Proposed industry funding model for ASIC

Submission by UniSuper

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Introduction

ABOUT UNISUPER

UniSuper is the superannuation fund dedicated to people working in Australia's higher education and research sector. With approximately 400,000 members and $50 billion in funds under management (as at June 2015), UniSuper is one of Australia's largest superannuation funds and has one of the very few open defined benefit schemes.

This submission has been prepared by UniSuper Management Pty Ltd (ABN 91 006 961 799) which acts as the administrator of the Trustee, UniSuper Limited (ABN 54 006 027 121).

Proposed industry funding model

Government should recover the cost of ASIC's regulatory activities directly from industry participants through fees and levies calibrated to reflect the cost of regulating different industry sectors. Government would continue to set ASIC's overall funding needs. However, this would be done through three-yearly funding reviews.

Financial System Inquiry, Recommendation 29[1]

Under a flat levy calculation…[t]he amount they pay only reflects differences in the size of their assessable base.

Under a risk-based calculation, the rate of the levy would vary…depending on an assessment of their riskiness. This can be done in an attempt to discourage excessive risk-taking, to counter moral hazard and to sharpen market disciplines...[2]

Reserve Bank of Australia

In principle support for risk-adjusted levies

In a regulatory model designed to ensure that those who create the need for regulation bear its cost, we would support a model based on imposing risk-adjusted levies on market participants. All things being equal, those who pose the greatest risk to the market - in terms of their regulatory and compliance performance - should pay more because they create a greater cost for regulators to oversee them.

We do not believe that flat levies based on size alone are fair or appropriate. Further, levies that are not risk-adjusted are likely to reduce the incentive to invest time and resources into an organisation's risk and compliance functions. The imposition of risk-adjusted levies would strengthen a culture of risk management through clear "price signals" for poor compliance practices.

While there are trade-offs with risk-adjusted levies being potentially more complex to design and administer as well as potential competition effects, we strongly believe that risk-adjusted levies are ultimately superior to flat, size-based levies which are not likely to create the right incentives for market participants.

[1] Financial System Inquiry Final Report, http://fsi.gov.au/publications/final-report/ (accessed 23 September 2015) 250-253
[2] Reserve Bank of Australia, Submission to the Financial System Inquiry, http://fsi.gov.au/files/2014/04/Reserve_Bank_of_Australia.pdf (accessed 25 September 2015) 61

There is a distinction between public & non-public offer superannuation funds

The Consultation Paper does not make a distinction between public offer and non-public offer (or restricted access) superannuation funds. We believe that this is an important distinction that should be taken into account with the setting of any levies.

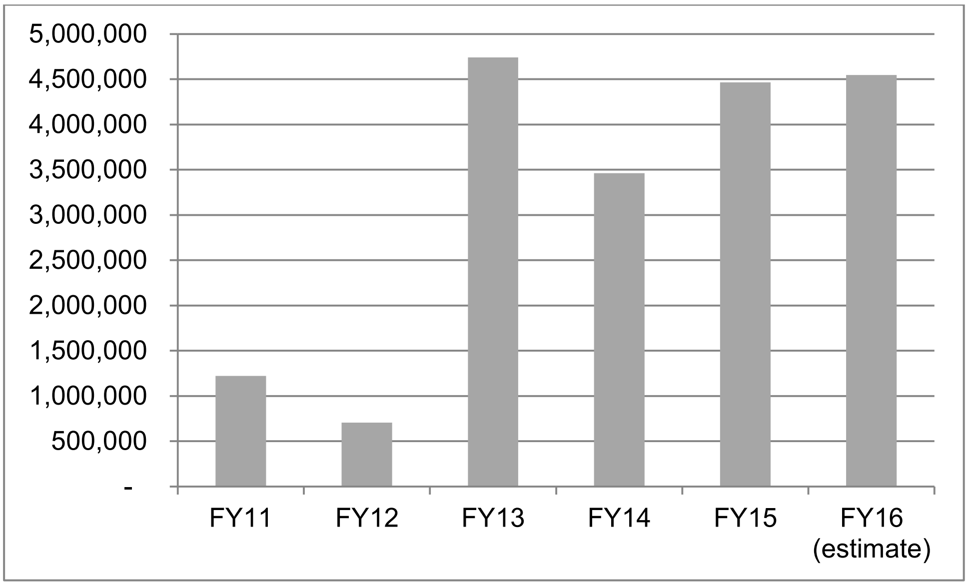
A restricted access super fund is only offered to a contained population of members, typically based on their employment with a particular employer or industry. Consequently, within a contained population, industry-wide consequences would be less likely as would be contagion resulting from compliance issues. While it would be arguably hard to quantify the risk differential between public-offer and non-public offer funds, we believe it is still possible and appropriate to make this distinction.

Determining ASIC's annual levies and ensuring funding accountability

The process of determining ASIC's annual levies is a key part of an industry-funding model, particularly where price signals are to be used to encourage better regulatory compliance from market participants and performance from regulators.

The existing process for collecting Financial Institution Supervisory Levies does involve consultation but does not have a focus on encouraging and improving behaviour. We believe a more consultative approach is required.

In the chart below, we highlight the *APRA levies* that have been paid by UniSuper over the past five years, along with an estimate for 2015/16. These levies have been hard to predict, and hence budget for, and have varied significantly based on the need to fund regulatory initiatives.



Our estimate of the likely annual levy imposed on UniSuper and related entities is in the order of $180,000. Taken together with the above APRA levies, UniSuper's total levies constitute material amounts, particularly when there is significant focus on the management costs of superannuation funds.

To ensure that levies are fairly and appropriately collected from each industry sector and sub-sector, we would encourage the regular publication of detailed information of amounts collected across ASIC's regulated population. Table two in the Consultation Paper summarises the industry sectors and sub-sectors in Australia and we submit that detailed breakdown of levies collected across this population will be important.

We note that in New Zealand, the Ministry of Economic Development has prepared the following detailed breakdown of the Financial Markets Authority (FMA) levy[3]:

Table 3: Distribution of FMA levy across the financial sector

	Market Participants	**Estimated Revenue excluding GST (Million)**	**% of Total Levy Collected**
Class 2	Registered banks and non-bank deposit takers	1.75	11%
Class 3	Insurers	1.67	10%
Class 4	Licensed trustees and statutory supervisors	0.57	3.5%
Class 5	Issuers of specified managed funds[6]	3.31	20%
Class 1, 6 and 7	Levy on application for FSP registration, exchange participants, contributory mortgage brokers, authorised futures dealers, FSPs entering into and trading particular financial products on behalf of another person[7], FSPs offering broking services, authorised financial advisers, and registered FSPs which are not subject to a levy in classes 2 to 6	3.90	24%
Class 8 and 9	Public issuers and issuers registering a prospectus	0.96	6%
Class10 and 11	Registered exchanges and authorised futures exchanges	0.03	0.2%
Class 12 and 13	Licensed auditors (via accredited body) and overseas auditors	0.22	1.3%
Class 14 and 15	Companies and other registered entities at registration[8] and annual return[9]	4.00	24%
Total		**16.4**	

We strongly encourage a similar approach in Australia.

[3] Ministry of Economic Development (NZ), Regulatory Impact Statement, http://www.treasury.govt.nz/publications/informationreleases/ris/pdfs/ris-med-flf-jun12.pdf (accessed 21 September 2015) 8 also see Annex 2

Further, to ensure that levies are fairly and appropriately collected from each industry sector, the composition of the proposed Cost Recovery Stakeholder Panel should be broad to accommodate the significant diversity of financial and non-financial regulated entities.

We suggest that any associated working groups recognise the diversity of industry participants, particularly superannuation funds, where there are key distinctions between public and non-public offer funds as well as between defined contribution and defined benefit schemes.

We note that non-financial corporates are within ASIC's regulated population, and we seek further information on the likely contribution paid by that sector towards ASIC's regulatory activities.