

10 March 2017

Manager
Corporations and Schemes Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: asicfunding@treasury.gov.au

Dear Mr McAuliffe

Re: ASIC Supervisory Cost Recovery Levy Bill 2017 and Related Bills

In brief:

AIST strongly supports the introduction of an ASIC industry funding model and the move towards greater transparency. However, AIST does not support carve-outs from complying with the Government's Cost Recovery Guidelines (CRG). The objectives set out in the Levies Bill need to reflect compliance with the CRG, and that the levies raised need to reflect the volume of ASIC's focus on particular entities and sub-sectors (including profit-to-members and for-profit subsectors). It is critical that consultation also occurs regarding any draft Regulations, which will set the levy calculation methodology.

Thank you for the opportunity to comment on this exposure draft legislation (the draft Bills), which will introduce an industry funding model for ASIC's regulatory activities.

AIST strongly supports the introduction of such an industry funding model and its move towards transparency and accountability. In the past, AIST's key concern was that there was a significant lack of transparency regarding the raising of ASIC levies. This key concern was primarily driven through the lack of compliance with the Australian Government Cost Recovery Guidelines (the

CRG¹) and the Australian Government Charging Framework ('Charging Framework')². AIST welcomes annual calculations based on ASIC's previous year's activities, coupled with a Cost Recovery Impact Statement, and calculations which take into account outcomes from the implementation of the Regulator Performance Framework³.

The draft Bills go some way to improving the transparency of ASIC levies. However, some of AIST's key concerns remain. In summary, these are:

1. Non-compliance with the CRG.

The draft Bills (if implemented) would seek to recover **all** of ASIC's regulatory costs – even if this is contrary to the CRG. AIST strongly opposes the concept of items being included which are not leviable. As stated in the CRG, 'A cost recovery levy ... differs from general taxation as it is 'earmarked' to fund activities provided to the group that pays the levy.'

From the previous consultations, it is clear that ASIC's total costs include items which are not recoverable if the CRG is applied. For example, the costs of ESA, financial literacy, the administration of unclaimed moneys, administration of the Assetless Administration Fund, or the operation of the North Queensland insurance aggregator website were all mentioned as being included in ASIC's total costs. While AIST understands that these are all worthy activities, they are not activities which should be levied: they are not leviable if the CRG is applied. Further, they are not activities where it may be said that these activities specifically relate to the entities being levied.

AIST cannot support carve-outs from the CRG.

¹ Australian Government, Department of Finance, (2014). *Australian Government Cost Recovery Guidelines, July 2014 - Third edition*. Resource Management Guide No.304. [online] Australian Government. Available at: <http://tinyurl.com/lplwh2g> [Accessed 8 March 2017].

² Australian Government, Department of Finance, (2015). *Australian Government Charging Framework*, Resource Management Guide no. 302. [online] Australian Government. Available at: <http://tinyurl.com/grrwr8q> [Accessed 8 March 2017].

³ Australian Government, (2014). *Regulator Performance Framework*. [online] Australian Government. Available at: <http://tinyurl.com/ht72fsy> [Accessed 8 March 2017].

2. The objectives drive the levy calculation methodologies. The objectives need to be more clearly stated to ensure the levy calculation methodology delivers greater regulatory focus.

The objectives proposed within the *ASIC Supervisory Cost Recovery Levy Bill* are both incomplete and contrary to the CRG. To overcome this, the following should be included within the Objectives:

- Compliance with the Government's CRG.
- That the volume ASIC's regulatory activities on various entities and sectors be linked with the amount of levy raised.
- That ASIC is to commence publicly reporting on its regulatory activities on a risk-related basis, including by sub-sector. This would assist with identifying the need to collect higher levies at a sub-sector or entity level. Such risk-related data could include the number of breaches, data from External Dispute Resolution sources, ASIC time spent on particular entities or sub-sectors, and the number of entity internal complaints.

It is extremely important to ensure these objectives are solid since the Regulations (which will include the levy calculation methodology) must take the objectives into account.

3. The definition of 'sub-sector' needs to include by industry sector – profit-to-member and for-profit.

This definition enable the collection of levies based on the level of breaches and various consumer complaints and compensations flowing from sub-sectors (e.g. the for-profit sector).

The definition of 'sub-sector' is to be determined by Regulations. AIST strongly recommends that the definition include (as does APRA data reporting) the sectors of profit-to-member / for profit sector. ASIC has repeatedly pointed out that poor culture within banks (for profit sector) is a driver of poor conduct, regulatory failures and associated consumer losses. It is critical that as part of the industry funding model, regulatory focus should enable an assessment of the relative risk of industry sub-sectors to better understand the relative risks of profit-to-member subsector compared with the for-profit sub-sector. Levies should be raised accordingly.

4. Monies for the SCT should be separately accounted for.

AIST strongly believes that monies for the SCT should be separately accounted for and should not form part of the ASIC levy. This matter needs to be included within the draft Regulations.

As AIST has argued in previous submissions (including to the Ramsay Review), the ability of the SCT to fulfill its statutory obligations is directly related to its funding, and the accountability of this funding.

The SCT needs to receive adequate resources on an ongoing basis to ensure that it continues to meet their caseload, without backlogs increasing again - that do not require further ad-hoc funding increases.

In funding the SCT, superannuation funds need the funding to be clearly identified, and separated from ASIC's funding. In the event the Government does not accept our primary submission for completely separate funding, AIST calls for the allocation to the SCT to be separately identified as a line item in ASIC's funding, and for this to be reconciled against the SCT Budget on an annual basis.

5. We do not know whether the calculation methodology will meet the objective of being simple and certain.

In our December 2016 submission, we commented that we are currently unable to undertake calculations and would require further data. Because the levy calculation methods or formulae are to be dealt with by Regulation (which are not yet available), AIST is unable to comment on the methodology.

6. We do not know the basis for waiving levies.

Section 14 of the *ASIC Supervisory Cost Recovery Levy (Collection) Bill 2017* would enable the waiver of levies payable. AIST would like to gain an understanding of the basis when this might occur.

AIST would also greatly welcome further consultations regarding both any draft Regulations as well as the proposed ASIC web portal which would be used to provide information to ASIC. The draft Regulations will be critical as they will deal with the levy calculation methodology.

Given the above concerns, we now turn to our recommended amendments to the Draft Bills. We have identified the amendments with either underlining (insertions) or 'strikethrough' (deletions) for ease of reference.

ASIC Supervisory Cost Recovery Levy Bill 2017 ('Levies Bill')

Subsection 7(1) (Definitions) – add a definition of Cost Recovery Guidelines

Cost recovery guidelines means the Australian Government Cost Recovery Guidelines, July 2014 or any substitution.

Subsection 7(1) (Definitions) – amend the definition of ‘sector’

sector means:

- (a) the regulations may specify sectors using the APRA groupings of not for profit, retail, and corporate funds; and
- (b) ~~(a)~~ if the regulations specify sectors—a group of one or more entities each of which meets the criteria specified in the regulations for the sector; or
- (c) ~~(b)~~ otherwise – a group of one or more entities each of which satisfies a particular paragraph of the definition of **regulated entity**.

Note: An entity may form part of more than one sector.

sub-sector has the meaning given by the regulations.

Subsection 9(2) (Amount of levy) – expand the objectives to provide a more solid foundation for levy-raising

The objectives are:

- (a) that the Cost Recovery Guidelines must be applied.
- (b) subject to the Cost Recovery Guidelines, that the total amount of levy payable by all leviable entities in relation to a financial year equals the amount of ASIC’s regulatory costs for the financial year; and
- (c) subject to the Cost Recovery Guidelines, that the total amount of levy payable by all leviable entities in a particular class, sector, or sub-sector in a financial year equals the amount of ASIC’s regulatory costs relating to that class, sector, or sub-sector for that financial year.
- (d) That in setting the levies, the importance, volume, risk-mitigation and impact of ASIC’s regulatory costs (including upon a particular class, sector, or sub-sector) in a financial year be taken into account.

Section 10 (Meaning of regulatory costs) – Amend the subsection so that the meaning of ‘costs’ takes into account the proposed amendments to subsection 9(2) Objectives

10 Meaning of regulatory costs

Subject to subsection 9(2):

- (1) ASIC’s **regulatory costs** for a financial year means the lesser of:
 - (a) the sum of all amounts appropriated by the Parliament for the purposes of ASIC for the financial year; and
 - (b) the amount determined in an instrument under subsection (2) for the financial year.
- (2) ASIC must, by legislative instrument, determine the amount that is the cost to ASIC of regulating leviable entities for a financial year.

- (3) A legislative instrument under subsection (2) may only be made, for a financial year, after the last day by which returns relating to the financial year must be lodged with ASIC under section 10 of the ASIC Supervisory Cost Recovery Levy (Collection) Act 2017.
- (4) If the amount of levy collected in relation to a financial year falls short of, or exceeds, the amount of ASIC's regulatory costs for the financial year, ASIC must, in making an instrument under subsection (2):
 - (a) for an excess of collected levy—reduce the amount of its regulatory costs for the following financial year by the amount of the excess; or
 - (b) for a shortfall of collected levy—increase the amount of its regulatory costs for the following financial year by the amount of the shortfall.
- (5) The regulations may prescribe amounts that ASIC may not include in the amount determined under subsection (2).

ASIC Supervisory Cost Recovery Levy (Collection) Bill 2017

AIST does not have any comments regarding this Bill other than wishing to be part of any consultations regarding the design of the ASIC web portal which will be used to remit data to ASIC.

ASIC Supervisory Cost Recovery Levy (Consequential Amendments) Bill 2017

Section 2 of Schedule 1 of the exposure draft Bill which adds a new Division 4 (Transparency) to the Australian Securities and Investments Commission Act 2001 – Amend the proposed new section 138 so that the meaning of costs takes into account the proposed amendments to subsection 9(2) objectives within the Levies Bill

138 Annual “dashboard” report about ASIC’s regulatory costs

- (1) Subject to subsection 9 of the *ASIC Supervisory Cost Recovery Levy Act 2017*, as soon as practicable after 31 October in each year, ASIC must publish on its website the following information in respect of the financial year ending on 30 June in that year:
 - (a) its total regulatory costs in relation to leviable entities;
 - (b) the total regulatory costs from paragraph (a), apportioned on the basis of sector and sub sector;
 - (c) the sector costs from paragraph (b), apportioned on the basis of costs relating to different kinds of activities undertaken by ASIC in the financial year;
 - (d) the sector costs from paragraph (b), apportioned on the basis of costs relating to different kinds of expenses incurred by ASIC in the financial year;
 - (e) any other information required by the regulations.
- (2) This section applies in respect of the financial year that ends after the commencement of the *ASIC Supervisory Cost Recovery Levy Act 2017*, and later financial years.

Please contact Karen Volpato, Senior Policy Advisor on 0419127496 or at kvolpato@aist.asn.au should you wish to discuss our submission.

Yours sincerely,

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A handwritten signature in black ink, appearing to read 'Tom Garcia', is written over a light blue horizontal line.

Tom Garcia
Chief Executive Officer

The Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public-sector funds.

As the principal advocate and peak representative body for the \$700 billion profit-to-members superannuation sector, AIST plays a key role in policy development and is a leading provider of research.

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