



FINANCIAL
SERVICES
COUNCIL

ASIC Industry Funding Model Review

FSC Submission

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1. About the Financial Services Council

The FSC is a peak body which sets mandatory Standards and develops policy for more than 100 member companies in one of Australia's largest industry sectors, financial services.

Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, life insurers and financial advice licensees. Our Supporting Members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses.

The financial services industry is responsible for investing more than \$3 trillion on behalf of over 15.6 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange, and is one of the largest pools of managed funds in the world.

2. Executive Summary and key points

Introduction

The FSC welcomes the opportunity to provide comments on the Discussion Paper regarding the ASIC industry funding model (**IFM**).

In terms of what the IFM aims to be, we agree with the Discussion Paper (page 8) that the IFM *should* deliver a range of benefits, including:

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

However, the FSC has concerns that the IFM does not deliver sufficiently on all of these goals, particularly the first, third and fourth bullet points listed above.

The FSC is pleased to make the following key comments in this section 2 in relation to the IFM. Sections 3, 4 and 5 then contain specific responses to the Discussion Paper questions. While the FSC notes that certain of our comments touch on issues that the Discussion Paper states are not within the scope of the Review, the FSC considers them to be sufficiently important as to warrant consideration.

Ex-post model is an ineffective outlier. The ex-post IFM is inappropriate, inefficient and not in line with international practice.

The Discussion Paper states on page 17 as follows:

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

No explanation is given as to why other regulators are able to work with an ex-ante model. Nor is any explanation given as to how these other regulators are able to set a budget and determine resource allocations in advance. Other regulators have many of the same problems with budgeting and uncertainty as ASIC. The Discussion Paper makes no attempt to explain why ASIC should be treated differently. This begs the question, why is ASIC an international outlier.

The FSC **recommends** that the IFM should be changed to an ex-ante model and follow international best practice.

Cost allocation is inequitable. The IFM requires innocent third parties to pay for the wrongdoings of others. It is an unfair model. It draws a series of ad hoc lines in the sand and requires businesses that fall within the IFM regulated sector to pay for wrongdoing even if they have no meaningful connection to a business that has engaged in wrongdoing. Meanwhile the IFM does not include any funding from Government consolidated revenue, even where it is plain that certain activities of ASIC can and do serve and protect “the public” at large more than they serve and protect the regulated sectors that are required to fund the IFM.

The FSC would oppose any change to the model (for simplification purposes or otherwise) that leads to greater cross-subsidisation, compared to what is inherent within the existing model. As a matter of principle, we generally support model equity over simplicity, as this operates to ensure that, to the greatest extent feasible, costs are linked to the regulated entities causing the need for those costs. The FSC appreciates that an appropriate balance needs to be made between equity and simplicity.

The FSC believes that it is more important to have granular and equitable apportionment of costs. As clearly pointed out in the Discussion Paper, enforcement activity is a key driver of levy volatility year on year and variance between estimated and actual levies. Enforcement activity has generally been concentrated in a small number of sub-sectors, as opposed to being equally spread across all sub-sectors. Given the Treasury’s clear analysis, there does not seem to be a policy case to take a cost-spreading approach that would lead to greater cross subsidisation. The FSC is of the view that enforcement costs should be recovered from those causing the need for enforcement activity.

The FSC **recommends** that the IFM relies more on consolidated revenue and less on the regulated sector. Any changes to the model should not lead to greater cross-subsidisation.

Cost recovery should be capped. Cost recovery under the IFM is effectively not capped at the sectoral level and occurs on an ex-post basis. There is no proper oversight over whether ASIC is using its resources efficiently, as Ministers are asked to sign off levies to recoup costs already incurred. Recent years have seen costs rise materially, often significantly above estimated amounts. An uncapped model does not incentivise ASIC to improve efficiency, productivity and responsiveness of government activities and accountability for those activities.

The FSC also notes that the amount by which a final levy invoice payable by a particular entity exceeds the estimated invoice amount for that entity is not capped. This means that some businesses can and have been asked to pay amounts substantially in excess of what they had budgeted for.

The FSC **recommends** that the amount that can be recouped via the IFM should be capped at the sectoral level.

The FSC also **recommends** that where an increase in final amounts payable by a specific entity exceeds a certain percentage threshold (cap) of the estimate previously given to that entity, any amount in excess of this threshold should not be payable pursuant to the levy. In our view it is fair and equitable that certainty should be provided to industry sectors by way of an effective cap being placed on amounts payable. See section 3.

Costs are too high and rising. The cost burden of the IFM is significant. The rising cost of the IFM levies should be considered together with the cost of other industry levies. For example, the FSC notes that other industry levies administered by APRA – e.g. the Financial Institutions Supervisory Levies - have also increased, while new proposed legislation such as the Financial Accountability Regime and Compensation Scheme of Last Resort will add to the already significant financial burden.

The FSC **recommends** that the ASIC industry levy cost burden be reassessed in the context of the total burden on regulated businesses.

Costs need to be better controlled. The amount of the industry levy related to costs of enforcement activity needs to be better controlled. ASIC should implement effective measures to control third party professional adviser fees of legal counsel and other relevant professionals. For example, professional advisers could be asked to provide fee caps or strictly controlled fee estimates in respect of particular matters. In many other jurisdictions, legal counsel are required to provide fee caps for work done. ASIC should require this as well. ASIC should also consider how it can better control enforcement costs (for example, through more appropriate numbers and levels of staff being allocated to particular workstreams for particular time periods). ASIC should be required to provide more details regarding the basis on which third party advisor fees are paid.

The FSC **recommends** that ASIC make material changes to control costs. See section 3.

The construct of the Cost Recovery Impact Statement (CRIS) is not fit for purpose.

While there continues to be merit in publishing a draft CRIS for public consultation, there have, year on year, been significant variations between estimated levies in the CRIS and actual levies. The publication date of the CRIS has also varied, year on year. The CRIS is large, difficult to navigate, and lacking in easily digestible summaries. It does not contain sufficient detail regarding costs spent on enforcement. It is not transparent where it needs to be, and overly cluttered where it should not be. And as a consultation document, while necessary, it has not been effective, given that feedback provided on draft CRIS has largely not been acted on. It is for these reasons that stakeholder engagement has fallen.

The FSC **recommends** that the CRIS is materially improved. See section 5.

3. Industry Funding Levies

1. *Appendix D provides a catalogue of sub sector definitions, metrics and formulas. If the status quo remains (that is, there are no substantial changes to the IFM framework), are any changes required to ensure the existing industry sub-sectors, levy formulas and entity metrics remain fit for purpose in the longer-term and/or can respond to changes within industry sub sectors?*

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

The FSC notes that cost recovery under the IFM is not capped at the sectoral level and occurs on an ex-post basis. As a result, there is no independent oversight over whether ASIC is using its resources efficiently, with Ministers being asked to sign off levies to recoup costs already incurred. Over recent years, ASIC's actual regulatory costs have risen significantly, often well above estimated amounts.

The FSC **recommends** capping the amount that can be recouped from sectors via the IFM.

Alternatively, if sectoral caps are not introduced, the FSC **recommends** that Ministers should be required to approve ASIC's operational budgets well in advance of a financial year and, as part of this process, ASIC should clearly articulate what its proposed operational budget would mean for ASIC levies (on a granular sub-sector basis).

We also set out below some specific comments in relation to particular metrics and definitions for specific sub-sectors.

Responsible entities

The current approach to calculating the fees owed by responsible entities is based on the "total value of assets" (Total Assets) in all registered schemes operated by the responsible entity (REs). We have concerns that using Total Assets may not be the best measure for calculating the ASIC levy for REs. Total Assets includes derivatives exposure which inflates the value of the fund, however it is not reflective of the Funds Under Management actually managed which is based on net assets. The FSC supports ASIC using the Net Asset Value (NAV), instead of Total Assets, to calculate the levy for REs. Net Assets is a more accurate reflection of Funds Under Management and basis for allocation of costs. We do not envisage that using NAV, instead of Total Assets, would have any adverse implications for the total quantum of levies raised. ASIC could continue to collect the same amount from the industry however the calculation for how much is collected from each RE would be based on the NAV managed by REs instead of Total Assets.

The FSC **recommends** that consideration be given to using the NAV, instead of Total Assets, for the RE ASIC levy methodology.

Financial advice sector

The FSC notes that the Government has provided temporary relief for financial services' licensees who provide personal advice to retail clients by reducing levies.

The FSC **recommends** that the temporary levies relief provided to these personal financial advice licensees should be continued for a further period. Industry should be provided with more information as soon as practicable on the future of this temporary relief.

Market infrastructure and intermediaries sector

The definition for *Over-the-counter (OTC) traders* is very broad and does not specify whether this includes overseas domiciled traders. We understand that some businesses have received informal guidance from ASIC, through the Australian Financial Markets Association, that they did not expect overseas domiciled OTC traders to be included.

The FSC **recommends** that this guidance be expressly included into the definition of the sub-sector.

In addition, the FSC notes that there are a number of other concerns raised by industry regarding industry sub-sectors, levy formulas and entity metrics which are set out below.

Double counting. Industry has raised concerns regarding the double-counting of assets, where more than one authorisation applies to the same pool of assets (e.g. assets of a superannuation trustee may also be assets of an operator of an investor directed portfolio service).

Referencing of fees. Some of our members have expressed concerns with inconsistencies in the referencing of fees. For example, the fees published for the large futures exchange sub-sector refers to 'transactions and messages' while the related 2020-2021 invoices refer to 'messages and lots'.

The FSC **recommends** that attention is given to these issues. Where appropriate, ASIC should publish further guidance to assist industry.

2. *Do stakeholders understand ASIC's methodology for allocating costs of activities that impact multiple sub sectors? Is the current level of transparency relating to this approach appropriate?*

The FSC's understanding is that its members broadly understand ASIC's methodology. However, there needs to be a significant improvement in transparency, as explained below.

3. *Is it more important to have a simpler model that can be more readily understood by entities and administered by ASIC which may result in increased cross-subsidisation, or a more equitable model (similar to the status quo) that closely links the recovery of costs to the groups of entities causing the need for those costs?*

The FSC would oppose any change to the model (for simplification purposes or otherwise) that leads to greater cross-subsidisation, compared to what is inherent within the existing

model. As a matter of principle, we generally support model equity over simplicity, as this operates to ensure that, to the greatest extent feasible, costs are linked to the regulated entities causing the need for those costs. The FSC appreciates that an appropriate balance needs to be made between equity and simplicity. However, as the Discussion Paper's suggested model simplifications would unnecessarily lead to greater cross-subsidisation, the FSC is unable to support these suggestions.

With this properly taken into account, it would be important to ensure that any administrative cost saving made from *appropriate* model simplification is applied to offset levies.

4. *Is cross-subsidising costs for entities within a sub sector or sector more appropriate than cross-subsidising costs across all of ASIC's regulated population? If so, why?*

The FSC submits that it is not appropriate that the increase in enforcement activity against particular entities in a sub-sector should be financed solely by way of a levy on all entities in that sub-sector, as this is a less targeted and relevant approach that effectively requires innocent parties to pay for the wrongdoings of unrelated third parties. The effect is unfair and arguably in conflict with ASIC's stated aim that the "*industry funding model for ASIC....ensures that the costs of the regulatory activities undertaken by ASIC are borne by those creating the need for regulation*".

In respect of a given sub-sector, entities that have been the subject of enforcement action and litigation often exit the industry, resulting in a situation where the remaining and compliant industry participants are obliged to shoulder some (or all) of the enforcement costs directly related to the exited entity. This is inequitable and unfair and should be a matter for Government consolidated revenue by virtue of the inequity in billing the compliant entities that remain in the sub-sector.

5. *Are there other opportunities to simplify the design, structure and legislative framework for levies? If so, what opportunities and what benefits would they provide?*

No comment.

6. *Does the design, structure and legislative framework of the levy component of the IFM have sufficient flexibility to respond to changes in markets, sectors and products ASIC has oversight of? If not, what aspects require more flexibility and what changes could be made?*

It is not clear to the FSC that the IFM has sufficient flexibility to respond to changes in markets, sectors and products. Relevantly, industry would benefit from an indication as to how the IFM is likely to respond to the *Quality of Advice Review*, which notably is proposing changes which would impact the IFM (for example, the proposed change to the definition of personal advice and removing the definition of general advice).

7. *How can costs associated with enforcement activity be recovered most equitably? What changes could be made to the current approach, and what benefits would they provide?*

The FSC submits that the amount of the industry levy related to costs of enforcement activity should be better controlled. One suggestion that this could be done would be implementing measures to control third party professional adviser fees of legal counsel and other relevant professionals. For example, professional advisers could be asked to provide fee caps or strictly controlled fee estimates in respect of particular matters. ASIC should be required to provide more details regarding the basis on which third party advisor fees are paid.

The FSC **recommends** that ASIC should provide further details of how it instructs legal counsel and other relevant third party advisors, and how the fees of legal counsel are calculated and agreed.

ASIC should also consider how it can better control its own internal enforcement costs (for example, through more appropriate time allocation of ASIC staff and appropriate numbers and levels of staff being allocated to particular workstreams for particular time periods). The Discussion Paper notes at page 12:

“ 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.”

However, it is well recognised that time measurement (measuring how much time a person or persons have spent to complete a task) is not an effective way of determining how efficiently or effectively the person has worked. It does not lead to ‘value for money’ and, instead, may result in excessive amounts of time being spent on completing tasks which should have been done in a much shorter timeframe. We also note that allocating ASIC staff a fixed amount of time to work on an issue may not yield optimal outcomes, given the potential depth and breadth of a regulatory proposal or enforcement matter.

The FSC also disagrees with the following comment in the Discussion Paper on pp 19 and 20:

“Some stakeholders have argued that court-awarded penalties and fines should also be used to offset industry levies in the same manner as own source revenue. Court-awarded penalties and fines are paid into the Commonwealth Consolidated Revenue Fund. Penalties are imposed for a punitive purpose and as a deterrent for misconduct and bear no relationship to ASIC’s regulatory costs. This is consistent with the treatment of penalties and fines across the Commonwealth. The use of penalties and fines to offset industry levies could be perceived as industry ‘benefiting’ from misconduct and create perverse incentives (for example, the risk that enforcement activity is driven by revenue considerations rather than efforts to reduce non-compliance). The use of fines and penalties to offset ASIC’s regulatory costs will not be considered as part of this Review.”

The FSC submits that if ASIC is properly carrying out its statutory duties it should not create perverse incentives. The FSC reiterates that any court-imposed penalties or fines should be used to reduce the cost to ASIC of enforcement.

8. *Are there opportunities to improve the transparency and reporting of enforcement costs? If so, what changes could be made and what benefits would they provide?*

See our response to question 7 above and section 5.

9. *Is the approach of attributing costs of illegal unlicensed conduct to the most 'relevant' sub sector the most appropriate recovery method? Alternatively, how should these costs be recovered, and why?*

The FSC submits that illegal unlicensed conduct should not be paid for solely by the individual sub-sector, nor cross-subsidised across all sectors. Rather, it should be recovered, to the fullest extent possible, from the relevant entity that is to be penalised for illegal activity and, if needed, subsidised by the Government where full cost recovery is not possible. For example, unlicensed entities acting (or illegally) purporting to act in a sector are *not* part of that sector – they are simply operators committing offences and not complying with the law – the cost of enforcement should not be billed to those who comply with the law.

10. *Are there alternative ways to recover the costs of ASIC's activity relating to emerging sectors and illegal unlicensed conduct from current industry sub sectors, and why?*

No comment.

11. *How can costs associated with capital expenditure be recovered most equitably and transparently? What changes could be made to the current approach, and what benefits would they provide?*

No comment.

12. *How can costs associated with education and policy advice be recovered most equitably and transparently? What changes could be made to the current approach, and what benefit*

The FSC **recommends** that the costs of education and policy advice should not be paid for by industry. These activities are not directly related to the regulation of the industry. ASIC's educational initiatives and policy advice are of benefit to the broader community and the Government.

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

There are a number of touchpoints across the cycle through which indirect costs are reported to industry (e.g. the CRIS and ASIC Corporate Plan). We would welcome further detail on how indirect costs are allocated to improve their understanding of these costs.

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

Since the commencement of the IFM, actual levies have often exceeded estimated levies by a material margin. These variations have made it very difficult for industry to reasonably provision for the levies in their budgets. The detrimental impact of this problem is exacerbated by how the CRIS has been issued at different times each year. This is compounded by the fact that many businesses are subject to multiple levies under the IFM

(e.g. where they provide advice, insurance and/or operate investment platforms). It is still useful to see a draft CRIS as this allows stakeholders to comment on whether the proposed allocation is consistent with the IFM methodology, is fair, equitable and reasonable (and does not support inappropriate cross-subsidisation). It also provides governance, transparency and accountability on the cost allocation, by providing a reasonable (and public) opportunity to comment on the draft CRIS. While we appreciate the amount of work that is required to publish the existing level of detail in the CRIS, please see further below our specific comments on the CRIS content.

The FSC **recommends** that where an increase in final amounts payable by a specific entity exceeds a certain percentage threshold (cap) of the estimate previously given to that entity, any amount in excess of this threshold should not be payable pursuant to the levy. In our view it is fair and equitable that certainty should be provided to industry by way of an effective cap being placed on amounts payable.

See also our response to question 1.

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

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

Due to the historical variations between estimated and actual levies, we submit that there is limited utility in the estimated levies provided presently (as they are usually exceeded, sometimes significantly so, in recent experience). More frequent reporting to assist with internal cost budgeting would be beneficial to industry. For example, quarterly or half-yearly estimates could help better support expenditure forecasting and associated decision making. A range for estimated levies could be useful, insofar as the rationale for the estimated range was clearly articulated and justified.

15. Is it more important to have less volatile/more stable levy amounts year-on-year, or more granular and equitable apportionment of costs each year?

The FSC believes that it is more important to have granular and equitable apportionment of costs. As clearly pointed out in the Treasury Discussion paper, enforcement activity is a key driver of levy volatility year on year and variance between estimated and actual levies. The Discussion paper also points out that enforcement activity has generally been concentrated in a small number of sub-sectors, as opposed to being equally spread across all sub-sectors. Given the Treasury's clear analysis, there does not seem to be a policy case to take a cost-spreading approach that would lead to greater cross subsidisation. The FSC is of the view that enforcement costs should be recovered from those causing the need for enforcement activity.

16. Are there other ways to manage or reduce volatility in levy amounts year-on-year, including other approaches to spreading costs? If so, why, and what benefits would it provide?

Given the significant volatility amounts, the FSC submits that it would be fair and equitable to provide industry with greater certainty by introducing caps on the amounts that are invoiced to specific entities for any particular year. The increase in “cost recovery levies” plus “statutory levies” for an individual entity within each sub-sector could be capped at a set percentage increase to better enable businesses to absorb these expenses. This would provide ASIC with some flexibility whilst also providing industry with more certainty as to minimum and maximum total amounts payable.

A related way would be to spread amounts payable across several years, which would help individual licensees to manage unexpectedly high additional costs, and again a cap could be set at a maximum amount for any particular year.

See also our response to question 1.

4. Fees-for-service

17. *In relation to the design, structure and legislative framework for fees-for-service:*

17.1. *Are any changes required to ensure it remains fit for purpose in the longer-term and/or can respond to changes in industry?*

The FSC notes that certain processes put in place prior to the introduction of the IFM have not substantially changed in the years since its implementation. An example of this would be the process for annual renewal of credit licences (**CL50**) which we understand has not changed and asks for similar metrics for a different time period. This somewhat duplicates the IFM data collection.

There is also limited clarity on what the continuing data collection in the CL50 is being used for since the introduction of Industry Funding annual data submissions. Limited feedback is provided to licensees from the CL50 process.

17.2. *Are there opportunities to simplify the design, structure, and legislative framework for fees-for-service?*

See our response to question 17.1 regarding CL50.

18. *Are there any costs currently recovered through fees-for-service that would be more appropriate to recover through industry levies? If so, why?*

No comment.

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

The FSC submits this would depend on the amount by which the fee would need to be increased - the larger the increase, the more likely it would be helpful to industry to spread the cost over a period of years.

20. *Is it appropriate for ASIC to have the power to determine which of its regulatory activities/services it can charge a fee for?*

The FSC considers it appropriate that the types of activities that ASIC can charge fees for to be a matter of primary legislation, with specific chargeable matters and fee amounts to be contained in regulations. We see a potential conflict in ASIC determining the fees, even with accountability mechanisms, as ultimately ASIC would be determining the costs to be recovered and fees to recover the costs, rather than a third (or preferably independent) party such as Parliament or the Executive. We are satisfied with Parliament (legislation) or the Executive or Minister (regulations) determining what ASIC is permitted to charge, but we do not support delegating this power to ASIC, other than for CPI increases.

The FSC submits that it would be helpful to provide timely communication to impacted sectors/entities on fee methodology and any increases, with such communications provided a minimum period of time prior to implementation of the particular fee change (such time

period could vary depending on the magnitude and nature of the changes under discussion). Policy changes should not be enacted at short notice unless it is to the clear benefit of the relevant impacted sectors (e.g. a reduction in a fee payable).

21. *Is it appropriate for ASIC to have the power to set fee amounts, or should this power remain with the Government?*

As a general principle, the FSC believes that ASIC should not have the power to set fee amounts. However, the power to make CPI-related increases could be delegated to ASIC.

21.1. *If ASIC were provided the power to set fee amounts, should there be any limitations on what fees it can adjust, or by how much? For example, setting caps on specific fees in primary law or regulations, or setting principles to guide ASIC's setting of fee amounts?*

See our response to question 20.

22. *What transparency and accountability mechanisms would be appropriate if ASIC were setting fee amounts?*

The FSC does not support the delegation of fee amounts to ASIC. This power should remain with the Government, with exception to CPI increases to fees.

23. *Do fees for licence and registration cancellations provide a disincentive to cancel licenses and registrations? If so, would a lower fee or no fee remove this disincentive?*

The FSC understands that the time required to apply for a new licence, including associated charges, may disincentivise some industry participants from cancelling licences if there is a potential for future use.

It is important that fee amounts be carefully considered and are not unreasonably high. The FSC submits that cancellation fees should not exceed the estimated annual fee paid by an entity for a period.

24. *Would it be more appropriate for the costs associated with licence and registration cancellations to be recovered through industry levies (noting that there are wider benefits to ensuring entities and individuals that are no longer undertaking a particular licensed activity do not continue to hold a licence for that activity)?*

The FSC submits that these fees should remain as fee-for-service. It is not clear that the wider benefits referred to are material enough to warrant other licensees paying for something that has no direct connection with them, and it would be appropriate to continue to link this cost to the entity that benefited from the licence and registration.

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

The FSC broadly supports this approach, on the basis that a licensee who initiates a specific transaction should be responsible for the associated ASIC costs where there is a clear

connection between the relevant fee and the relevant transaction. However, the FSC does not agree that the cost of class relief applications or no-action letter applications should necessarily fall under this rubric, given that this type of activity will often benefit industry as a whole.

5. Reporting, transparency and consultation

26. *How do regulated entities and other stakeholders engage with ASIC's transparency and consultation mechanisms relating to the IFM? What aspects are most useful?*

26.1. *What do stakeholders seek from mechanisms to engage with the IFM? Is it more important for these mechanisms to provide transparency, or to allow for stakeholder consultation and feedback?*

The FSC notes that transparency is of key importance for our members, but it is also important for our members to be able to provide feedback on the IFM.

Our members are particularly interested in the rationale for changes in levies being properly explained, as this assists industry participants in understanding how and why levies are charged to relevant sub-sectors.

27. *Are the existing transparency and consultation mechanisms in relation to the IFM appropriate?*

The FSC has received feedback from members that they feel the current consultation mechanisms are not helpful, given that previous suggestions and comments have generally not been acted on by ASIC, either because it is not within ASIC's powers to do so, or for reasons that are not fully explained. Based on this experience, many of our members are of the view that there is limited utility in responding to CRIS consultations.

The FSC does not believe the current consultation process adds much value and submits that alternative ways of conducting consultations, for example, through webinars or workshops (similar to AFCA funding model session held earlier in 2022), would be more beneficial. The interactive nature of a webinar or workshop would help the industry to have further insights regarding the IFM.

In terms of transparency, the FSC **recommends** that more transparency is provided in terms of how amounts are allocated, in particular for enforcement matters and the sub-sectors where variance is significant year on year.

27.1. *Would changes to existing mechanisms or alternative mechanisms be beneficial? If so, what changes could be adopted and what benefits would they provide?*

The FSC notes that on page 38 of the Discussion Paper, four options are proposed to improve the CRIS process. The FSC is of the view that options two, three and four should be strongly supported, although as a collective suite of measures. We are of the view that, if implemented, these would operate to: appropriately facilitate further meaningful consultation on the IFM's policy settings (option two); help minimise friction in entity budgeting (option three); and help lift transparency and accountability (option four).

As an appropriate complement to these measures, we reiterate our position that ASIC should be required to set out each year, in the CRIS, productivity and efficiency improvements made each year.

28. How is the CRIS used by regulated entities and other stakeholders, and do stakeholders find the information in the CRIS useful?

As the FSC understands, its members often use the CRIS to estimate potential charges and for forecasting purposes. For example, a licensee may use the CRIS and a previous year's invoices together to forecast for future periods.

The levy estimates and CRIS are useful to some extent, but further forecasting and advance notice of levies (e.g., for the next 2-3 years) where practicable, could help licensees and advisers to better plan ahead and provision for levies. This could also assist with investor forecasts that licensees are required to provide to their shareholders. However, any medium to long range estimates would have to be carefully assessed and controlled to avoid unreasonable use of higher estimates to 'compensate' for the uncertainty associated with longer timeframes. It would also be important for industry to be able to challenge any medium or long range estimates, and for any reasonable and justified concerns that are raised by industry to be properly addressed.

Quarterly or half-yearly updates on expected levies could also be beneficial for planning and budgeting.

28.1. Could improvements be made to the CRIS, including the form/format and nature of information provided? If so, what improvements and what benefits would they provide?

The CRIS contains a large amount of information that many stakeholders do not read. A more useful way to provide the information for licensees would be to include sub-sector specific information on ASIC's costs and how they are apportioned to the sub-sector and the individual licensee as an appendix to the ASIC Invoices.

A summary table comparing the current year to the previous year, at a sub-sector level, would be beneficial. This table should identify and explain any material sub-sector changes.

28.2. At what time is it most beneficial for the CRIS to be published?

The FSC acknowledges the balance between expedience and accuracy when it comes to publishing the CRIS. On balance, however, the FSC would advocate for a more accurate CRIS at a consistent point in time during the year. Added certainty in publication time would assist in internal planning and forecasting.

29. Noting that changes to the IFM are for the most part decisions for the Government, is annual consultation by ASIC via the CRIS useful? Would less frequent but more substantive consultation be preferable?

The FSC submits that annual consultation on IFM policy settings by ASIC via the CRIS would not be useful. Less frequent and more substantive consultation where, subject to any Government policy, comments can be accommodated would be preferable.

30. *Are changes required to the criteria determining material variance? If so, what should be changed – the percentage and/or dollar value amount, or be based on the number of entities impacted?*

Materiality would be best considered on a sub-sector basis as this ensures relevance at a more detailed level.

30.1. *When should information regarding material variations be published?*

It would be more useful to publish the information regarding material variations, especially the main contributor(s) to the variance, in the current year's final CRIS, as opposed to in the following year's final CRIS.

31. *What other information would be useful to regulated entities or other stakeholders to understand how ASIC sets its regulatory priorities and/or to understand the relationship between ASIC's costs and the amounts recovered from industry? What benefits would additional information provide?*

The FSC **recommends** greater detail and granularity of disclosure in relation to the background, reasons for and justifications of particular activity undertaken by ASIC, particularly in relation to enforcement and surveillance activity (and the key reasons underpinning any material increases in costs). The level of efficiency and effectiveness of such regulatory activities should also be more fully described.

The FSC **recommends** that more detail should be provided on which enforcement cases are being funded, the amount being spent on a particular case, and the status and outcomes of these cases. In addition, the costs recovered in a particular case should also be disclosed with greater detail, particularly given the substantial investigation and litigation costs incurred in the relevant periods.

On specific litigation matters, the FSC would encourage more clarity in relation to whether costs have been recovered from an entity, fall under the ASIC Enforcement Special Account (ESA), or are yet to be recovered (and estimated timing). A greater level of detail should be disclosed to help distinguish between activities that are financed by the statutory levy (including the ASIC ESA) and the cost recovery levy.

With regards to ASIC industry guidance, it would be helpful to industry if ASIC indicated (fairly) binding timeframes for guidance and a service level delivery (i.e. ASIC met timeframes X per cent of the time over year Y). It is not uncommon for timeframes for the release of ASIC guidance to be delayed, and sometimes significantly (perhaps due to regulatory change workload or complexity). The delays though concern industry as they impact industry's ability to fully implement and operationalise regulatory change within the legislative required timeframes.