

31 January 2022

Financial Regulator Assessment Authority
The Treasury
Langton Crescent
PARKES ACT 2600

By email: FRAA@treasury.gov.au

Dear Members,

Assessment of the effectiveness and capability of ASIC

CPA Australia represents the diverse interests of more than 168,000 members, working in over 100 countries and regions supported by 19 offices around the world. We make this submission on behalf of our members and in the broader public interest.

CPA Australia members interact with the Australia Securities and Investments Commissions (ASIC) in a number of areas, particularly audit and assurance, financial reporting, insolvency and financial advice. As a professional association, we also have many touch points with ASIC through committees, industry liaison groups, consultations and with individual ASIC officers.

However, as an external stakeholder we do not have direct visibility of ASIC's internal structure, processes and decision making to allow us to respond directly to many of the key questions in the consultation paper. Therefore, we provide insights that we and our members have gained in interactions with ASIC and share a number of concerns, which we believe will indirectly address a number of the questions asked.

Strategic prioritisation, planning and decision making

Industry Funding Model

CPA Australia's primary concern is with the ASIC Industry Funding Model (IFM) and how it reflects on ASIC's accountability and transparency regarding its internal processes and decision making.

ASIC fees, levied across a number of the sectors in which our members operate, have increased significantly year on year since the ASIC IFM commenced in 2017-18. The most notable examples are in the financial advice sector where the levy was scheduled to increase over 230 per cent over the preceding three years and in audit, where the registration fee for registered company auditors has more than quadrupled in the last two years. These levy increases are reflective of the increase in ASIC's regulatory expenses from \$236.6m in 2017-18 to \$337.5 for 2020-21. Following sustained efforts from professional and industry organisations to address the unsustainability of the levy increases, the Government recognised the continuing adverse impact of the ASIC IFM and intervened in August 2021. It announced temporary relief by reducing the levy on financial advisers for two years and committing to a review of the ASIC IFM¹.

We will not comment directly on the structure of the ASIC IFM as that will be the subject of the upcoming Treasury review. However, we offer the following comments on ASIC's accountability and transparency with respect to the allocation of costs under the ASIC IFM.

Each year, ASIC is obliged to release a draft for comment, and then a final, Cost Recovery Implementation Statement (CRIS) outlining the allocation of regulatory costs between industry sectors and the (indicative) levies to be charged.

¹ [Media Release: Temporary and targeted relief on ASIC levies for financial advisers, August 2021.](#)

Amongst other things, the CRIS states that the ASIC IFM:

- (a) establishes price signals in the way resources are allocated within ASIC;
- (b) provides economic incentives to drive the Government's desired regulatory outcomes for the financial system;
- (c) provides greater stability and certainty in ASIC's funding and ensures that ASIC is adequately resourced to carry out our regulatory mandate; and
- (d) improves our cost transparency and accountability to industry.

However, it is problematic that the current CRIS process makes it difficult for these objectives to be met.

Increasingly, the draft CRIS is released for consultation after the end of the financial year to which it is to apply. For example, the draft CRIS for 2020-21 was released for comment in late July 2021 and finalised in November 2021.

The significant delays between ASIC levy estimates being provided and the final levies being announced each year, coupled with the significant variations between the estimated levies and the final levies charged, makes it extremely difficult for regulated industry participants to accurately budget for their ASIC levies and to set adequate fees for their clients in order to recoup these costs.

We also observe that indirect costs make up a disproportionate amount of the total operating expenditure of regulatory costs, averaging around 40 per cent each year. There is no transparency as to how these costs are determined and apportioned. The lack of transparency with respect to these costs means that industry participants seem to be covering some general and administrative costs that are unrelated to ASIC's regulatory and oversight functions. This is particularly evident with the financial advice sector's indirect costs increasing significantly at the same time that enforcement costs have also risen significantly.

Further, there are no clear indicators or metrics published in the CRIS on the effectiveness or efficiency of ASIC's regulatory processes. In a system where ASIC is able to recover fully its regulatory costs there is no clear incentive for ASIC to reduce regulatory costs, drive efficiencies and improve regulatory outcomes.

When ASIC is queried by industry regarding any concerns around the apportionment of regulatory costs under the IFM, their response is that they are constrained by the parameters of the ASIC IFM set by the Government and do not acknowledge any accountability for their expenditure, the effectiveness or efficiency of their regulatory processes, or the return on investment for the stakeholders who pay the levies.

Stakeholder Engagement

Beyond our concerns with the ASIC IFM, we do not believe there is a sufficiently collaborative approach to engaging with industry stakeholders. While there is ad-hoc regular engagement with ASIC in some sectors, such as financial reporting or audit and assurance, our general sense is that ASIC typically does not engage with industry to create collaborative relationships.

Where consultation does occur, often there is little meaningful dialogue and hence little chance to obtain the most effective outcomes. Decisions often appear to be made behind closed doors with little insight into the ASIC decision making process. For example, stakeholder engagement meetings with professional associations in the financial advice sector result in very little insight beyond sharing information. Most often this information is already available and, in many circumstances, already more up to date in the public arena. Moreover, the associations are asked to set the agenda and ASIC officers are unable to provide any information or insights beyond what has been requested in the agenda. Typically, ASIC officers will not engage in any meaningful dialogue beyond the agenda.

This is in stark contrast to our interaction with other regulators and administrators, such as the Australian Taxation Office or the Tax Practitioners' Board, who will consult with industry, either publicly or confidentially, regarding how measures may be most effectively implemented, or how guidance may be best provided. Often ASIC guidance is released, or decisions announced, with no or only selective industry consultation having been undertaken.

As a further example of lack of engagement, the Affordable Advice project had the highest number of submissions to date in this area. However, the result of ASIC having received such significant input and comments, was the release of a one-page infographic six months after submissions closed. There was little insight apart from the high-level findings presented in the infographic. An open, ongoing dialogue with industry would have provided far greater insight to ASIC and would have better complimented the commissioned research.

Surveillance

Financial Services

A key concern for CPA Australia is the need for clarification of ASIC's role with regard to the regulated industry sectors. Is ASIC an administrator of the law or a proactive regulator? This important question has been brought into greater focus during the recent Senate Economics Committee inquiry into the collapse of the Sterling Income Trust².

The ASIC [website](#) states that "ASIC is Australia's integrated corporate, markets, financial services and consumer credit regulator."

It goes on to say:

"Our role under the ASIC Act is to:

- maintain, facilitate and improve the performance of the financial system and entities in it
- promote confident and informed participation by investors and consumers in the financial system
- administer the law effectively and with minimal procedural requirements
- receive, process and store, efficiently and quickly, information we receive
- make information about companies and other bodies available to the public as soon as practicable
- take whatever action we can, and which is necessary, to enforce and give effect to the law."

However, ASIC Chair, Mr. Longo made it clear in his appearance before the Senate Committee Inquiry on 16 November 2021 that ASIC's role in relation to regulating managed investment schemes (MIS) is to administer a scheme's application to become regulated, not to proactively determine if a scheme is suitable to be regulated for consumer protection purposes. He cited ASIC's submission to the Parliamentary Joint Committee Inquiry into the collapse of Trio Capital Limited in 2011, which stated:

Consistent with the economic philosophy underlying the FSR regime, ASIC does not take action on the basis of commercially flawed business models. A significant feature of a number of collapses leading to investor losses is flawed business models—that is, models that could only prosper if asset prices continually rose and debt markets remained open and liquid. Responsibility for flawed business models lies with management and the board³.

CPA Australia believes that clarification is required, by ASIC and the Government through its Statement of Expectations, to ensure ASIC's role is consistent with the general community expectation that where the 'regulator' is approving the registration of a financial product, the regulator has assessed the product as suitable for consumers and there is a certain level of comfort consumers will be protected.

Registered Company Auditors

With respect to the effectiveness of ASIC's surveillance of registered company auditors (RCAs) and authorised audit companies⁴, we make the following observations.

1. A transparent appeals process is required. Whilst ASIC has an expert panel that is used to advise the surveillance team on their assessments of audits conducted, this panel is not available to RCAs or audit firms to challenge or appeal the audit inspection findings. An independent review process needs to be available to RCAs as matters raised in the inspection findings can often be a matter of professional judgement.
2. Increased inspection capability is required. The audits inspected by ASIC are the most high-risk and complex engagements conducted in Australia, which require extensive experience often gained over decades. Inspection teams likewise require a high level of specialist skill to be effective. Concerns have been voiced within the profession that there is insufficient resourcing of the inspection function with respect to having sufficient qualified and experienced individuals. Typically, inspection teams do not hold the same level of experience as the RCAs that they are inspecting. As a result, difficulties can arise, including an undue focus on the audit work effort in relation to an account without consideration of the context of the risk assessment or the narrowing of inspection scope. ASIC needs to ensure that its staff have the appropriate skills and experience, with succession plans in place. Attracting experience commensurate with the level of complexity may require additional funding to attract candidates who may have worked at senior levels within auditing firms.

² [Senate Economics Committee Inquiry - Sterling Income Trust](#).

³ PJC Inquiry Into the collapse of Trio Capital Limited, Submission by the Australian Securities and Investments Commission. p.15

⁴ Noting that audit partnerships do not need to be licensed, while surveillance activities focus on the audit firm – whether a company or partnership.

3. Risk assessment. The selection of audit inspections should differentiate between minor and major issues - and thus focus on key risks. It would be helpful if ASIC could rank its findings such that the major issues are ranked higher than minor issues, and that all issues are clearly identified, via a ranking process, in terms of what are the most important or highest risk matters to address. This would be similar to the approach taken by the United States Securities and Exchanges Commission.
4. Technological solutions. ASIC may benefit from leveraging technological tools to conduct data analytics when considering the adequacy of the risk assessment, the natural language processing used in examining audit workpapers or robotic process automation in assessing files. We are not aware of such tools being utilised currently.
5. More streamlined inspection process. Audit inspections can extend over long periods with teams sometimes returning to audit firms a long time after their initial visits, creating additional regulatory burden and uncertainty for these firms. Clearer Service Level Agreement (SLA) commitments about the process and timeframes to manage expectations would be beneficial. (It is noted that ASIC has been working on this process over the past year and some changes have occurred.)

Financial Reporting

In relation to financial reporting, we make the following observations:

1. The responsibility for setting accounting standards in Australia rests with the Australian Accounting Standards Board (AASB) under s227 of the ASIC Act. However, in recent times, ASIC has been involved in providing "guidance" on how certain accounting requirements should be applied. This includes the publication of the "[COVID-19 FAQs](#)", which not only provide accounting guidance for COVID-19 impacted circumstances, but also for other current matters too such as "customisation costs relating to cloud computing and SaaS arrangements". Since audit firms inspected by ASIC tend to "strongly recommend" their clients follow guidance issued by ASIC, this is seen by some as influencing how accounting standards are interpreted and applied.

Another example would be ASIC's initial view that, for Australian Financial Service (AFS) Licensees, right-of-use assets should be excluded (because they are considered intangible) from the net asset calculation, whilst the corresponding lease liabilities should not be excluded. CPA Australia argued against this inappropriate interpretation, which ASIC subsequently agreed not to introduce. Whether ASIC should be playing a role in providing directions on how the accounting standards are interpreted is a matter open to question.

2. There are other areas of financial reporting where ASIC's approach to setting requirements causes concern. The recent indication from ASIC that all AFS Licensees should prepare Tier 1 General Purpose Financial Reports (GPFR) is one such example. We (along with Chartered Accountants ANZ) have suggested to ASIC that this is an unnecessary and burdensome impost on many small AFS Licensees. We understand that ASIC is currently re-considering the matter before reaching a conclusion.
3. ASIC has been proactive in enabling digital financial reporting, albeit on a voluntary basis. We believe it is important for Australia to move to a mandated digital financial reporting regime. If digital reporting was mandated, this would need to be coupled with free access to the relevant data on the ASIC register (which is now transferring to the ATO). Free access to the data already available would also benefit efficient well-informed markets.
4. ASIC has recently Issued a [media release](#) signalling its intention to assist with the international development of sustainability reporting standards through the newly established International Sustainability Standards Board (ISSB) and the Introduction of these standards Into Australia. There Is no acknowledgement in the media release however, of similar Intentions expressed by the Australian Accounting Standards Board (AASB). This suggest that there Is a lack of agreement and distinct lack of clarity around who has responsibility and oversight of the Introduction of sustainability reporting standards Into Australia. As both ASIC and the AASB are agencies that operate under the Australian Treasury, we strongly recommend that agreement Is reached soon around who has responsibility for sustainability reporting In Australia.

Financial Advisers

In relation to the surveillance of financial advisers, our observations centre on ASIC's responsiveness, utilisation of data collected and its adaptability.

1. There is no transparency regarding the processes followed by ASIC when investigating potential breaches of the law, either identified by ASIC or referred to it by state or federal agencies, or industry associations. Also, there is little transparency about the progress of these investigations or their outcomes. The Sterling Income Trust collapse is a topical example.

A generally held perception by industry participants is that ASIC is a reactive regulator, whereas there appears to be an expectation within the community that it should be a more proactive regulator. That is, that it would take appropriate pre-emptive action to minimise potential impacts on consumers based on the risk assessment of financial products and financial advisers.

2. ASIC collects a wide range of data from AFS licensees and AFS licence applications, however it is not clear how, if at all, ASIC uses this data for surveillance activities. Two recent examples are the collection of data regarding Professional Indemnity Insurance (PII) and data collected from the breach reporting regime, that commenced on 1 October 2021.
 - a. ASIC collects a range of data regarding PII from AFS licence applicants and from annual renewals, such as level of cover, amount of excess and cover exclusions. Having appropriate and adequate PII cover is essential to ensuring consumers have adequate protection and access to restitution in the case of financial product or advice failure. However, discussions with ASIC throughout 2021 indicate that ASIC does not undertake any analysis of PII cover to ensure appropriate coverage and to strengthen consumer protection. A lack of resources was given as the reason. However, agencies with a similar role and less resources, such as the Tax Practitioners' Board are able to make a risk-based assessment of the appropriateness and adequacy of PII cover for a much larger population of registered tax agents (RTAs).
 - b. Since 1 October 2021 AFS licensees have been required to report to ASIC any breaches of the Corporations Law by authorised financial advisers. However, there has been no indication as to how ASIC may use the data collected. ASIC officers were asked in a professional association liaison meeting at the beginning of December 2021 if they could provide any insights into the data collected so far and if there were any trends developing. The response was that they were only required to report annually and didn't have any data to share. This is a missed opportunity for ASIC to adapt based on the data they have received. It is also a missed opportunity to collaborate with industry to identify trends, potential issues, areas that need attention and to proactively develop guidance or measures to address them.

Licensing

Apart from the discussion above regarding how data collected during the application process is utilised, our primary concern with licencing is in regard to the inconsistencies between SLAs for application processing within different regulated sectors.

Within ASIC's Service Charter, the processing time for application for registration for RCAs or audit companies is 28 days, while it is 14 days for managed investment schemes. However, the timeframe for granting or varying an AFS Licence ranges from 150 days (target:70 per cent) to 240 days (target: 90 per cent of applications).

These timelines are not conducive to supporting business, especially where the majority of financial planning businesses are now small to medium businesses. Five to eight months minimum does not assist these businesses to prepare when starting their business and to manage costs.

Our members have not provided any direct feedback with respect to the registration process for RCAs or audit companies.

Further consultation

CPA Australia suggests that the Authority considers holding roundtables with stakeholders and professional associations to further discuss, in greater detail, the range of issues identified. We welcome the opportunity to be consulted further. We also recommend that the Authority does not limit its assessment to the current effectiveness and capability of ASIC, but take the opportunity to use this review to identify and assess emerging issues and trends, along with future opportunities.

If you have any queries regarding this submission, please contact Michael Davison, Senior Manager, Advocacy and Retirement Policy on 02 6267 8552 or michael.davison@cpaaustralia.com.au.

Yours sincerely

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