28 January 2022

Mr Nicholas Moore (Chair)
Financial Regulator Assessment Authority

Via email: *FRAA@treasury.gov.au*

Dear Mr Moore,

ASIC assessment

Chartered Accountants Australia and New Zealand (CA ANZ) welcomes the opportunity to provide feedback to the inaugural assessment of the effectiveness and capability of the Australian Securities and Investment Commission (ASIC). The feedback reflects the experience of our members, many of whom are small business owners and hold particular licences including registered company auditor, registered liquidator and Australian Financial Services License (AFSL).

Importantly, our feedback reflects ASIC's processes up until July 1, 2021. We note that, from 1st July 2021, there is a revised *Regulator Performance Guide* to drive how regulators design and report on performance. While it appears ASIC intends to adopt the new guidelines for the financial year 2021-22, it remains unclear which of the existing reporting mechanisms will be retired.

It is our expectation that the new process will remove the need for one existing report being the Regulator Performance Framework: ASIC self-assessment. As such, for external stakeholders, to provide comments on the effectiveness and capability of ASIC we have reviewed ASIC's:

- Statement of Expectations
- Statement of Intent
- Corporate Plan – Strategic Priorities
- Enforcement Update
- Cost Recovery Implementation Statement (CRIS)
- Annual dashboard report
- Annual Report

Overall, we find it difficult to align the forecasts made in the first three documents above, which outline ASIC's strategic priorities, with the actuals presented in the last three documents. The key issue being that the forecasted activities in the Corporate Plan do not align with the activities undertaken and reported on in the CRIS. Our detailed response, against the questions posed, can be found in Appendix A.

In particular, the information provided in the CRIS which is ASIC's primary document to inform its regulated population and external stakeholders of its strategic priorities, resource allocation and decisions made. We find that, rather than provide detail, the CRIS contains overarching commentary with little to no detail on why the allocation of resources at sub-sector level changes drastically between years and between the CRIS provided for consultation (draft CRIS) and the final CRIS. For reference, Appendix B is our submission to the draft CRIS 2020-21 and details our concerns with ASICs communication process.

Finally, the CRIS is released solely at ASIC's discretion and, in the last few years, this has occurred after the financial period to which it relates. We do not consider this to be reflective of an effective regulator. At the commencement of a financial period, ASIC's regulated population are unaware of the priorities for their sub-sector, the estimated levy they should build into their budget and business plan or the specific support and guidance that ASIC intend to provide their sub-sector.

We would welcome an opportunity to discuss in greater detail how ASIC can better engage with its regulated population, better utilise the data ASIC request from their regulated population and how ASIC may provide its population more certainty on the levies they will be required to remit as they enter a new financial period.

Please reach out to Karen McWilliams with any queries on this submission or to organise a time to discuss in greater detail. Karen's contact details being karen.mcwilliams@charteredaccountantsanz.com or on +612 8078 5451

Yours sincerely

Simon Grant FCA
Group Executive
Advocacy & Professional Standing

Karen McWilliams FCA
Business Reform Leader
Advocacy & Professional Standing

Appendix A

Following are our response to those question raised which we are able to provide a response from the experience of our members.

Effectiveness and capability

1. We consider ASIC has a clear framework for setting strategic priorities which is outlined on page 06 of its Corporate Plan 2021-25, published in August 2021.
   What does appear to be missing from the planning process is testing the rigour of the threats and behaviours identified by ASIC, which set their strategic priorities, with its regulated population.

2. As it appears the planning process does not test ASIC's findings against the actual threats and behaviours with those mitigated on a daily basis by ASIC's regulated population, we would consider the current process to be ineffective.
   We are unable to comment on ASIC's use of data and technology to inform their processes as this information does not appear to be publicly available.

3. We do not consider ASIC is effective in the allocation of resources to its strategic priorities.
   Page 35 of ASIC's Corporate Plan 2020-24, Focus 2020-21 (the Plan), which considers resource allocation, directs the reader to the Cost Recovery Implementation Statement (CRIS) for detail on resource allocation.

   We have found it difficult to reconcile the forecasted allocation of resources, as outlined in the Plan, to the actual allocation, detailed in a CRIS and summarised in the Annual dashboard report 2020-21 (dashboard). For example, the Plan estimates around 70% of resources will be allocated to enforcement, supervision and surveillance activities. The actual allocation in the dashboard was 62.2%. Similarly, engagement with stakeholders was forecasted to be 4.2%, the actual was 1.9%.

   Of greater concern are those allocations not captured in the Plan, in particular, indirect costs. While there is no forecast in the Plan, indirect costs utilised 37.8% of ASIC resources.
   We are unable to locate information on how these indirect costs were allocated across other activities such as enforcement and surveillance.

   The differences for the period 2020-21:

Expense	Annual Dashboard			Plan
	$m		% of total	
Surveillance	$ 11.45		14.4%	**26.2%**
Enforcement	$ 34.53		43.5%	**44.8%**
Other Regulatory activities	**$ 3.46**		**4.3%**	
Industry engagement		$ 1.55	1.9%	**4.2%**
Education		$ 0.09	0.1%	**0.3%**
Guidance		$ 0.66	0.8%	**2.6%**
Policy Advice		$ 1.16	1.5%	**4.4%**
Indirect Costs	**$ 30.02**		**37.8%**	
Governance, strategy, legal		$ 7.98	10.0%	
IT support		$ 7.78	9.8%	
Operations Support		$ 5.03	6.3%	
Property & Corp services		$ 9.23	11.6%	
Registry				**11.0%**
Regulatory applications				**6.5%**
	$ 79.45		100.0%	**100%**

4. We are not aware of ASIC's internal oversight processes. For external oversight, we again refer to the CRIS being the key document for ASIC's regulated population.

   From consultations we sought in the second half of 2021, external oversight by Government appears compartmentalised. Treasury review the CRIS before release with the intent to oversee whether the allocation of costs is appropriate, not if the activities undertaken did give effect to ASIC's strategic priorities. The Department of Finance provide guidelines on how the Industry Funding Model can be implemented but do not appear to monitor if it is done so effectively.

   To gain feedback from its regulated population ASIC release a CRIS for consultation and invite feedback to understand if the commentary provides adequate detail in respect of the allocation of resources. Yet, though numerous submissions are made every year by industry, there is never any change in the commentary between the CRIS for consultation and the final CRIS.

   We conclude that it is intended that the regulated population hold ASIC accountable for decisions giving effect to their strategic priorities yet, as highlighted, the information provided by ASIC does not enable such monitoring or oversight.

5. We do not consider that ASIC clearly communicates its strategic prioritisation and decision-making for a specific financial period, or against its framework, to its external stakeholders.

   We refer again to the CRIS, which is intended to outline ASIC's forecast of costs and activities for the coming [financial] year, detail the allocation of costs for the previous year and provide indicative levies to help industry plan. Yet there is no timeframe placed on ASIC as to when this critical document must be published. For example, the CRIS for consultation for the financial period 2020-21 was not published until 23 July 2021, after the close of the relevant financial period. The current communication by ASIC means it is not possible for ASICs regulated population to support its strategic priorities as they are not aware of them until after the relevant period.

   Clear communication requires timely communication and requires transparency with its regulated population on how ASIC take their feedback into account when setting priorities and making regulatory decisions. We look forward to working with ASIC to enable them to meet the revised performance measures of a principles-based service that places an emphasis on genuine engagement with regulated entities and the broader community.

Surveillance function

1. We consider ASIC has a clear framework for setting strategic priorities, outlined on page 06 of its Corporate Plan 2021-25, published in August 2021, yet it is not clear how ASIC make decisions on resourcing each of these priorities.

2. It is difficult to comment on the effectiveness of ASICs surveillance activities as there is little information available as to the detail of these activities in each sub-sector. For example, for registered liquidators, ASIC surveillance appears to be analysing the thousands of reports they receive each year from this cohort. The outcome being various guides outlining ASIC's expectations on how external administrations should be conducted. Yet, the common experience of our members is that when they contact ASIC to clarify a technical issue, they are advised that ASIC cannot provide legal advice.

   Conversely, the ASIC's Audit Inspection Program and Financial Reporting Surveillance are seen to play valuable roles in promoting continuous improvement in financial reporting and audit quality. This cohort consider the surveillance activities do identify the important focus areas for preparers, directors and auditors. We disseminate ASIC's focus areas and findings amongst a large population of Australia's preparers, directors and auditors and utilise these insights to inform training, resources and conferences to equip members with targeted support.

While we value the ongoing collaboration with ASIC staff to towards these objectives, we raise our concern to confusion amongst stakeholders. Despite efforts in ASIC's detailed reporting to clarify the limited, risk-based nature of its inspection sample, which mean such comparisons are unlikely to be statistically valid, a commentary on findings across different periods and firms has persisted in the media, leading to confusion amongst stakeholders.

We remain concerned on the effectiveness of communication of the results of inspections and surveillance. The reporting on ASIC's Audit Inspection Program is aimed at investors and other stakeholders, and therefore notionally could impact confidence in audited listed company financial statements in Australia, confidence in the regulator and its data and communications, and confidence in Australia's capital markets more generally.

Given the highly subjective and judgemental nature of the vast majority of audit and financial reporting issues raised in ASIC's surveillance activities, effective resourcing and efficient and transparent processes for the escalation of issues and decision making are paramount.

3. We are unable to comment if ASIC is appropriately resourced to undertake effective surveillance. We do know that ASICs regulated population provide a raft of reports throughout a financial period so that ASIC have the raw data. In consultations with ASIC, ASIC have highlighted areas that remain on legacy systems making changes to those systems difficult if not impossible.

   For example, in looking for a Registered Liquidator, a member of the public is unable to see if they are fully licensed of hold a specific class of licence such as limited to a Restructuring Practitioner only, this class came into effect in January 2021. Similarly, when ASIC does upgrade or change technology it creates a break in statistics and ASICs ability to report on its activities. We refer to the notes at the bottom of page 32 of ASICs Annual Report 2020-21 which states 'Due to differences in the way enforcement activities were recorded in the legacy system compared to the new platform, statistics relating to the time taken to complete criminal and civil actions were not reported last year.'

   This does raise the question if ASICs surveillance activities are effective if they are is still reliant on legacy systems. Unfortunately, we cannot comment if ASICs surveillance systems are appropriate, that is undertaken with the latest technology, as the allocation of resources to technology is conveyed in the CRIS under the broad category 'Other costs' rather than by strategic priority.

4. We consider gaps remain in ASIC using data and technology to reduce regulatory impost. ASIC still require numerous forms to have wet signatures and be retained by a business – even where lodgement of that information to ASIC is electronic with no signature required.

   Equally there remains unnecessary duplication of effort by directors of businesses and ASIC's regulated population that provide services to these directors.

   For example, in external administration, directors are expected to complete details of the operation of their business on entering external administration in the Report on Company Activities and Property (RoCAP) and the registered liquidator must undertake investigations and also provide details of the operation of the business in various reports to ASIC. The complexity of the RoCAP is evident in that the form (Part A, lodged with ASIC, Part B a questionnaire that is not lodged with ASIC) is a total of 14 pages and the instructions to complete this form total 45 pages.

Like a lot of data provided to ASIC, registered liquidators have no transparency over how ASIC use the data provided in this form. Yet assisting directors to complete a RoCAP, undertaking investigations and completing the raft of reports required from registered liquidators, could be significantly streamlined through better use of technology combined with ASIC only seeking the data once and only data they will utilise to fulfil their role.

5. As noted in our response to question 3, we are unable to comment if ASIC has appropriately prioritised enhancing technology capability for its surveillance activities.

Licensing function

The key issue raised by our members in regard to the relationship between ASICs licensing function and its regulatory mandate is the overlap with other licensing regimes such as the Australian Taxation Office for tax and BAS agent.

For example, a member that runs their own small practice spends a disproportion amount of time on compliance with a myriad of reporting obligations imposed due to the raft of licenses held by their workforce and being incorporated. The myriad of reports provided appear to tell different areas of Government the same information through many, unrelated, digital platforms, with no transparency on how the data they provide is utilized. This time would be more effectively invested in providing low risk, highly valued, services to the community.

Accordingly, we welcome the introduction of the revised performance framework which requires continuous improvement and building of trust by regulators. ASIC will need to understand the costs and impact of its regulation and identify and seek to minimize duplication by harmonizing its activities with other regulators.

Appendix B

Extract from covering letter of submission to the CRIS 2020-21 for consultation

13 August 2021

Attention: Sarah Morgan, Adviser, Strategic Policy
Australian Securities & Investments Commission

By email: **policy.submissions@asic.gov.au**

Cost Recovery Implementation Statement: ASIC Industry funding model (2020-21)

Chartered Accountants Australia and New Zealand (CA ANZ welcome the opportunity to comment on ASIC's cost recovery implementation statement (CRIS) for the financial year 2020-21. Noting that ASIC provided Budget estimates for 2020-21 to Parliament in October 2020, we fail to understand why this CRIS was not released in the first few months of 2021. We provide the following comments in good faith that they will be considered in preparing the final CRIS for 2020-21.

The key resource that enables ASIC to meet its obligations as outlined in this CRIS is its regulated population. It is the regulated population that facilitates informed participation of investors and consumers; that provides data for ASIC to store; that provides the information about companies and other bodies ASIC makes available to the public; that enables individuals and business to meet their statutory obligations, giving effect to the law.

Through this submission we refer to a CRIS for comment as a draft CRIS to distinguish comments relating to a final CRIS. Further, our comments reflect the feedback from members that are registered company auditors, registered liquidators or hold a licence to provide personal advice to retail clients. Accordingly, the examples provided throughout this submission draw on the levies imposed on these subsectors.

ASIC process

Timing

There do not appear to be statutory timeframes for any step in ASIC's process and therefore no measure which the regulated population can hold ASIC accountable to in this regard. This appears unreasonable when considered against the statutory burdens placed on the regulated population. For example, the requirement to provide an annual return for the period 2020-21 to ASIC no later than September 2021. If these annual returns are outside the designated timeframe penalties will apply. Yet it appears to be solely at ASIC's discretion when a draft, and a final, CRIS are released.

The lack of timeliness shown by ASIC has seen it fall short of its stated purpose that 'The CRIS will also provide industry with indicative levies for the following year to help them plan.' The regulated population has been left guessing how much to budget from, in many cases, significantly reduced turnover in 2020-21 to meet ASIC's levies. Furthermore, expending levies over relevant clients is impossible when the quantum of the levy is advised at such a late date.

In our opinion, the release of the draft CRIS 2020-21 in July 2021 has not met the purpose of the model as stated at paragraph 20 (e) to 'improve our cost transparency and accountability to industry.' We also consider this reflects poorly on ASIC as the corporate regulator given the focus on improving corporate transparency and accountability.

The CRIS and actual levies

We understand the intent of a draft CRIS is to provide the regulated population with an indication of the levies that will apply for a financial year. However, we do not understand why a final CRIS, which is not released until actual costs are known, continues to provide estimates when the actual levies will have been determined.

While this CRIS provides estimates of levies to be invoiced in January 2022, past experience raises doubt on the figures provided. As outlined in Table 1 in Appendix A, estimates have borne little relation to actual levies in previous years with most actual levies being significantly higher.

We refer to the final CRIS for the financial period 2019-20 released in March 2021. Even nine months after financial year end to which it relates, the figures in the final CRIS (2019-2020) were still estimates. Those estimates, and the report content, also appeared unchanged when compared to the draft CRIS released in June 2020. Further, the estimates in the final CRIS bear little relation to the actual levies published earlier in the summary in November 2020. Refer Appendix A, Table 2. It does raise the question, if the final CRIS is released after levies are determined and does not reflect these actual levies, what is the purpose?

Additionally, in discussions with ASIC it appears explanations must be given to Parliament where actual costs exceed budget by more than $2 million or 10 per cent. Yet no such explanation is provided for activities within a subsector when actual levies exceed estimates by more than 10 per cent.

Without reconciliation of the estimated to actual levies, the regulated population has no transparency over ASIC's actual cost allocations for their subsector and little data with which to hold ASIC accountable that each subsector is only levied for the actual costs of regulating that sector.

This is of particular concern as many subsectors have experienced increases of greater than 20 per cent between the estimate in a draft CRIS and the actual levy. Even budgeting for higher levies than expected, many of the regulated population have been caught short with significant increases only revealed when actual levies are published. Refer Appendix A, Table 3.

Subsector specific comments

Auditors

The estimated levy for 2020-21 is $1127, an increase of 39% from 2019-20 of $811 (in the previous year, the levy increased by 290%).

Following the previous increase, we received a large amount of feedback indicating the levy is disproportionately impacting auditors across regional communities and in smaller and medium sized firms. Many of these auditors have retained their auditor registration to do vital work for community organisations, charities and not-for-profits. Moreover, feedback indicated that auditors did not feel they had received clear messaging regarding why these increases are occurring and what impact the additional funding will provide in terms of regulatory activities, with the delayed timing of the information exacerbating this communication issue.

This CRIS notes at paragraph 109 'A flat levy applies as a relatively small amount of our regulatory effort is expended on registered company auditors.' This statement appears contrary to the estimated total cost of regulating during 2020-21 of $4.107 million, an increase of 32% from the estimated cost of $3.1 million in final CRIS for 2019-20. Particularly as the focus during 2020-21 appears to have been, reflected in a more than 400% increase in the estimated cost, on enforcement.

The impact of these increases and the lack of timely communication is that many regional, small and medium audit practices are considering reducing their audit work or ceasing work as auditors altogether. Clearly this is a highly problematic outcome – many entities in regional areas, not for profits and SMEs rely on these auditors to be able to meet their statutory or constitutional obligations and continue operating, and to obtain the integrity and assurance of an audit. Regulation of the audit sector should overall strengthen it, not undermine its continuation – a lack of proportionality here appears to be putting at risk the continuation of many small and medium audit practices.

Registered Liquidators

The estimated levy per appointment or notifiable event for 2020-21 is $127, which is an increase of 60% from 2019-20 of $79.16.

To reveal the full impact on a registered liquidator, it is important to multiply this metric figure by the average numbers of appointments and events undertaken in a year. For example, the total levy for the 2019-20 period for one of our members was approximately $18,000. This was made up of the minimum $2,500 plus approx. $15,500 based on the number of reportable events. Based on the CRIS 2020-21 estimate, and assuming a similar workload, the total levy will be around $27,300,

This extraordinary increase does not seem proportionate to the potential risks in 2020-21 given ASIC's statistics on Companies entering external administration and controller appointments, Series 1, collapsed from 7,362 in 2019-20 to 4,235 in 2020-21. With a 42 per cent drop in insolvencies for 2020-21, the basis for this increase in surveillance and enforcement required over the same regulated population is unclear. It appears that the estimated increase is driven by increases in supervision (27%), policy advice (39%) and property and corporate services (22%).

With a significant decrease in work being undertaken by registered liquidators in 2020-21, we seek transparency over the risks which resulted in increased supervision, a list of the policy advice provided and detail on the additional property and corporate services utilised to regulate registered liquidators during this period of reduced activity.

As raised in our many discussions with ASIC, the various stimulus measures provided by all levels of government have sought to sustain businesses and jobs. The success is evident in the continued decline of companies entering external administration. This declined is mirrored in the revenue of registered liquidators, small business themselves, evidenced by the proportion of registered liquidators in receipt of the Jobkeeper subsidies themselves.

When the economy begins to recover and stimulus measures are withdrawn, Australia will need registered liquidators to ensure those businesses that must close do so in an orderly manner and return the best outcome for creditors and the overall economy,

Accordingly, we seek a waiver of levies for registered liquidators for the period 2020-21.

Financial advice

The estimated levy for 2020-21 per adviser is $3138, an increase of 29% from 2019-20 of $2426 (for licensees that provide personal advice to retail clients on relevant financial products)

This estimated increase follows dramatic year-on-year increases since inception of the Industry Funding Model. The amount charged per financial planner increased 160 per cent in the two years to 2019-20. These increases are particularly unfair on advisers who practice under a limited AFSL where, in many cases, licensed advice accounts for less than 10% of revenue to the practice, yet the levy is the same as it is for those who are solely financial advice providers.

The impact of such significant increases has resulted in a sustained reduction in the number of financial advisers. Around 26,000 advisers were registered with ASIC in 2017-18, dropping to around 24,000 by 2019-20 and continuing to fall to under 20,000 currently. Simultaneously, the impacts of COVID and Australia's ageing population have seen more and more Australian individuals and small businesses needing affordable advice. We therefore have a growing advice gap, and with continuing escalating regulatory costs, there is widespread speculation that the population of financial advisers will continue to fall over the next few years.

Lastly, we believe it is inappropriate to see fines from remediation activities in the sector go into consolidated revenue, when they should be offset against future levies, particularly when the fines primarily come from action taken against institutions who no longer participate in the sector.

Final CRIS 2020-21

In preparing the final CRIS for 2020-21 we seek that:

- the figures represent the actual cost across each activity in each subsector, not estimates;
- for each sub-sector and across each activity, where there is a variance of more than 10% between the estimate in this draft CRIS and the actual cost and levy, a detailed explanation of the cause for that variance; and
- ASIC to hold themselves accountable to their self-determined timeframes as provided in the table of key events and estimated dates.

For ASIC to maintain, facilitate and improve Australia's financial system it must be transparent with, and accountable to, its regulated population. That regulated population seeks transparency through estimates of levies being provided during the related financial period and actual levies detailed across activities for each subsector in the final CRIS. The regulated population seeks accountability through statutory timeframes being placed on ASIC's key events with compensation provided to the regulated population if these timeframes are not met.

Appendix C

About Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand (CA ANZ) represents 131,673 financial professionals, supporting them to make a difference to the businesses, organisations and communities in which they work and live. Chartered Accountants are known as Difference Makers. The depth and breadth of their expertise helps them to see the big picture and chart the best course of action

CA ANZ promotes the Chartered Accountant (CA) designation and high ethical standards, delivers world-class services and life-long education to members and advocates for the public good. We protect the reputation of the designation by ensuring members continue to comply with a code of ethics, backed by a robust discipline process. We also monitor Chartered Accountants who offer services directly to the public.

Our flagship CA Program, the pathway to becoming a Chartered Accountant, combines rigorous education with mentored practical experience. Ongoing professional development helps members shape business decisions and remain relevant in a changing world.

We actively engage with governments, regulators and standard setters on behalf of members and the profession to advocate boldly in the public good. Our thought leadership promotes prosperity in Australia and New Zealand.

Our support of the profession extends to affiliations with international accounting organisations.

We are a member of the International Federation of Accountants and are connected globally through Chartered Accountants Worldwide and the Global Accounting Alliance. Chartered Accountants Worldwide brings together members of 15 chartered accounting institutes to create a community of more than 1.8 million Chartered Accountants and students in more than 190 countries. CA ANZ is a founding member of the Global Accounting Alliance which is made up of 10 leading accounting bodies that together promote quality services, share information and collaborate on important international issues.

We have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents more than 870,000 current and next generation accounting professionals across 179 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications.

We employ more than 500 talented people across Australia, New Zealand, Singapore, Malaysia, Hong Kong and the United Kingdom.