises during the financial year for which there will be a substantial increase in costs for a sub-sector.

2.53 Without government intervention, ASIC must recover these costs from the relevant sub-sector irrespective of the financial impact it would have on the sub-sector.

2.54 It remains a decision of the Government whether costs that would have a significant financial impact on a sub-sector should be recovered from the relevant sub-sector or recovered in a different way to ease the financial impact – see Appendix B.

## Allocation of costs to sub-sectors

2.55 The Cost Recovery Levy Act sets out the principles ASIC must have regard to when attributing its regulatory costs to a sub-sector.

- Costs relating to the direct regulation of leviable entities (that is, direct costs) must be attributed to that sub-sector.
- Costs relating to the indirect regulation of leviable entities (that is, indirect costs) must be attributed to each sub-sector in proportion to the regulatory resources directed to that sub-sector.
- An excess or shortfall (under or over recovery) is attributable to the sub-sector in which the excess or shortfall arose.
- Costs relating to the ESA are to be attributed over time and in a reasonable manner to the sub-sectors to which the costs giving rise to the debits in the ESA relate.

## Direct costs

- 2.56 ASIC uses a time management and recording system whereby ASIC staff measure the time spent on a specific regulatory activity and the affected sub-sector. For example, if a staff member spent 10 hours undertaking supervision and surveillance on an entity within the credit intermediaries sub-sector – the associated costs (such as direct employee expenses and direct supplier costs) are allocated to that sub-sector.
- 2.57 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.
- 2.58 For example, ASIC investigates a matter relating to an individual who is suspected of providing unlicensed personal financial advice to retail clients as well as suspected unlicensed dealing of general insurance products. In this scenario, if ASIC staff spend 30 per cent of its time on the matter investigating the financial advice aspect and 70 per cent of its time investigating the insurance aspect, the costs of the matter would be recovered proportionally from the relevant sub-sectors – 30 per cent from the personal financial advice licensee sub-sector and 70 per cent from the insurance product provider sub-sector.
- 2.59 ASIC currently assigns costs at the activity and sub-sector level which aims to apportion costs to those entities in sub-sectors causing the need for ASIC’s regulatory effort. ASIC’s time recording system currently distinguishes between 52 sub-sectors and 17 regulatory activity types, which results in 884 possible combinations of sub-sectors and activities.
- 2.60 In 2020–21, ASIC undertook a pilot cost study on two of its regulatory activities (enforcement, and supervision and surveillance) to test whether a further disaggregation at a sub-activity level would have any benefits, including impact on levy size and distribution. However, after conducting the pilot study, ASIC found that levy distribution and size were not impacted by a further disaggregation of regulatory activities and did not identify any benefits from the pilot. Additionally, the implementation of granular time reporting would require expensive system changes to be efficient which would then be recoverable under the IFM.

## Analysis and findings

- 2.61 The Review finds that the current allocation approach of direct costs at an activity and sub-sector level remains appropriate in apportioning costs to those entities in sub-sectors that are causing the need for ASIC’s regulatory effort.

- 2.62 However, there are certain activities where the recovery of costs does not align with this principle and should be recovered in a different way where there are wider industry benefits – see sections below.

### Key finding

The current approach of using a time management system to allocate direct costs on an activity and sub-sector basis remains appropriate. Based on findings from a 2021 pilot study, any further disaggregation would be administratively burdensome and costly for ASIC to administer and would not have any significant impacts on levy distribution and size.

## Indirect costs

- 2.63 ASIC allocates indirect costs primarily on a fulltime equivalent (FTE) basis – that is, the amount of FTE allocated to a specific regulatory activity in a particular sub-sector will determine the amount of indirect costs attributed to the sub-sector. For example, if 20 per cent of staff undertook work relevant to a particular sub-sector, 20 per cent of the indirect costs (finance, legal, property etc) would be allocated to that sub-sector. This subsequently flows through to levies.
- 2.64 There are exceptions to this rule where FTE is not an appropriate measure. For example, ASIC's General Counsel costs are allocated based on the areas in which they spent most of their time. In these instances, ASIC generally uses the 'direct cost' costing method for apportioning its indirect costs.

### Analysis and findings

- 2.65 Stakeholders have expressed confusion relating to the recovery of indirect costs and how these costs are allocated to sub-sectors and therefore impact levies.
- 2.66 While the approach remains appropriate and is consistent with the Charging Framework, consideration has been given as to how the allocation of these costs could be better explained – see Chapter 5.

### Key finding

The current approach of ASIC allocating indirect costs on an FTE basis, and in some cases, using the direct cost method remains appropriate and is consistent with the Charging Framework.

## Enforcement

- 2.67 Currently, two approaches are taken to the recovery of enforcement costs – for 'business as usual' (BAU) enforcement matters and for ESA enforcement matters.

- 2.68 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. BAU enforcement matters are generally smaller enforcement matters that ASIC funds through its general appropriation.
- 2.69 For larger enforcement matters, 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.
- 2.70 ESA costs are allocated to the relevant sub-sector(s) 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. ESA costs are recovered via statutory levies in recognition of the intertemporal cross-subsidisation of costs over time.
- 2.71 ASIC staff in enforcement teams record time spent per matter. Matters are charged to sub-sectors based on the regulatory classification of the entity and the type of misconduct subject to investigation.

**Table 2.3: ESA amounts since the commencement of the IFM**

	2017–18	2018–19	2019–20	2020–21	2021–22	2022–23
<b>Appropriation (\$ million)</b>	26,279	36,217	41,195	59,221	64,811	55,246
<b>Amount spent (\$ million)</b>	-29,563	-34,611	-72,099	-59,610	-59,491	Not available
<b>Balance (\$ million)</b>	59,135	62,954	39,599	45,174	71,137	Not available

### Analysis and findings

- 2.72 The IFM attempts to attribute 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 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
  - 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
- 2.73 The Review finds that 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. However, where possible, ASIC does seek to recover certain enforcement costs from entities subject to enforcement – see below.



- 2.74 There is broader benefit to other entities within the industry sub-sector from ASIC's enforcement action, by maintaining trust and integrity in the financial system and promoting consumer confidence.

### Key finding

It is appropriate that the costs of BAU and ESA enforcement matters are recovered from the sub-sectors to which the enforcement action relates and aligns with the principles of the IFM.

### Key finding

Recovering ESA costs via a 3-year rolling average has reduced levy volatility at a sub-sector level compared to if the costs had been recovered in the year in which the enforcement expenses were incurred. It remains appropriate to maintain the 3-year rolling average approach for the ESA to lessen levy volatility for large enforcement matters.

## Unlicensed conduct

- 2.75 ASIC takes action in relation to 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.
- 2.76 Nevertheless, ASIC incurs costs in identifying, preventing and sanctioning unlicensed conduct. These costs are allocated (and recovered) from the most 'relevant' sub-sector via levies. For example, regulatory activity relating to an unlicensed individual providing personal advice to retail clients on relevant financial products would be recovered from the personal financial advice licensee sub-sector. It is the responsibility of ASIC to determine the most relevant sub-sector(s) to apportion these costs.
- 2.77 This type of activity tends to be limited to sub-sectors which involve the provision of services to consumers that requires a license and is generally concentrated to the financial advice, insurance and deposit-taking and credit sectors. That is, this type of misconduct does not generally occur in all the sub-sectors ASIC regulates.
- 2.78 In 2021–22, enforcement action relating to unlicensed conduct represented approximately 15 per cent ASIC's total enforcement costs (including both direct and indirect costs). Of this, 30 per cent related to unlicensed conduct that was recovered from the personal financial advice licensee sub-sector and 25 per cent related to unlicensed conduct that was recovered from the over-the-counter derivative issuers sub-sector.

### Analysis and findings

- 2.79 The Review finds that the current approach of allocating costs to the 'relevant' sub-sector does not align with the principle that those entities in sub-sectors who cause the need for ASIC's regulatory effort should be charged for it.

- 2.80 Where costs do not align with this principle, costs should be recovered from the population that benefits from the activity. ASIC action in relation to unlicensed conduct is in the interests of the licensed participants because it maintains integrity and trust in the industry and deters competition from unlicensed and unregulated competitors.
- 2.81 Where an enforcement matter relates to unlicensed conduct, costs of that enforcement matter should be allocated to the relevant licensed population that benefits from ASIC's regulatory effort. The Review finds that benefits extend beyond a sub-sector and to the whole sector itself. This population benefits from ASIC's action to ensure that only licensed participants are providing services.
- 2.82 For example, if ASIC takes enforcement action against an unlicensed individual providing personal advice to retail clients on relevant financial products, this benefits the financial advice sector as a whole. Consumers do not generally differentiate between the different types of financial advice being provided, just that unlicensed financial advice is being provided and should be prevented.
- 2.83 Therefore, the Review finds that costs relating to unlicensed conduct should be allocated and recovered from the relevant sector(s) that benefit from ASIC action against unlicensed operators. This may require changes to the principles set out in sub-section 10(7) of the Cost Recovery Levy Act to be implemented. It may also require changes to ASIC's time measurement system as ASIC does not currently track this at an activity level.

### Key finding

The recovery of costs relating to unlicensed conduct does not align with the principle that those entities in sub-sectors who cause the need for ASIC's regulatory effort should be charged for it and should be recovered based on the regulated population that benefits from this regulatory activity. The Review finds that the benefits of this regulatory activity extend beyond the sub-sector and to the whole sector itself and should be recovered accordingly.

### Recommendation 1

Spread the recovery of regulatory costs relating to unlicensed activity across the relevant sector(s) based on ASIC's total regulatory effort for each sub-sector (within the relevant sector(s)).

## Emerging industry sectors and providers

- 2.84 Over the life of the ASIC 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.

- 2.85 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'.
- 2.86 This perimeter refers to activities, which are often novel, for example, crypto assets and buy now pay later (BNPL), that do not sit within the existing system of licensing, registration, and supervision – and therefore, do not form part of or are not explicitly captured by the existing IFM sub-sectors. The Government is currently considering options for regulating BNPL products, including the introduction of licensing obligations.
- 2.87 These costs are allocated to (and recovered from) 'adjacent' and existing sub-sectors which are already licenced and regulated via levies. For example, regulatory activity relating to BNPL is recovered from the credit providers sub-sector. It is the responsibility of ASIC to determine the adjacent sub-sector(s) to apportion these types of costs.

### Analysis and findings

- 2.88 The Review finds that the current approach of allocating costs to 'adjacent' existing sub-sector(s) does not align with the principle that those entities in sub-sectors who cause the need for ASIC's regulatory effort should be charged for it.
- 2.89 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.
- 2.90 Therefore, the Review finds that costs relating to regulating emerging sectors and providers should be allocated across and recovered from all of ASIC's regulated population in recognition of the wider industry benefits of ASIC's regulatory activity.
- 2.91 This may require changes to the principles set out in sub-section 10(7) of the Cost Recovery Levy Act to be implemented. It may also require changes to ASIC's time measurement system as ASIC does not currently track this at an activity level.

### Key finding

The recovery of costs relating to regulating emerging sector does not align with the principle that those entities in sub-sectors who cause the need for ASIC's regulatory effort should be charged for it. Costs should be recovered based on the regulated population that benefits from this regulatory activity. The Review finds that the benefits of this regulatory activity extend to all of ASIC's regulated population (as it is difficult to assign benefits of this activity to specific sub-sectors) and should be recovered accordingly.

## Recommendation 2

Spread the recovery of regulatory costs relating to emerging sectors outside the existing regulatory framework across ASIC's entire regulated population based on ASIC's total regulatory effort for each sub-sector.

### Capital expenditure

- 2.92 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.
- 2.93 Generally, 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.

### Analysis and findings

- 2.94 The Review finds that the current approach of allocating capital expenditure costs may not always align with the principle that those who cause the need for regulation, should pay for it.
- 2.95 The recovery of capital expenditure in the year in which the investment is made (which means the regulated population in that year bears the cost of investment) does not recognise that capital assets have a useful life over multiple years and benefits future regulated populations.
- 2.96 Therefore, the Review finds that for all capital expenditure projects, the Government consider whether to prescribe capital expenditure costs to be recovered over time either based on the useful life of the asset or another time period. In making this decision, the Government should consider the size of the capital project and the impact it will have on the sub-sector if costs are recovered in the year in which the investment is made.
- 2.97 This approach is consistent with other cost recovery models that recover capital expenditure over the life of an asset and is consistent with the requirements of the Charging Framework.

## Recommendation 3

The Government should consider (at the time of approving a new policy proposal) whether to prescribe capital expenditure costs to be recovered over time either based on the useful life of the asset or another time period.

### Other cost recovery mechanisms

- 2.98 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 ASIC Act and section 319 of the *National Consumer Credit Protection Act 2009*. All 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. All recovered litigation costs are applied back to relevant sub-sectors, to offset levy amounts and are also recorded as own source revenue.

2.99 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.

## Analysis and findings

2.100 Own source revenue (which includes the recovery of investigation and litigation costs) recovers only a fraction of total enforcement costs – recovering between \$4 and \$23 million per year over the life of the IFM (see Table 2.4). 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.

2.101 The actual amount recovered via these mechanisms will vary on a case-by-case basis because not all expenditure will be recoverable and in some instances the entity or person ASIC takes action against has insufficient assets to cover ASIC's cost, despite being awarded by the courts.

**Table 2.4: ASIC own source revenue compared to total enforcement costs**

	2017–18	2018–19	2019–20	2020–21	2021–22
Total ASIC enforcement costs (\$ million)	67.5	75.6	83.6	110.0*	130.5*
Total own source revenue (\$ million)	16.1	7.2	4.6	6.5*	23.3*
Own source revenue as a percentage of enforcement costs (%)	23.8	9.5	5.5	5.9	17.8

\*The figures presented reflect amounts before levy relief was applied to the financial advice sub-sector.

2.102 During consultation, stakeholders suggested that entities subject to enforcement should pay for those costs rather than being subsidised by other entities in the sub-sector.

2.103 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, noting there would be circumstances in which the entity involved cannot pay the costs.

2.104 Stakeholders have also frequently suggested that court-awarded penalties and fines should also be used to offset industry levies in the same manner as own source revenue.

2.105 Penalties are imposed as a deterrent for misconduct and are not calculate with reference to ASIC's regulatory costs. This is consistent with the treatment of penalties and fines across the Commonwealth, which are returned to the CRF.

2.106 The use of fines and penalties to offset ASIC's regulatory costs has not been considered as part of this Review.

### Key finding

ASIC is effectively using available mechanisms to recover investigation and litigation costs directly from individual entities where possible. ASIC should continue to use the cost recovery mechanisms, to the fullest extent possible, to directly recover investigation and litigation costs from those entities subject to enforcement.

## Calculation of levies

2.107 The levy payable by an individual entity is determined using formulas and metrics for the sub-sector prescribed in the Cost Recovery Levy Regulations.

### Analysis and findings

2.108 The type of levy and the metric for calculating the amount of levy payable is different for each industry sub-sector. The type of levy and metric considers the different types, sizes and levels of activity undertaken by regulated entities.

2.109 Therefore, larger entities or entities undertaking a higher volume of activities that are in a sub-sector subject to a graduated levy, would generally pay higher levies in their sub-sector. This reflects the principle that entities that undertake higher levels of activity, generally require more of ASIC's regulatory effort.

2.110 In 2021–22, of the 43,508 total leviable entities, the top 10 entities paid around 20 per cent (or around \$65 million) of total levies. These entities were generally larger corporations operating across multiple sub-sectors.

2.111 This concentration of costs is also evident at a sub-sector level. For example, in 2021–22:

- of the 4,281 total leviable entities in the credit intermediaries sub-sector, the top 10 entities paid around 28 per cent of total regulatory costs for the sub-sector
- of the 197 total leviable entities in the deposit product providers sub-sector, the top 10 entities paid around 86 per cent of total regulatory costs for the sub-sector

2.112 The review finds that this approach is appropriate and equitable because of the range of industry sub-sectors regulated by ASIC, variations in ASIC's regulatory costs for each industry sub-sector and the differences in size and levels of activity undertaken by each entity in each industry sub-sector.

2.113 As part of the Review's consultation process, the Review sought views from stakeholders and ASIC on suggested changes to sub-sector definitions, formulas and metrics set in the Cost Recovery Levy Regulations. Stakeholders have also frequently suggested amendments to sub-sectors via other consultation mechanisms (such as through the CRIS process).

- 2.114 The types of changes that stakeholders and ASIC have proposed include:
- combining sub-sectors that have similar types of entities and undertake similar types of regulated activity to reduce ambiguity and instances of entities undertaking similar activities that fall within multiple sub-sectors
  - introducing graduated levies and pro-rated components to better reflect ASIC’s regulatory effort in certain sub-sectors currently subject to flat levies
  - adjusting entity metrics to better apportion costs to entities within a sub-sector
- 2.115 The Review has not considered in detail the merits of changes that have been suggested by stakeholders and ASIC. However, the Review recognises that changes should be made to ensure that sub-sector definitions, metrics and formulas remain fit-for-purpose. While ad hoc changes have been made to sub-sectors, there has been no wholesale changes to sub-sectors since the commencement of the IFM.
- 2.116 Therefore, the Government should identify proposed changes to sub-sectors (using feedback received as part of this Review process and other consultation mechanisms) and further consult with stakeholders on the merits of the proposed changes before implementing any changes in Regulations.
- 2.117 In considering changes to sub-sectors, the Government should have regard to the following principles and guidelines.
- A presumption against increasing complexity and administrative costs for ASIC and regulated entities. This includes a presumption against disaggregating existing sub-sectors into smaller sub-sectors.
    - Smaller sub-sectors would generally be more sensitive to increases in ASIC’s costs, which increases the scope for greater volatility and variance in levies as costs are being recovered from a smaller number of entities.
  - Consistent with the above principle, reducing instances of sub-sectors with one or very few entities unless the entity or entities in the sub-sector provide a monopoly or quasi-monopoly service.
  - Ensuring the sub-sector is mature and financially viable so that entities can pay the cost of ASIC regulating the sub-sector (without hindering competition and innovation).
    - In some instances, it may be appropriate for the Government to consider transitional arrangements for new entities that are brought into ASIC’s regulatory remit. For example, creating a ‘time-limited’ sub-sector for structurally distinctive entities that are subject to implementation costs or additional regulatory costs while the sub-sector stabilises and can form part of another existing sub-sector.
- 2.118 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.
- 2.119 Currently, entities subject to a graduated levy must pay a minimum component irrespective of the size of the entity or level of activity it undertakes. The minimum components (set out in the Cost Recovery Levy Regulations) were originally set at a level which broadly reflected the costs of certain ASIC activities that are more stable over time and ‘fixed’ for each sub-sector.

- 2.120 Since ASIC's total funding – and therefore the total amount recovered via levies – has increased substantially since the commencement of the IFM, the minimum components set in 2017–18 do not reflect ASIC's fixed costs.
- 2.121 The Review finds that it is appropriate that entities subject to a graduated levy pay a minimum component. A minimum component ensures all regulated entities contribute to ASIC's costs to be an effective regulator (that is, ASIC's enabling costs). Therefore, the Review finds that the minimum components that are currently set in the Cost Recovery Levy Regulations remain appropriate.
- 2.122 The Review notes that any changes to sub-sector definitions, formulas and metrics will require legislative change and would need to go through usual Parliamentary and legislative processes including public consultation. It will also require changes to ASIC systems to be able to calculate levies in line with the changes and may also require adjusted reporting by regulated entities where there are changes to entity metrics.

#### Recommendation 4

Following public consultation, changes should be made to certain sub-sector definitions, entity metrics and levy formulas set out in Regulations to ensure they remain fit-for-purpose.

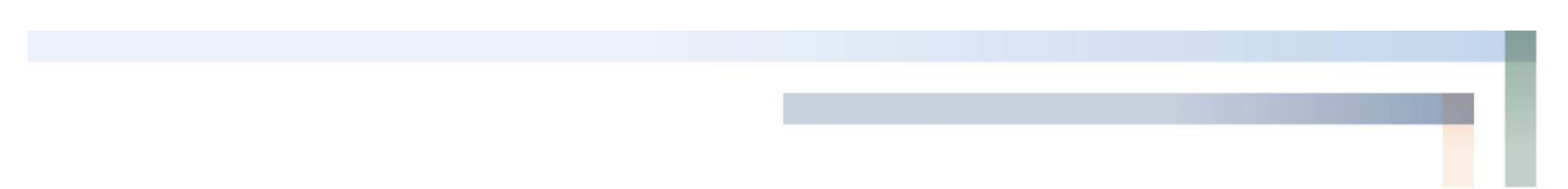
## Flexibility of the levies framework

- 2.123 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.
- 2.124 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, adjusting levy metrics for certain sub-sectors, and changes to levy amounts (such as the temporary levy relief for persona financial advice licensees in 2020–21 and 2021–22).

## Analysis and findings

- 2.125 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. This includes the time taken to consult with stakeholders on the proposed changes.
- 2.126 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.
- 2.127 The Review finds that it is appropriate for the Government to retain responsibility for determining sub-sector definitions, entity metrics and levy formulas, as these decisions relate to policy settings of the IFM and impact the levy payable by entities.



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- 2.128 To improve flexibility, consideration could be given to setting sub-sector definitions, metrics and formulas in a legislative instrument made by the responsible Minister. While it would not reduce timeframes substantially, it would not require Governor-General approval and may allow changes to be made on a more regular basis. This approach would retain parliamentary oversight as the legislative instrument would be subject to disallowance.
- 2.129 However, the Review does not recommend this adjustment is necessary if the Government agrees to ASIC and Treasury undertaking five-yearly substantive consultation with industry on the policy settings of the IFM – see Chapter 5. This process would ensure regulated entities can provide feedback on the suitability of the IFM framework and settings, noting industry dynamics can change rapidly. This frequency will also allow Government to properly assess the impact of any related policies that have been implemented following this Review.

### Key finding

While the IFM is intended to be flexible, the process of making and amending primary legislation or regulations (including stakeholder consultation) does not facilitate the IFM to be highly responsive to changes in industry sectors it regulates. However, the levy framework remains appropriate given the importance of Ministerial and Parliamentary oversight regarding the regulation of financial services. It remains important that regulated entities have an avenue to provide feedback and suggestions on changes to the IFM framework and settings and that sub-sectors definitions, metrics and formulas are reviewed periodically.

## Chapter 3: Levy volatility & variance

### Introduction

- 3.1 The Review's Terms of Reference requires the Review to consider 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.
- 3.2 This chapter examines the causes of levy volatility and potential mitigations as well as the causes of levy variance and potential mitigations.

### ASIC funding profile

- 3.3 The total funding made available to ASIC by the Government has increased since the commencement of the IFM. This has meant that the total amount recovered through levies under the IFM has also increased.
- 3.4 In 2017–18 (when the levy component of the IFM commenced), ASIC recovered \$236.6 million in levies from 45,490 entities. In 2021–22, ASIC recovered \$313.3 million in levies (an increase of 32 per cent from 2017–18) from 43,077 entities (a decrease of 5 per cent from 2017–18).
- 3.5 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 (Financial Services Royal Commission).
- 3.6 The increase in funding is supporting ASIC to strengthen and intensify its approach to enforcement and take on expanded responsibilities to address misconduct. As a result, certain sectors have required greater supervision and surveillance and increased ASIC enforcement.
- 3.7 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.
- 3.8 The Review has not examined or made recommendations on the appropriate aggregate level of funding provided to ASIC, which is out of scope for the Review. However, the Review notes that any increases in ASIC's total funding would generally increase the amounts recovered from industry through the IFM. This increase would not be uniformly spread across all of ASIC's regulated population but is more likely to be directed to certain sub-sectors that require increased regulation.

Table 3.1 ASIC’s funding profile relative to amounts recovered via levies and fees

	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 amount recovered via levies (\$ million)	236.6	276.7	320.3	314.1*	313.3*
Total amount recovered via fees (\$ million)	N/A	13.6	11.3	14.5	12.9
Total number of leviable entities	45,490	46,148	43,804	43,508	43,077

\*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 \$33.9 million not being recovered from the personal financial advice licensee sub-sector for 2020–21 and 2021–22 respectively.

### Sub-sectors experiencing increasing levies

- 3.9 Since 2017–18, 17 sub-sectors have seen their costs fall and 15 sub-sectors have seen their costs remain broadly steady. The remaining 20 sub-sectors have faced increases as a result of ASIC dedicating greater resources to regulating those sub-sectors.
- 3.10 The former government previously 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 was capped at the 2018–19 level of \$1,142 in respect of 2020–21 and 2021–22. The cost of this relief was borne by the Government (through general taxpayers) and was not recovered through levies charged to other sub-sectors.
- 3.11 There have been some key factors that have contributed to the increase in levies for this sub-sector such as increased regulatory focus by ASIC on this sector and structural changes in light of the Financial Services Royal Commission.
- 3.12 The Review notes that these factors are out of ASIC’s control and, given the legislative framework of the IFM, ASIC has limited power to adjust levy amounts once costs have been expended without government intervention. The Review acknowledges this type of intervention from the Government is not common and not a part of the normal operation of the ASIC IFM – see Chapter 2 ‘Cost Recovery Policy’.
- 3.13 While the total regulatory costs for the sub-sector have increased since 2017–18, the Review notes that these costs have been relatively stable since 2019–20 and in the absence of the temporary levy relief, the per adviser levy for the sub-sector would have been around \$3,000 – see Table 3.2.

Table 3.2: Levy amounts for the personal financial advice licensee sub-sector with and without the temporary levy relief

	2017–18	2018–19	2019–20	2020–21	2021–22
Total regulatory costs for the sub-sector without levy relief (\$ million)	25.6	33.0	56.2	60.0*	56.7*
Total regulatory costs for the sub-sector with relief (\$ million)	N/A	N/A	N/A	25.8	22.8
Number of licensees	2,985	3,051	2,991	2,933	2,866
Number of advisers	22,652	24,919	21,308	18,704	16,153
Graduated levy amount without relief (per adviser)	934	1,142	2,426	2,971**	3,021**

\* These amounts are what would be recovered from the sub-sector if there was no levy relief.

\*\*These per adviser amounts reflect the amounts that would've been charged had the relief not been in effect.

- 3.14 The personal financial advice licensee sub-sector is not unique in experiencing these types of structural changes that have led to increasing levies. For example, the credit intermediaries sub-sector have seen their costs rise with the decrease in the number of credit representatives (16 per cent since 2017–18) coupled with increasing levies (58 per cent since 2017–18).
- 3.15 The Review notes that while certain sub-sectors have been experiencing increasing levies, this could change going forward subject to ASIC's regulatory priorities which could divert resources and costs to other sub-sectors.
- 3.16 Increasing levies have also had an impact on other aspects of the ASIC IFM that stakeholders have raised concerns about. In particular, volatility in levy amounts across years which stakeholders have noted makes it difficult to budget for their levies. Levy volatility has been considered in more detail in the subsequent section.

## Levy volatility

- 3.17 Levy amounts that are recovered from sub-sectors will vary each year, driven by factors including the level of regulatory effort applied by ASIC to that sub-sector, the population of that sub-sector and in some instances, the level of activity undertaken by entities in the sub-sector.
- 3.18 Due to the way the ASIC IFM operates, all sub-sectors have experienced some level of volatility in their levy amounts each year since the commencement of the IFM. In some cases, the changes in levy amounts between years has been significant for some sub-sectors.

## Analysis and findings

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

- 3.21 The key drivers of volatility in levy amounts across years are:
- enforcement activity and the associated increase/decrease in indirect costs, followed by supervision and surveillance
  - regulatory effort expended by ASIC, which will vary across sub-sectors and years 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 (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); and/or
    - changes in the level of activity undertaken by the entity which may impact their levy amounts if they are subject to a graduated levy.
- 3.22 Sub-sectors that have experienced a consistent concentration of enforcement costs each year have also experienced consistent volatility in levies. Enforcement activity has generally been concentrated to a small number of sub-sectors, rather than 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-sectors, with around 90 per cent recovered from less than 20 sub-sectors.
- 3.23 This could change going forward subject to ASIC's regulatory priorities which could divert resources and costs to other sub-sectors.
- 3.24 The Review has considered ways to manage and reduce volatility in levy amounts. 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.
- 3.25 Within the ASIC IFM, costs relating to the ESA are recovered using a 3-year rolling average. This approach has reduced levy volatility at a sub-sector level compared to if the costs been recovered in the year in which the enforcement expenses were incurred.
- 3.26 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 enforcement costs.
- 3.27 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 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. Any approach taken to spread costs would result in either a levy reduction or increase for different entities relative to the current approach.
- 3.28 As part of the Review process, ASIC analysed various alternative cost recovery approaches to spread costs across a wider population and the outcomes on volatility. ASIC focussed on spreading enforcement costs, the key contributor to volatility across years.
- 3.29 This analysis was based on the costs being spread across a wider population but being recovered at a sub-sector level using the current levy metrics and formulas. This is because ASIC does not have a standardised metric which it could apply to all of ASIC's regulated population to apportion costs and calculate levy amounts. Because of this, the outcomes on volatility by spreading costs within the current framework does not substantially change or improve volatility relative to the current approach.

- 3.30 Options to spread costs over time or over a wider population were not generally supported by stakeholders, primarily because this approach moved further away from the principle of ‘those that cause the need for regulation, should generally be charged for it’.
- 3.31 Stakeholders have suggested removing certain costs to reduce volatility, in particular enforcement costs. The Review notes that while the removal of enforcement costs would reduce volatility, it would not eliminate it completely and volatility would remain as ASIC’s other regulatory activities are subject to change year-on-year. Additionally, the removal of costs from the IFM would not align with governments’ long-standing position that cost recovery levies and fees are considered as a funding mechanism prior to budget funding – see Chapter 2.

### Key finding

Levy volatility at a sub-sector level is reflective of ASIC’s ability to be responsive to market threats and its independence to direct resources to meet its mandate and changing priorities year on year. Spreading costs over a wider population to address volatility would lead to increased cross-subsidisation and shift the cost burden among entities.

## Ex-post charging

- 3.32 ASIC is one of the few regulators that recovers regulatory costs via industry levies using an ex-post model.
- 3.33 Most regulators that recover regulatory costs via levies do so on an ex-ante basis. This requires regulators to set a budget and determine resource and cost allocations across their regulated population in advance of regulatory activity being undertaken.
- 3.34 ASIC’s ex-post model ensures that ASIC only recovers its actual expenditure from each sub-sector and provides flexibility for ASIC to respond to emerging threats.

## Analysis and findings

- 3.35 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 due to the ex-post nature of the IFM. Some stakeholders have suggested the ASIC IFM should be ex-ante to give levy certainty.
- 3.36 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.
- 3.37 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.

- 3.38 To give regulated entities a sense of what their levies might be, ASIC provides an estimate in their CRIS. However, the variance between the estimated amount and the actual amount can differ, sometimes by a substantial amount. The drivers of variance between estimated and actual levies and the outcomes of implementing an ex-ante model are explored in more detail in the subsequent section on levy variance.

### Key finding

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. The key driver of cost uncertainty is ASIC's enforcement activity due to ASIC's large (and changing) regulated population.

## Levy variance

- 3.39 ASIC calculates and publishes estimated levy amounts in its draft CRIS for stakeholder consultation (see chapter 5 for more information on the CRIS process). Generally, ASIC starts preparing and calculating its estimated levies in the middle of the financial year based on information and data at a point in time, which can be 'out-of-date' by the time the CRIS is released. This means that actual levies will generally vary from these estimates at a sub-sector level, sometimes by a substantial degree.

## Analysis and findings

- 3.40 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.
- 3.41 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
  - business activity metrics submitted by entities
- 3.42 ASIC's estimates of its total regulatory costs at an activity level (for example, total supervision and surveillance costs) have been relatively accurate since the commencement of the IFM.
- 3.43 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.

- 3.44 Stakeholders have raised concerns where there have been significant increases between their estimated and actual levies which makes it difficult to budget for the levies.
- 3.45 Since the commencement of the IFM, ASIC, via their CRIS process has provided explanatory material relating to 38 instances of sub-sectors experiencing a material variation between actual costs and the estimate provided. ASIC considers a material variance to occur if the difference between the total actual costs and the estimated costs for the subsector are greater than 10% of the estimated costs and \$2 million in total. A variation in enforcement costs was the main contributor to this variance in 35 of the 38 instances.
- 3.46 Levy variance is a symptom of the ex-post nature of the model and the requirement of the Charging Framework that ASIC provide industry estimated levy amounts prior to issuing final invoices. During consultation, stakeholders expressed a preference for ASIC's cost recovery to be on an ex-ante basis to give levy certainty.
- 3.47 What this would mean is that ASIC would need to calculate prior to the leviable financial year its estimated regulatory costs for each sub-sector. Currently, ASIC does this in the middle of the leviable financial year (when a few months costs are known) which can result in substantial variances for sub-sectors. Doing this prior to the financial year would result in greater variances.
- 3.48 This type of approach would require adjustments in subsequent years at a sub-sector level to account for any over or under recoveries. This would cause intertemporal cross-subsidisation and significant levy volatility, meaning regulated populations of the future will be subsidising regulatory costs for the past.
- 3.49 The removal of enforcement costs from the model was raised by stakeholders to make an ex-ante model work more efficiently and enable ASIC to predict its costs more accurately. The Review notes that while the removal of enforcement costs would reduce variance, it would not eliminate it completely and levy variance would remain, which would require adjustments in subsequent years.
- 3.50 Additionally, the removal of costs from the IFM would not align with governments' long-standing position that cost recovery levies and fees are considered as a funding mechanism prior to budget funding – see Chapter 2.

### Key finding

A factor driving the variance between estimated and actual levies is the use of limited data at the time of calculating the estimated levies. The Review has identified adjustments to ASIC's processes which are expected to reduce levy variance (see Chapter 5)

### Key finding

The most prominent driver of significant variance between estimated and actual levies for sub-sectors has been a deviation between expected and actual enforcement costs allocated to sub-sectors.



# Chapter 4: Fees-for-service

## Introduction

- 4.1 The Review’s Terms of Reference requires the Review to consider whether the design and legislative framework for regulatory fees-for-service remains appropriate, and to consider the types of costs recovered through fees. This does not include a detailed examination of individual fees.
- 4.2 This chapter examines the design and flexibility of the fees framework; the cost recovery policy that underpins the framework; and the nature of ASIC’s activities that are cost recovered from industry through fees.

## Fees-for-service framework

- 4.3 As part of the IFM, ASIC directly charges fees for user initiated and transaction-based activities where ASIC provides a specific service to individual entities. These fees are charged when a service, or regulatory activity is provided directly to an individual or organisation. For example, an application fee for an Australian Financial Services Licence (AFSL) would be payable at the time of application by an individual or organisation.
- 4.4 Before the commencement of the fees framework, ASIC charged industry fees for around 180 separate regulatory forms. These fees did not accurately reflect the cost of ASIC processing and assessing these forms. Many of these activities only attracted a nominal fee which was not subject to any review. As a result, any difference between the fee an entity paid, and the actual costs incurred by ASIC were subsidised by taxpayers.
- 4.5 The fees component of the IFM commenced on 4 July 2018 and accounts for a small proportion of the total amount recovered from industry under the IFM – typically between 3-5 per cent each year. Table 4.1 compares amounts recovered via fees as a proportion of total industry funding recovered through the IFM.

Table 4.1: Fee revenue compared to total industry funding

	2018–19	2019–20	2020–21	2021–22
Amount recovered via industry levies (\$ million)	276.7	320.3	314.1	313.3
Amount recovered via fees-for-service (\$ million)	13.6	11.2	14.5	12.9
Fees revenue as a proportion of total amount recovered (%)	4.7	3.4	4.4	4.0

## Costs recovered through fees

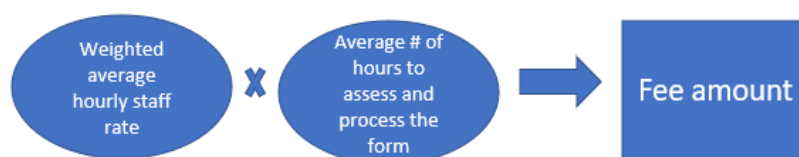
- 4.6 ASIC collects fees in relation to 5 broad activity types:
  1. **Licence application or variation services:** Licensing or otherwise authorising people to operate or participate in the markets and industries that ASIC regulates.
  2. **Registration application services:** Registering or otherwise authorising people to operate or participate in the markets and industries that ASIC regulates.

3. **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.
  4. **Requests for changes to market operating rules:** Assessing changes to the operating rules of a licensed market or licensed clearing and settlement facility.
  5. **Applications for relief:** Assessing and determining applications for relief from certain provisions in the legislation that ASIC is responsible for administering.
- 4.7 Currently, there are 196 fees equating to 419 forms currently charged under the fees framework. There are more forms than fee items as some fee items may relate to multiple/various lodgements or applications required under legislation.
- 4.8 Under the Charging Framework, fee amounts are to be set to reflect the efficient cost to ASIC to administer the service and thus enable full cost recovery. Fee amounts recover both direct and indirect costs relating to the provision of the relevant service.
- 4.9 However, the Government can decide to charge no fee or a partial fee (which occurs when less than the full cost of a regulatory activity or service is recovered) if charging would not support achieving the Government’s policy objectives. For example, no fee or a partial fee may be appropriate when a fee is being ‘phased in’, where full cost recovery conflicts with the Government’s priorities or where the Government has made an explicit policy decision to only charge for part of the costs of an activity.
- Schedule 1 of the Corporations (Fees) Regulations 2001 sets 170 items with a fee amount and 46 items with no fee amount.
  - Schedule 1, Part 1 of the National Consumer Credit Protection (Fees) Regulations 2010 sets 22 items with a fee amount and 19 items with no fee amount.
  - Section 4 of Superannuation Auditor Registration Imposition Regulations 2022 sets 4 items with a fee amount and 5 items with no fee amount.
- 4.10 Generally, the nature of no fee type applications relates to applying for a variation of a licensee’s name, seeking an exemption from a provision, withdrawing an application or lodging a report or a statement.

## Methodology

- 4.11 The methodology used to calculate fees is based on the Charging Framework to ensure fees are closely aligned with ASIC’s actual costs.

Figure 4.2: Fee methodology



- 4.12 The fee for each regulatory form is calculated (at a point in time) using a weighted average hourly rate (calculated for each team associated with the form and includes indirect costs)

multiplied by the regulatory effort (that is, the average number of hours) required to assess and process each form type.

- 4.13 The regulatory teams in ASIC are not structured in an identical fashion and comprise a varying mix of staff at different levels. Therefore, to ensure that ASIC only recovers efficient costs (that is, the minimum costs necessary to provide the activity while achieving the policy objectives and legislative functions of the Australian Government), ASIC has not set a standard hourly charge rate for the agency as a whole but has instead calculated weighted hourly charge rates in accordance with the specific profile of the different regulatory teams.
- 4.14 It is important to note that the fee methodology ensures fees are closely aligned with ASIC's actual costs but are not ASIC's actual costs. The Review recognises that it will be administratively complex for ASIC to charge fees based on ASIC's actual costs, which will also create unknown fee amounts for individual entities seeking ASIC's services. For the purposes of this Chapter, where the Review uses the terminology of 'full cost recovery', it is on the proviso that fee amounts will only ever closely reflect ASIC's costs using this methodology.
- 4.15 Flat fees are charged for services relating 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.
- 4.16 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.

## Fee waivers

- 4.17 Under section 63 of the PGPA Act, the Finance Minister has delegated the power to ASIC to waive an amount owing to the Commonwealth under the Corporations Act up to \$5,000 for any one fee. If ASIC waives a fee under this delegation, these costs are not recovered via the levies and are budget-funded instead.

## Registry fees

- 4.18 Fees relating to the operation of public registers are also set out in Schedule 2 of the Corporations (Fees) Regulations 2001. These fees are not part of the IFM and are not cost recovered under the Charging Framework. Therefore, these registry fees are not within the scope of this Review and will continue to be set separately.

## Cost recovery policy

- 4.19 In 2018, the Government introduced a new fees framework where a single, identifiable entity would be charged the full cost of a service provided by ASIC. This was in recognition that ASIC's regulatory services are completed at the request of a specific entity and primarily benefits the requesting entity and as such, fees associated with regulatory services should be fully cost recovered by the benefiting entity rather than taxpayers.

- 4.20 The Explanatory Memorandum to the Corporations (Fees) Amendment (ASIC Fees) Bill 2018 and associated Bills noted that fee amounts would be reviewed every three years. Indexation does not apply to regulatory fees, as the Government's intention was that fee amounts would be regularly reviewed.
- 4.21 Although government policy has been that fees are set to fully offset ASIC's costs and are to be reviewed every three years, there has been no wholesale change to fee amounts since the commencement of the fees component of the IFM in 2018.
- 4.22 Consequently, most fee amounts no longer align with the cost to ASIC. Total fee revenue now only partially recovers ASIC's costs of providing its services. The deficit per year between fee revenue and ASIC's costs in providing the services since the commencement of the fees component of the IFM is set out in Table 4.2. This shortfall has been funded by general taxpayers.
- 4.23 Table 4.2 sets out the shortfall between fee revenue and ASIC's cost of providing services since 2018–19. While the fees framework commenced on 4 July 2018, the revenue collected via fees did not align with ASIC's cost of providing those services during 2018–19 due to fee amounts being determined based on ASIC's costs prior to 2018–19 – therefore, there is a shortfall between fee revenue and ASIC costs since the commencement of the fees framework.

**Table 4.2: Fee revenue relative to costs**

Fees-for-service activities	2018–19		2019–20		2020–21		2021–22	
	Cost \$m	Revenue \$m	Cost \$m	Revenue \$m	Cost \$m	Revenue \$m	Cost \$m	Revenue \$m
Licence applications or variations	6.3	3.8	9.4	3.8	3.1	4.9	2.2	4.0
Registration application services	1.6	0.9	2.4	1.0	0.7	1.1	0.7	1.2
Compliance review of documents	9.1	3.3	8.2	3.3	9.7	4.6	10.6	3.5
Requests for changes to market operating rules	0.1	0.0 <sup>5</sup>	0.4	0.1	0.4	0.2	0.6	0.1
Assessment of applications for relief	6.4	5.5	9.0	3.1	11.3	3.7	11.2	4.0
<b>Total</b>	<b>23.5</b>	<b>13.6</b>	<b>29.4</b>	<b>11.2</b>	<b>25.1</b>	<b>14.5</b>	<b>25.4</b>	<b>12.9</b>

<sup>5</sup> The revenue generated from this activity was \$36,100. Due to rounding, this figure is shown as \$0.0 million.

## Analysis and findings

- 4.24 In accordance with the requirement that regulatory fees are reviewed every three years, in 2020, ASIC conducted an internal review of fee amounts for 196 fees. In determining the fee amounts, ASIC reviewed the regulatory effort required to assess and process each form by examining time recordings of staff undertaking fees-for-service activities over the past three years and applied up-to-date hourly wage rates.
- 4.25 The outcomes of the review indicated that fees for 395 forms needed to increase, and fees for 24 forms needed to decrease. Most fees would need to increase by 6-12 per cent as a result of changes in the hourly rate applied (last reviewed in 2017). The methodology by which fees are calculated was not reviewed.
- 4.26 Although the scheduled 2020 review identified a need for the majority of fee amounts to be adjusted, the Government at the time was unable to consult with industry on the changes due to the COVID-19 pandemic.
- 4.27 The Review finds that the current fee framework, including the methodology used to calculate fee amounts, remains appropriate and the principles underpinning the framework are suitable.
- 4.28 Consistent with this finding, the Review supports fee amounts to be adjusted to reflect full cost recovery to align with government policy, including the Charging Framework which states that government entities should set charges to recover the full efficient cost of providing specific activities. As the activities and services for which a fee is charged primarily benefits the requesting entity, it is not appropriate that taxpayers fund the shortfall.
- 4.29 Additionally, it is not appropriate that in certain circumstances entities are being charged more than the cost of ASIC undertaking the activity. For example, in 2022, self-managed super fund (SMSF) auditor fees set out in the Superannuation Auditor Registration Imposition Regulation 2012 were reviewed. The \$899 registration cancellation fee for SMSF auditors was revised and decreased to \$193 to reflect ASIC's costs.
- 4.30 Generally, stakeholders are supportive of fee amounts being adjusted to reflect full cost recovery. However, there was some concern that some fee increases could be substantial. Some stakeholders suggested a gradual increase in fees over time until they were cost reflective. That is, fees are adjusted by a certain amount or proportion each year before it is at full cost recovery.
- 4.31 The Review does not recommend a gradual approach. Fees should reflect full cost recovery. While the Review recognises stakeholder concerns, implementing a gradual approach to fee increases would be administratively burdensome and complex to administer. The Review considers that stakeholder concerns can be mitigated by providing industry with as much notice as possible of revised fee amounts before they come into effect. Any adjustments to fee amounts in legislation would also involve consultation as per the legislative process.

## Key finding

Fee amounts no longer align with government policy that fees are set to recover the efficient cost to ASIC. Total fee revenue now only partially recovers ASIC's costs of providing these services, with the shortfall being taxpayer funded. It is not appropriate that taxpayers are funding costs for activities that primarily benefit entities that are requesting those services from ASIC.

## Recommendation 5

The Government should reaffirm its commitment that regulatory fees should be charged at a level which enables full cost recovery. In line with this, the Government should adjust regulatory fee amounts to a level which facilitates full cost recovery of ASIC's cost in providing these services, unless the Government has made a decision that no fee or a partial fee should be charged.

## Flexibility of the fees framework

- 4.32 While ASIC administers and charges fees, 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. This provides a high degree of government oversight.
- 4.33 As fee amounts are set in Regulations, any changes to fee amounts needs to follow the usual legislative process. This would generally include:
- 3-6 months for ASIC to review fee amounts
  - The Government to consider the outcomes of the ASIC review including any adjustments that are required to fee amounts
  - Legislative drafting process to reflect proposed changes to Regulations
  - The Government to consult on proposed changes to Regulations
  - Finalisation of amendments to Regulations
  - The Governor-General to agree to amended Regulations via the Executive Council process.
- 4.34 While there have been legislative amendments to specific fees on an ad hoc basis, which have included amendments to enable ASIC to charge new fees, there has been no wholesale change to the fees framework since it was introduced in 2018.

## Analysis and findings

- 4.35 Updating fee amounts in Regulations is time and resource intensive and can divert resources from other government priorities. This limits flexibility to make changes. Additionally, the Government is not best placed to ensure fees and fee amounts remain up-to-date and fully recover ASIC's costs.

- 4.36 For example, while ASIC was able to conduct a review of the fees framework in 2020, any subsequent consultation on the outcomes of the review were not able to be progressed by the Government due to the COVID-19 pandemic and other priorities.
- 4.37 While this current Review has presented an opportunity to examine and consult on the fees framework, there is a risk that the Government may not be able to prioritise subsequent reviews undertaken by ASIC if other and more pressing matters arise. This would result in the continuation of the current situation where fee revenue only partially recovers ASIC's costs.
- 4.38 Currently the shortfall is borne by general taxpayers, which does not align with government policy or the overarching principle in the Charging Framework that entities who cause the need for regulation are charged for it.
- 4.39 To mitigate these issues, the Review considers that it is appropriate for the Government to delegate to ASIC the power to set fee amounts in subordinate legislation. This will enable ASIC to review and update fee amounts periodically if there is an increase or decrease in ASIC's costs of providing their services, which will ensure full cost recovery.
- 4.40 The Review considers it appropriate that ASIC review and update fee amounts every three years. ASIC have an established fee review process which was developed for their 2020 review. ASIC can continue to leverage this process for future reviews, which minimises the impost to ASIC in delegating the fee-setting power.
- 4.41 Delegating ASIC the fee-setting power will also align with other government agencies and regulators that have the power to set their own fees. For example, APRA, which also operates an industry funded cost recovery model, has been delegated the authority to set fee amounts for its regulated population. APRA, like ASIC, charges fees for user-initiated and transaction-based activities services such as licensing and application fees.

#### Appropriate transparency, accountability, and oversight mechanisms

- 4.42 During consultation, stakeholders were concerned that delegating ASIC the fee-setting power would remove government oversight of ASIC's administration of the fees framework and reduce the incentive for ASIC to be efficient in administering regulatory activities and services for which fees are charged.
- 4.43 Stakeholders noted that if ASIC were delegated the fee-setting power, there should be adequate transparency and accountability mechanisms in place for ASIC, including appropriate oversight by the Government.
- 4.44 The Review acknowledges stakeholder concerns and agrees that appropriate transparency, accountability, and oversight mechanisms should be maintained if the fee-setting power is delegated to ASIC.
- 4.45 How ASIC allocates resources to deliver on its mandate, including how efficiently it administers fees-for-service activities, is not within the scope of this Review. However, the Review notes that ASIC must administer these regulatory activities and services within their total operating budget which is set by the Government.
- 4.46 There was also concern from stakeholders that by delegating ASIC the fee-setting power, ASIC would have the ability to determine the regulatory activities and services for which fees should be charged and/or establish new fees. The Review considers it appropriate that the

Government remains the decision-maker to determine the regulatory activities and services for which a fee should be charged by ASIC.

- 4.47 The Review considers the following mechanisms and controls would be appropriate if ASIC is delegated the fee-setting power:
1. The Government retains the power and responsibility to identify activities and services for which a fee should be charged
  2. The Government retains the power and responsibility to identify which activities and services a partial fee or 'no fee' should be charged
  3. Where the Government does not set a partial fee or 'no fee' amount in the Regulations, ASIC is to set a fee in subordinate legislation that reflects full cost recovery
  4. Legislating the requirement for ASIC to formally review the fees framework every three years
  5. Legislating the requirement for ASIC to notify the relevant Minister of outcomes of the three-yearly reviews, including any proposed adjustments to fee amounts
  6. Maintaining the cap in *Corporations (Fees) Act 2001* which limits the amount that can be charged for a fee
  7. ASIC to set fee amounts in subordinate legislation (such as in a legislative instrument) which would be subject to consultation requirements as per the usual legislative process, and Parliamentary oversight and disallowance
- 4.48 The Review notes that there are other mechanisms in place to ensure that if ASIC is delegated the fee-setting power, the fees that are being set are appropriate. This includes annual audits undertaken by the ANAO on ASIC's financial performance and the five-yearly Portfolio Charging Reviews that evaluate the performance of ASIC's cost recovered activities and ensure the charging remains appropriate. ASIC may also consider engaging an external, independent expert to audit its fee-setting approach and fee amounts to provide additional oversight.

### Key finding

The Review finds that the current fee framework is appropriate and the principles underpinning the framework are suitable. However, the design and legislative framework of the fees component of the IFM does not provide the flexibility required to ensure fee amounts are regularly reviewed and updated. This has resulted in fee amounts not being updated since the commencement of the fees framework in 2018.



## Recommendation 6

The Government should delegate to ASIC the power to set and adjust fee amounts in subordinate legislation, with fee amounts to be reviewed every three years to reflect full cost recovery.

## Types of costs recovered through fees

- 4.49 Broadly, stakeholder feedback indicates that industry supports the principle that a fee should be paid to ASIC for user-initiated and transaction-based activities and generally agree with the types of costs that are recovered through fees.
- 4.50 However, some stakeholders have raised concerns that certain fees create disincentives which lead to perverse outcomes or are being incorrectly charged and would be more appropriately recovered through industry funding levies.

## Analysis and findings

### Fee charges for licence and registration cancellations

- 4.51 ASIC charges fees for licence and registration cancellations. There are six flat fees which relate to licence and registration cancellations for 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 licences.
- 4.52 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.
- 4.53 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 or registration unnecessarily.
- 4.54 While the Review notes stakeholder concerns, it has not found sufficient evidence to suggest that individuals and business are retaining a licence unnecessarily to avoid cancellation fees. Retaining a licence or registration would result in other ongoing compliance requirements and costs for entities that would generally exceed the cost of cancelling a licence or registration. Fees should not disincentivise the cancellation of licences or registrations from those exiting the industry, particularly noting the risks associated with individuals and entities not pursuing cancellations.

- 4.55 The Review also finds that it is not appropriate for costs relating to licence and registration cancellation to be recovered via industry funding levies. The cost and benefit of licence and registration cancellation is solely attributable to the entity or organisation seeking to have their licence or registration cancelled. This approach would also be inconsistent with the requirements of the Charging Framework which state that a cost recovery fee is charged when the activity and its costs can be linked to a specific individual or organisation that requests the regulatory service or creates the need for it.
- 4.56 The Review considers it appropriate that a fee is charged for the cancellation of a licence or registration that is cost reflective of ASIC's regulatory effort. The benefit of this work ensures that entities are appropriately removed from the industry and that there are no outstanding matters that preclude the cancellation of a licence or registration.

### Key finding

Fees associated with licence and registration cancellations are not an incentive for entities to retain their licence or registration unnecessarily, as there are other compliance requirements and costs associated with holding a licence or registration that would generally exceed the cost of cancelling a licence or registration.

It is appropriate that a fee is charged to entities or organisations that are seeking a licence or registration cancellation that is cost reflective of the work required by ASIC to undertake these cancellations.

### Fees charged for relief applications

- 4.57 ASIC charges a fee to consider individual applications 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 (class orders).
- 4.58 ASIC has discretionary powers to grant relief from certain provisions of:
- the Corporations Act
  - the SIS Act
  - the Credit Act
  - the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009*

### Individual relief applications

- 4.59 Individual applications for relief attract a single fee of \$3,487. This is irrespective of whether the relief application is 'standard' or 'novel'.
- 4.60 A single fee is charged for standard relief applications. Although each standard relief application may be different in nature, the time and effort it takes ASIC to consider these types of applications is generally consistent.

- 4.61 The Review considers it appropriate that a single fee is charged for standard relief applications that is cost reflective of ASIC's regulatory effort. However, the Review notes that since the fee has not been reviewed since the commencement of the fees framework in 2018, the fee amount is likely to increase to better reflect ASIC's costs.
- 4.62 It is not appropriate for costs relating to standard relief applications to be recovered via levies as the benefit from that relief application is directly attributable to the individual or organisation seeking the relief.
- 4.63 Novel relief applications require ASIC to formulate substantive new policy. This may be because it raises new policy considerations, involves more than minor or technical variations to existing policy, or involves a significant change to (or reversal of) existing policy.
- 4.64 In 2018, the former government agreed to set a partial fee for novel relief applications in recognition of the industry-wide benefits that often result from these activities.
- 4.65 The single fee for novel relief applications has been set as a partial fee of \$3,487 (the same fee as standard relief applications), with any additional costs associated with novel relief applications over and above the single fee recovered via levies. This is because:
- novel applications often have a wider industry benefit
  - the significantly higher costs associated with novel applications may deter applicants from seeking relief
  - a subsequent decrease in novel applications may mean that individually, entities face an increased regulatory burden
- 4.66 The Review finds it appropriate that a single fee is charged for novel relief applications on a partial cost recovery basis in recognition that a full cost recovery fee would be significant and likely disincentivise individuals from seeking relief regarding areas of law where regulatory change is desirable. Therefore, the fee amount that is charged for standard applications should remain the fee amount for novel applications with any additional costs to be recovered via levies in recognition that novel relief applications often have a wider industry benefit.
- 4.67 In a written submission, a stakeholder noted a scenario where an application for financial reporting relief is made for a number of companies under a single corporate group. The stakeholder noted that in this situation there is generally a single substantive application for review and assessment by ASIC, but the fee is charged to each company within the corporate group in respect of which the relief is sought. Therefore, if there are 15 companies in the corporate group, each company is charged the relief application fee.
- 4.68 The Review finds that it is appropriate that a fee is charged for each individual company as ASIC is required to consider the relief application based on the facts relating to each company which requires time and effort by ASIC to consider. However, the Review notes that in this scenario, the corporate group may wish to seek a fee waiver by ASIC (noting that ASIC only has the power to waive fees up to \$5,000).

## Class orders

- 4.69 Class orders are legislative instruments that ASIC issues to:
- exempt a person(s) from certain provisions in legislation that ASIC administers
  - modify or clarify the operation of certain provisions
  - make declarations about a person(s) who is subject to a particular provision
- 4.70 These legislative instruments generally apply to a class of persons or entities who carry out a particular activity in certain circumstances.
- 4.71 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. The Review finds that this remains appropriate.
- 4.72 During consultation, a stakeholder shared a scenario where an individual relief application subsequently resulted in a class order being made (in recognition of the relief being applicable to a class of entities).
- 4.73 While rare, there may be instances when an entity applies for individual relief, and based on that relief application, ASIC later makes a class order. The entity is charged a fee because it is seeking a service from ASIC and receives the benefit of it. At a later stage, when the class order is applied, the entity does not receive a refund for the fee it paid.
- 4.74 The Review considers it appropriate that a fee is charged for individual relief applications that is cost reflective of ASIC's regulatory effort, even when a class order is later applied. This is because the individual initiated the relief application and received a benefit at the time the relief was granted.

### Key finding

Overall, the Review finds that the types of costs that are currently recovered through fees remains appropriate and has not found evidence that any costs currently recovered solely through fees should be recovered via levies instead.

## Costs recovered through fees and levies

- 4.75 In some circumstances, the costs of an activity may be recovered using a combination of both fees and levies.
- 4.76 For example, a fee may be charged to recover the costs of a licence application as this cost is directly attributable to an individual entity, while a levy may be used to recover the cost of ASIC developing regulatory guidance on how to apply for a licence in recognition of the wider industry benefits in providing this guidance.
- 4.77 Another example is in relation to capital costs – that is, the costs associated with ASIC’s information technology (IT) and systems. No aspect of ASIC’s capital costs is recovered via fees – that is, the cost of building or updating IT infrastructure or systems to provide a fees-for-service is not recovered via fees. These costs are recovered via levies.
- 4.78 For example, while ASIC charges a fee for an individual entity to apply for a licence (the cost of which only reflects ASIC’s cost in processing the application), the costs of the IT system associated with the licence application (that is, the portal through which the application is received) is recovered via levies. This is in recognition that the cost of the IT infrastructure or system cannot be directly attributable to an individual entity and provides wider industry benefits.
- 4.79 Other types of costs that are recovered through both fees and levies includes the costs associated with novel relief applications – see Section ‘Types of costs recovered through fees’.

### Analysis and findings

- 4.80 The Review finds it appropriate that in certain circumstances costs are recovered through both levies and fees, where it is clear that:
- the benefit and cost of an activity is directly attributable to an individual (and therefore a portion of the cost is recovered via fees); and
  - there are wider industry benefits from the activity (and therefore a portion of the cost is recovered via levies).
- 4.81 The Review finds that the arrangements for activities where costs are currently recovered through both fees and levies remains appropriate.

#### Key finding

The Review finds that it is appropriate in certain circumstances for costs to be recovered through both levies and fees, where it is clearly delineated that the benefit and cost of an activity is directly attributable to an individual (and therefore the cost is recovered via fees) or the wider industry (and therefore the cost is recovered via levies).

# Chapter 5: Reporting, transparency and consultation on the ASIC IFM

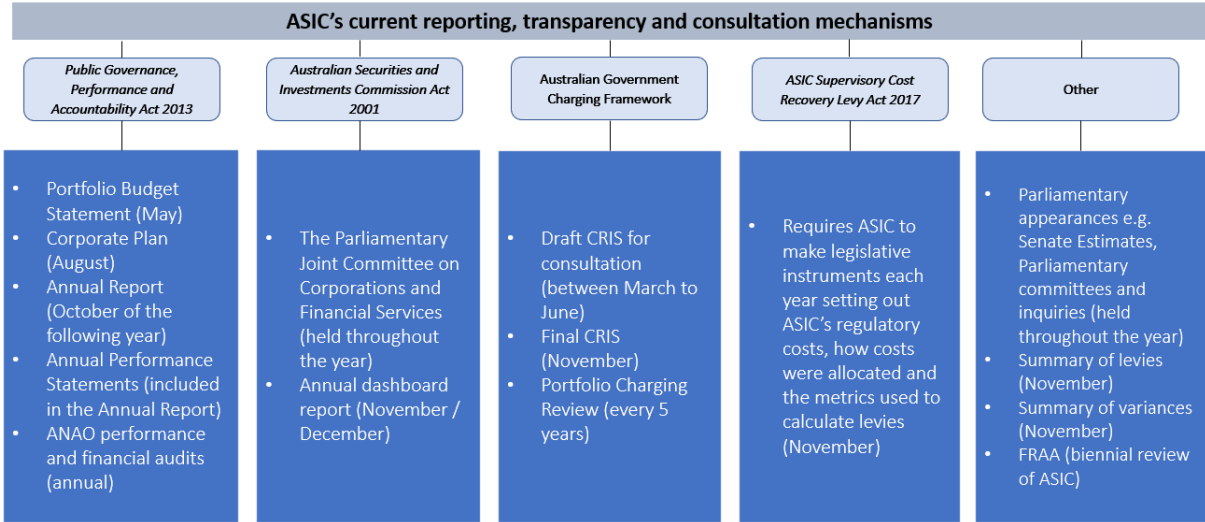
## Introduction

- 5.1 The Review’s Terms of Reference requires the Review to consider the suitability of ASIC’s transparency and consultation mechanisms, including the CRIS, and how ASIC could improve the accuracy of its estimates of costs to sub-sectors.
- 5.2 This chapter considers the suitability of ASIC’s reporting, transparency and consultation arrangements in relation to the ASIC IFM, as a means to ensure key information is available to stakeholders to enable an appropriate level of accountability to stakeholders on ASIC’s regulatory activities and costs.

## ASIC’s reporting, transparency and consultation framework

- 5.3 Reporting, transparency and consultation arrangements for the ASIC IFM are intended to ensure key information is available to stakeholders.
- 5.4 The Explanatory Memorandum to the ASIC Supervisory Cost Recovery Levy Bill 2017 and related Bills noted that the ASIC IFM will include measures to support ASIC to become a stronger regulator through increased accountability, transparency and engagement with consumers and its regulated entities.
- 5.5 Figure 5.1 outlines the legislative and broader government arrangements that require ASIC to make available information about its regulatory activities, regulatory costs and charges.

Figure 5.1: ASIC’s current reporting, transparency and consultation mechanisms



## Purpose and process of the CRIS

- 5.6 The Charging Framework requires government entities to document in a CRIS key information on how cost recovery for a specific government activity is implemented.
- 5.7 ASIC's CRIS is used by regulated entities for the following purposes:
1. as a transparency tool for regulated entities to understand how the costs of ASIC's regulatory activities will be recovered
  2. as a budgeting tool for regulated entities to estimate their levy invoices for that year
  3. as a consultation mechanism for stakeholders to engage and provide feedback on the IFM
- 5.8 Each year, the ASIC levies process commences in November when ASIC starts preparing estimated levies to be published in the draft CRIS to give regulated entities an indication of what levy costs to expect. The estimated levies are ASIC's best estimate based on available information at the time. 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. The draft CRIS is currently the key process through which stakeholders can engage with ASIC on the IFM.
- 5.9 A final CRIS is published that summarises the stakeholder feedback ASIC received during the consultation process on the draft CRIS and ASIC's response to stakeholder feedback.

## Analysis and findings

- 5.10 Engagement with stakeholders on the IFM can serve transparency, budgeting and consultation purposes. Transparency, budgeting and consultation are important tools for stakeholders in respect of industry-funded activities.

### Transparency and budgeting

- 5.11 Stakeholders are supportive of the CRIS remaining a transparency and budgeting tool, noting that adjustments should be made to improve both components of the CRIS. See sections 'Structure and information contained in the CRIS' and 'Timing of the levies and CRIS process' for further information on these aspects.

### Consultation

- 5.12 Stakeholder feedback has indicated relatively low levels of engagement on the CRIS. One of the contributing factors has been that stakeholders view 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; and
  - 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 unless the Government intervenes.

- 5.13 During consultation on this Review, stakeholders were supportive of the consultation component being removed from the CRIS process, and a less frequent but more substantive consultation mechanism being established. Stakeholders broadly thought a three-yearly consultation process would be appropriate.
- 5.14 Noting stakeholder feedback and the constraints on ASIC acting on feedback received via the CRIS process, the Review finds ASIC's purpose of the CRIS should be reframed to be a transparency and budgeting tool only in accordance with the requirements of the Charging Framework. This would result in the consultation component being removed from the CRIS process.
- 5.15 However, this Review finds that adjustments should be made to the CRIS to improve the level of transparency provided to stakeholders and enable more accurate estimated levies.
- 5.16 The Review recognises the important function of stakeholder consultation and engagement on industry-funded activities. However, there are also limits to the extent to which ASIC can and should consult with stakeholders on its activities, given the need to maintain clear independence from its regulated population.
- 5.17 Therefore, the Review agrees that an alternative consultation mechanism is established whereby less frequent but more substantive consultation on the policy settings of the ASIC IFM is undertaken by ASIC and the Treasury (on behalf of the Government).
- 5.18 The Charging Framework provides flexibility for government entities to determine the most appropriate method of consultation on their industry funding arrangements and does not require consultation to take place on an annual basis. Less frequent but more substantive consultation on the ASIC IFM is compliant with the Charging Framework.
- 5.19 While the Review recognises the benefit of undertaking this consultation process every three years, the provision of this new consultation would impose additional demands and costs on ASIC and the Treasury and would need to be appropriately balanced with the potential benefits for regulated entities and other stakeholders.
- 5.20 Any potential adjustments to the IFM as a result of this Review and future consultation may take some time to implement, particularly if legislative changes are required, and a three-yearly consultation process may be too frequent for the impacts of the changes to be felt given the ex-post nature of the model.
- 5.21 Therefore, the Review finds that a more appropriate consultation timeframe would be every five years from the completion of this Review. If this alternative consultation process leads to changes to the IFM that requires legislative change, there would also generally be consultation on the draft legislation separate to the five-yearly consultation process.
- 5.22 The Review expects this alternative consultation mechanism to be an open process that gives the opportunity for all of ASIC's regulated population and other interested stakeholders to provide written feedback on the ASIC IFM. Prior to consultation commencing, ASIC and Treasury should determine the most effective means of reaching stakeholders, including consideration of whether a supplementary paper for stakeholders (such as a discussion paper) and/or bilateral and multilateral meetings is appropriate to help stakeholders engage and provide feedback on the ASIC IFM.
- 5.23 The Review does not recommend legislating the consultation process as this will provide ASIC and Treasury the flexibility to adjust the consultation process if required. For example, undertaking consultation more frequently than on a five-yearly basis or adjusting the consultation approach.



- 5.24 However, the Review recognises that the details of the stakeholder engagement strategy, including a summary of the most recent consultation and stakeholder views are included in the next available CRIS or via another publicly available format. This would be compliant with the Charging Framework and give stakeholders certainty of the consultation process and timing going forward.
- 5.25 The benefits of undertaking less frequent but more substantive consultation would enable more meaningful consultation and consultation outcomes, greater engagement from stakeholders, and reduced administrative burden and cost to ASIC and stakeholders (who make submissions each year which result in no changes to the IFM) by no longer undertaking an annual consultation process that does not lead to substantive outcomes.

### Key finding

The purpose of the CRIS should remain a transparency and budgeting tool for stakeholders.

The consultation component of the CRIS process is not effective as stakeholder feedback is generally focussed on the policy settings of the IFM, which are a matter for the Government and are not within ASIC's remit to change. This has led to low levels of stakeholder engagement on the CRIS.

### Recommendation 7

ASIC should remove the consultation component from the CRIS process so that the CRIS is a transparency and budgeting tool for ASIC stakeholders. ASIC and Treasury to establish an alternative consultation process with industry stakeholders on a five yearly basis to examine the policy settings of the ASIC IFM.

## Draft and final CRIS

- 5.26 The information contained in the draft and final CRIS is generally the same, with the key differences in the final CRIS being:
- a summary of the stakeholder feedback ASIC received during the consultation process on the draft CRIS; and
  - ASIC's response to the stakeholder feedback.
- 5.27 Some stakeholders raised confusion about the purpose of the final CRIS, as they believe it includes updated estimated levies or the actual levies. However, this is not the case as the estimated levies for each sub-sector published in the draft CRIS remains the same in the final CRIS. This creates further confusion for stakeholders as the final CRIS is generally published around November each year, and very soon after, ASIC publishes its legislative instruments setting out its actual regulatory costs for each sub-sector. The estimated levies in the final CRIS can be substantially different to the actual levies in the legislative instruments.
- 5.28 While the final CRIS could be updated to include actual levies for each sub-sector, the Review finds it would be more administratively efficient for ASIC to no longer publish a draft CRIS,

particularly if the consultation component is removed from the CRIS process. Under the Charging Framework, a draft CRIS is only required if a government entity is using the CRIS as a tool for consultation.

- 5.29 The final CRIS would replace the draft CRIS and would generally include the same information and be released around the same time that the draft CRIS is currently released, however with more accurate estimated levies – see Section ‘Timing of the CRIS process’ for further information on the CRIS timing. This would reduce stakeholder confusion on the purpose of the final CRIS and streamline the CRIS process by removing a reporting requirement for ASIC.

### Key finding

Estimated levies published in the draft CRIS are not updated or amended in the final CRIS, which has led to stakeholder confusion on the purpose of the final CRIS. Stakeholders generally do not benefit from ASIC publishing both a draft and final CRIS.

If the consultation component of the CRIS process is removed (see Recommendation 7), a draft CRIS is no longer required to be published.

### Recommendation 8

ASIC should cease the release of a draft CRIS for consultation and only release a final CRIS.

## Information and structure of the CRIS

- 5.30 The Charging Framework sets out the type of information that must be included in a CRIS – see Appendix A. Consistent with the requirements of the Charging Framework, a wide range of information about the ASIC IFM is made available to stakeholders in the ASIC CRIS.

### Analysis and findings

- 5.31 Stakeholder feedback on the information provided in the CRIS has been mixed. Many stakeholders commented that the CRIS 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 in levy amounts between years and how levies are calculated. This conflicting feedback makes achieving the right balance difficult for ASIC.

#### Information contained in the CRIS

- 5.32 The Review recognises that there are limits to the extent of transparency 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.

## How ASIC allocates its regulatory costs to sub-sectors

- 5.33 Currently, the CRIS provides an overview of the steps involved in allocating ASIC's regulatory costs to sub-sectors (for example, see pages 26-29 of the 2021-22 CRIS). Stakeholder feedback on the content of the CRIS was that it can be difficult to understand how costs are allocated in practice.
- 5.34 The Review finds that there is scope for ASIC to improve explanations in the CRIS by simplifying the language and using other ways to demonstrate how costs are allocated – for example, including diagrams or flowcharts, or using an example to show how the cost of a specific activity is allocated.
- 5.35 The Review also finds that there is scope for ASIC to provide further information about how it apportions and recovers costs of certain regulatory activities from regulated entities. Currently, the CRIS provides limited information about how ASIC allocates costs for the following activities:
- costs relating to regulating and taking action against unlicensed operators
  - costs relating to regulating emerging sectors outside the existing regulatory framework
  - costs relating to regulatory activity that impacts multiple sectors
  - costs relating to capital expenditure
  - indirect costs
- 5.36 This would provide stakeholders a better understanding of how ASIC allocates costs of different activities where it may not be readily or easily apparent.

### Key finding

Noting the complexity of the IFM itself, ASIC's explanations in the CRIS regarding cost recovery methodology can be complex and difficult to understand. Stakeholders would benefit from additional information about ASIC's cost recovery methodology.

## Changes in levies

- 5.37 Stakeholders have raised concerns that information included in the CRIS does not sufficiently explain or justify ASIC's regulatory effort and how that impacts levy amounts, particularly where there is a large increase between estimated and actual levies as well as levy amounts year-on-year.
- 5.38 While ASIC provides an explanation for material variances between estimated and actual levies, stakeholders want more granular information about the reason for the variance. The key driver of variance between estimated and actual levies is generally due to enforcement costs, and stakeholders want the CRIS to include specific enforcement matters that have contributed to the increase in regulatory costs for a sub-sector.
- 5.39 The Review notes that ASIC is limited in the level of detail it can provide about enforcement matters, particularly ongoing matters. ASIC may not make information publicly available whereby, on balance, it may be against the public interest to do so. For example, to protect the legal rights of a person, to prevent a disorderly market, or where it may jeopardise a regulatory outcome.

- 5.40 Where possible, ASIC does publish specific enforcement matters in the CRIS that have contributed to an increase in regulatory costs for a sector. Generally, ASIC only publishes this information once it has been made public. For example, in the 2020–21 final CRIS, ASIC noted two specific enforcement matters that contributed to increased regulatory costs for the *Licensees that provide personal advice to retail clients on relevant financial products* sub-sector. This type of specific information is now provided in ASIC’s summary of variances document, published alongside its Annual Dashboard.
- 5.41 The Review encourages ASIC to continue to provide this level of detail where possible. ASIC should also consider referring to other publicly released documents relating to ASIC’s regulatory activity (in particular, enforcement activity). For example, ASIC produces six-monthly reports relating to ASIC’s enforcement outcomes as well as quarterly enforcement and regulatory updates.
- 5.42 As part of the findings from the FRAA review of ASIC’s effectiveness and capability, the FRAA in its final report found that “ASIC plans to more effectively communicate to stakeholders the concrete work and initiatives it is prioritising in the short term, especially its surveillance and enforcement plans”.<sup>6</sup> This will provide stakeholders with better transparency of ASIC’s initiatives and the products, industries and forms of conduct ASIC will focus on.
- 5.43 Following the FRAA review, in November 2022, ASIC released its enforcement priorities for 2023. This is the first time ASIC has identified particular areas of enforcement focus and communicates ASIC’s intent to stakeholders and gives an indication of where ASIC will direct its resources and expertise. ASIC expects to release its enforcement priorities on an annual basis.

### Key finding

While ASIC is constrained in what it can publish publicly relating to enforcement matters, ASIC is taking steps to provide greater transparency with regards to the enforcement matters that contribute to levy variances between estimated and actual levies.

### Structure of the CRIS

- 5.44 Currently, the CRIS is presented as a single document in PDF format and is around 200 pages in length. Stakeholders noted that the length and complexity of the CRIS makes it difficult to engage on the CRIS, and in some instances, stakeholders have found it easier to mainly rely on industry associations to summarise and distribute the key information they should be aware of.
- 5.45 The Review recognises that the length and 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.
- 5.46 However, the Review acknowledges stakeholder concerns and suggests ASIC should consider ways to streamline and enhance the structure of the CRIS to reduce complexity and encourage more stakeholders to engage with the CRIS.

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6 Financial Regulator Assessment Authority, 2022, *Effectiveness and Capability Review of the Australian Securities and Investments Commission*, page 39.

- 5.47 ASIC should trial alternative approaches to presenting the CRIS that are compliant with the Charging Framework. For example, this could include:
- having a separate CRIS for each sector, similar to APRA’s CRIS
  - publishing a summary of estimated levies (similar to the summary of actual levies ASIC publishes each year) alongside the CRIS so that stakeholders can easily identify their estimated levies for the financial year.
- 5.48 The Review also suggests ASIC consider presenting information outside of the CRIS to help reduce the length and complexity of the CRIS and make it easier for stakeholders to navigate. For example, removing information from the CRIS that does not change year-on-year and presenting this information elsewhere, such as on ASIC’s website and linking it to the CRIS or as a separate appendix to the CRIS.
- 5.49 This Review notes that there are a number of regulatory guides, information guides and other publicly available information separately located but relating to ASIC’s industry funding arrangements. ASIC should consider ways to consolidate this information to help stakeholders find information relating to ASIC’s industry funding arrangements in an easily accessible format and help increase stakeholders’ education about the ASIC IFM. For example, consolidating information on a single webpage (an ‘IFM information hub’).

### Key finding

Individuals and businesses struggle to engage with the CRIS, due to its length and complexity.

### Recommendation 9

ASIC should pilot and consider ways to:

- consolidate information regarding ASIC’s industry funding arrangements
- provide more simple explanations regarding ASIC’s cost recovery methodology and the operation of the IFM, including addressing any key gaps in information
- enhance and streamline the structure of the CRIS to reduce complexity for stakeholders

## Timing of the levies and CRIS process

- 5.50 The Charging Framework does not state explicit timeframes for when ASIC must publish the CRIS, only that it must be published before charging begins – that is, prior to levy invoices being issued to regulated entities.
- 5.51 Currently, the levies process commences around November each year when ASIC starts preparing its draft CRIS setting out estimated levies for that financial year. Table 5.1 provides an indicative timeline of the levies and CRIS process for 2021–22.

**Table 5.1: Timeline of the levies and CRIS process for 2021–22**

Key event	Date
ASIC begins preparing the draft CRIS which includes estimating levies for the 2021–22 financial year.	November 2021
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.	October 2022
ASIC makes legislative instruments with business activity details and final regulatory costs and publishes an annual dashboard report.	November 2022
ASIC sends invoices to entities for 2021–22 levies.	January 2023

## Analysis and findings

### Timing of the CRIS release

- 5.52 ASIC aims to publish the draft CRIS in March each year. However, the timing for the release of ASIC’s draft and final CRIS has not been consistent over the life of the IFM – see Table 5.2.
- 5.53 A number of external factors have impacted the timing of when the draft and final CRIS has been published, including the COVID-19 pandemic and decisions by previous governments to delay the release of the CRIS such as during the 2022 Federal Election.
- 5.54 Stakeholder feedback has indicated that a more consistent release of the CRIS would be preferred, specifically so that regulated entities are able to factor the timing of the CRIS release in their internal budget cycles and can anticipate when estimated levies will be known.
- 5.55 The Review recognises the timing of the CRIS has varied significantly, and that more consistent timing will provide more certainty to stakeholders. While the Review recommends that the CRIS is released consistently each year, the recommendation is made in consideration of the trade-off between timing and accuracy of estimates, which is addressed below.

### Accuracy of estimated levies

- 5.56 To meet the timeframe of publishing the draft CRIS in March, ASIC generally commences the process of calculating estimated levies in the middle of the financial year (around November of the previous calendar year). ASIC therefore calculates its estimated levies 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.
- 5.57 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.
- 5.58 The inconsistent timing of when estimated levies are released can also make it difficult for entities to budget for the actual levies. The Review notes that in instances when the release of the CRIS is delayed, ASIC does not update its estimated levies.

- 5.59 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.
- 5.60 For the 2021–22 CRIS process, ASIC was able to commence its process of calculating estimated levies in early 2022 (rather than November 2021) due to the Federal Election in May 2022, which resulted in the CRIS being released in June 2022. Therefore, ASIC was able to use six months of actual data to estimate levies for 2021–22. Due to the additional months' data ASIC was able to use, there was a reduction in the number of sub-sectors with material variances, reducing from 12 in 2020–21 to 6 in 2021–22.
- 5.61 The Review finds that a later release of the CRIS would enable more accurate estimated levies and recommends that the CRIS is released in June each year (no later than 30 June). The Review recognises that while this would mean estimated levies would reflect more up-to-date information, there would still be some variability in actual levy amounts.
- 5.62 This Review finds that while the June timeframe would not align with every entity's internal budget cycle, stakeholders are generally supportive of a later release of the CRIS to enable more accurate estimated levies.
- 5.63 ASIC would release a final CRIS in June each year (no later than 30 June) which would enable more consistent timing of when the CRIS is released and more accurate estimated levies. This would enable entities to better budget for their actual levy invoices issued in the following financial year.
- 5.64 Table 5.3 outlines a potential reframed CRIS and levy process timeline which allows for better estimated levies to be calculated by ASIC and removes the draft CRIS component of the model.

**Table 5.2 Potential timeline of the CRIS and levies process for 2022–23 onwards**

Key event	Date
ASIC begins preparing the draft CRIS which includes estimating levies for the 2022–23 financial year.	January 2023
ASIC publishes CRIS for 2022–23 which sets out the estimated levies for 2022-23. No consultation would be undertaken on the CRIS.	June 2023
ASIC's portal opens for entities to enter their 2022–23 annual returns, which includes their business metrics.	July – September 2023
ASIC makes legislative instruments with business activity details and final regulatory costs.	November 2023
ASIC publish annual dashboard and summary of variances.	December 2023
ASIC sends invoices to entities for 2022–23 levies.	January 2024

### Key finding

The inconsistent release of the CRIS each year as well as the large variances between estimated and actual levies has impacted stakeholders' ability to factor estimated levies in their internal budget cycles. The Review finds that a later and more consistent release of the CRIS in June each year (no later than 30 June) will provide better estimated levies for stakeholders as well as more consistency and certainty.

## Recommendation 10

ASIC should release the CRIS in June each year to enable more accurate estimated levies and a more consistent CRIS timeframe each year.

### Timing of material variance explanation

- 5.65 Stakeholders have raised concerns about the timing for the publication of information explaining material variances between estimated and actual levies.
- 5.66 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).
- 5.67 Stakeholder feedback has indicated that this timing is too late, noting that this information is provided well 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.
- 5.68 This Review notes ASIC has proactively undertaken steps to address this by publishing a Summary of Variances in conjunction with the 2021–22 Annual Dashboard. The Annual Dashboard is generally published at the end of each calendar year and sets out actual levies. The Summary of Variances that ASIC published in December 2022 includes the material variance explanations and variances for each sub-sector at an activity level. The Review supports this initiative and encourages ASIC to publish a summary of variances alongside the annual dashboard each year.

### Key finding

ASIC is proactively taking steps to provide information relating to material variances between estimated and actual levies in a timelier manner. For 2021–22 levies, ASIC released a Summary of Variances alongside their Annual Dashboard which provided material variance explanations and variances for each sub-sector at an activity level.

## Alignment of the CRIS with other corporate documents

- 5.69 In addition to the CRIS, ASIC uses a number of other mechanisms to provide information to stakeholders about its regulatory activities and costs. This includes requirements under the law, such as its Corporate Plan, Annual Report and annual dashboard as well as other mechanisms such as its six-monthly reports relating to enforcement outcomes as well as quarterly enforcement and regulatory updates.
- 5.70 There are generally three phases in which ASIC publishes documents relating to its regulatory activities and regulatory costs and charges.



## Phase 1 – Strategic planning (before the financial year)

- 5.71 This phase includes ASIC publishing its 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 relevance to the IFM, the Corporate Plan provides information on ASIC's strategic priorities which may assist stakeholders in understanding ASIC's areas of focus and resource allocation, and therefore where costs may be recovered from regulated entities.
- 5.72 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.

## Phase 2 – Ongoing regulation (during the financial year)

- 5.73 During this phase, ASIC publishes documents that provide updates on the regulatory activities it is undertaking and the estimated regulatory costs for ASIC undertaking these activities.
- 5.74 The CRIS is the key document that ASIC publishes during this phase which outlines ASIC's estimated regulatory costs and activities by sub-sector. Regulated entities can use the CRIS to estimate their levy invoice for the year and get an overview of the regulatory activities that are driving those estimated costs – noting that the figures remain an estimate and are likely to change.
- 5.75 The CRIS provides a more detailed breakdown of the activities identified in the Corporate Plan that ASIC are undertaking in each sub-sector throughout the course of the year.
- 5.76 During this phase, ASIC also releases its quarterly enforcement and regulatory updates which provides a summary of enforcement outcomes, regulatory changes and other areas of activities – and can therefore support regulated entities and other stakeholders in understanding ASIC's activities over the course of the year. It can also indicate to stakeholders if ASIC is shifting their focus or undertaking new activities not identified in the Corporate Plan or CRIS.

## Phase 3 – Performance analysis and outcomes (after the financial year)

- 5.77 During this phase, ASIC publishes a number of documents which analyse its performance over the financial year, including financial outcomes.
- 5.78 ASIC publishes 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.
- 5.79 ASIC also reports on its expenditure for each IFM sub-sector by regulatory activity in its annual dashboard and its legislative instruments. This allows regulated entities to reconcile any changes in estimated costs published via the CRIS.

## Analysis and findings

- 5.80 Stakeholders have noted that these various mechanisms and documents are useful to understand the regulatory activities that ASIC are undertaking and the sectors it will impact. However, stakeholders have sought better alignment between the various corporate

documents ASIC releases to better understand the potential impact on regulatory costs for each IFM sub-sector.

- 5.81 The Explanatory Memorandum to the ASIC Supervisory Cost Recovery Levy Bill 2017 and related Bills noted that the ASIC IFM will increase accountability by requiring ASIC to annually explain its regulatory priorities, the means by which it intends to address those priorities and the allocation of resources to each regulatory activity.
- 5.82 The Review notes that any adjustments to ASIC's existing reporting requirements needs to be balanced against the statutory purpose for which each document is released and that aligning the documents to be IFM-focused may lead to lengthier and more complex documents.
- 5.83 ASIC is also constrained by legislative requirements in what it can present in its corporate documents, such as the Corporate Plan and Annual Report that are required under the PGPA Act.
- 5.84 The Review recognises that ASIC has been taking steps to address stakeholder suggestions. For example, since the 2021–22 CRIS, ASIC has included focus area tables for each sector to assist stakeholders in understanding which of ASIC's regulatory activities are likely to impact their sub-sector and therefore, their levy amounts.
- 5.85 There may be scope for ASIC to articulate more clearly to regulated entities how ASIC's priorities, outlined in its Corporate Plan, could translate to their levies in the CRIS.

### Key finding

While the review recognises that stakeholders are seeking more alignment with ASIC's corporate documents, ASIC is limited in the information it can publish due to its statutory requirements. However, ASIC has been taking steps to address stakeholder suggestions and should continue to do so within the current requirements.

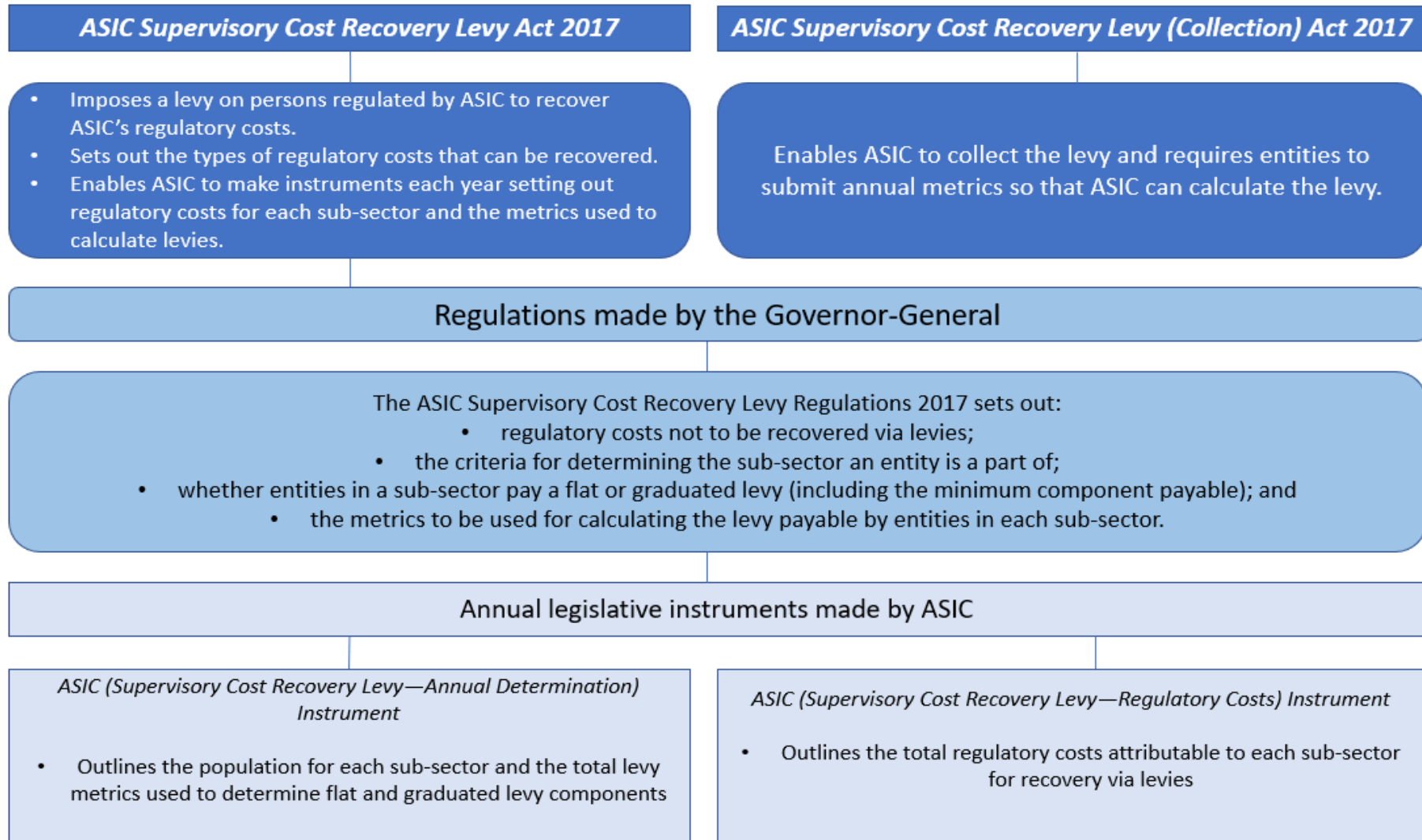


## Appendix A: ASIC IFM Framework

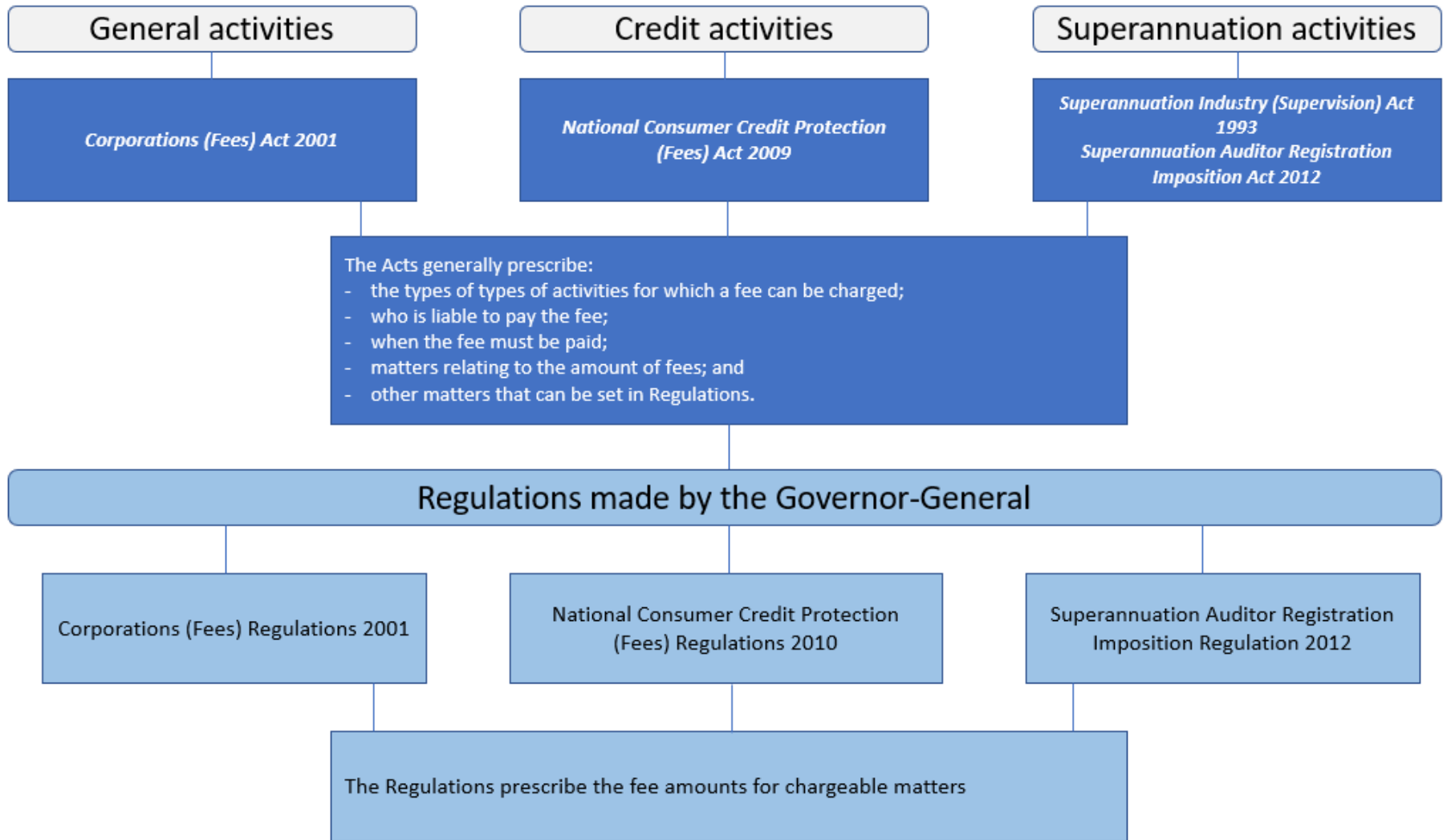
### Legislative framework

- i. All cost recovery levies and fees must have a statutory basis and be supported by legislation before it can be charged.
- ii. The following figures set out the legislative frameworks for industry funding levies and fees-for-service.

## Industry funding levies (effective from 1 July 2017)



**Fees-for-service (effective from 4 July 2018)**




## Charging Framework

- iii. 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.
- iv. 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.
- v. 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
  - recognise the value of government resources
- vi. The Charging Framework is a policy of the Government that is applied to government activities and includes the Charging Policy Statement,<sup>7</sup> 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.
- vii. 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.

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7 "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."

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- viii. 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
  - maintain up-to-date publicly available documentation and reporting
- ix. 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 Cost Recovery Levy Act.
- x. 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 cross-subsidisation between or within industry sub-sectors. 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.

## CRIS requirements

- xi. Each cost recovered activity, regardless of financial value, must be documented in a CRIS before charges commence. The CRIS is an explanatory document that provides key information on how cost recovery for a specific government activity is implemented.
- xii. Each CRIS must include:
- background information on the cost recovered activity, including the outputs that the activity will produce to achieve government policy outcomes
  - details of the Australian Government policy approval to cost recover the activity
  - details of the legislation authorising the charges
  - an explanation of how the activity was costed
  - an explanation of the design of cost recovery charges
  - an assessment of cost recovery risk
  - the stakeholder engagement strategy, including a summary of the most recent consultation and stakeholder views
  - financial estimates for the activity (that is, expenses and revenue)
  - reporting on financial and non-financial performance of the activity
  - key forward dates and events

## Objectives of the IFM

- xiii. 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.
- xiv. The levies component of the IFM was also refined in accordance with a number of design objectives, informed by stakeholder feedback:<sup>8</sup>
- 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

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



# Appendix B: Cost recovery decision-making process

