



24 March 2017

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

Email: asicfunding@treasury.gov.au

Dear Madam/Sir,

Exposure Draft legislation for ASIC Cost Recovery

The SMSF Association welcomes the opportunity to make a submission on the Exposure Draft legislation to enact the legislative framework for ASICs cost recovery levy. We apologise for the late submission.

Broadly the SMSFA has been supportive of the proposal of a model that gives ASIC more accountability to industry and consumers in the activities it undertakes and gives industry and consumers understanding of the actual costs of ASIC supervision.

We believe that a proper funded regulator of financial services is essential to consumer confidence and a sustainable financial services industry in Australia.

Framework legislation

The SMSFA has concerns with the lack of detail in the proposed legislation. This creates uncertainty for industry about significant costs that may be incurred based upon regulations that are presently unknown. The ASIC funding model will create a substantial additional regulatory burden and additional costs and accordingly these changes should be made with increased consultation and appropriate Parliamentary oversight, rather than regulations close to implementation date.

The SMSFA understands Treasury's desire for flexibility within the framework to allow for appropriate changes and responses but it is difficult to support the Bills in their current format. There is no information about cost recovery methodology, sub-sectors, reporting requirements and who will be required to pay for elements of ASIC's activity.

With entities potentially passing the cost onto consumers, providing certainty for industry will allow them to plan for the changes which will be in place on 1 July 2017. Without due process and procedural fairness industry may be surprised about details in the cost recovery implementation.



In our previous submission on the discussion paper, we raised a number of issues that are not addressed in the legislation and will need to be covered by regulations including:

- If ASIC has in place or can develop adequate cost allocation measures (particularly for the direct cost of labour) to regulatory measures corresponding to different market segments?
- What incentives there will be for efficiency or streamlining in ASIC?
- Whether a cost-recovery model that rewards good corporate citizens in the financial advice sector is being considered?
- How will general advice be levied?
- What the proposed fee structure for SMSF corporate trustees will be?
(The discussion paper indicated that Small Pty Ltd corporations would be subject to an annual levy of \$5. It would be appropriate in the interests of red-tape reduction if this was included in the ATO's annual levy collected from SMSFs and have an intergovernmental transfer.)

Accordingly, we believe that the draft Regulations should have been released for consultation in conjunction with the draft Bills. Given that all the detailed and necessary information regarding the application and operation of the proposed levy will be in the Regulations, consultation will be essential, and we encourage Treasury to expedite the release of the draft regulations.

We have the following specific comments on the draft legislation:

ASIC Supervisory Cost Recovery Levy Bill 2017

- The SMSFA proposes that paragraph 9(5)(d) of the Levy Bill needs further clarification due to its retrospective nature. As the ASIC funding commences from 1 July 2017 for a levy to be collected in financial years onwards it is not immediately clear why acts or circumstances existing before 1 July 2017 may need to be taken into account to determine the levy.
- Similarly subsection 9(9) of the Bill needs explanation in the explanatory memorandum as to why it is needed or justifiable. Allowing a legislative instrument to act retrospectively is a significant difference to how legislation generally operates and should accordingly be justified to the public to enhance transparency.

ASIC Supervisory Cost Recovery Levy (Collection) Bill 2017

- The SMSFA seeks further justification and clarification around section 9 which imposes a 20% monthly penalty for non-payment of the levy.
- The SMSFA proposes that the application of draft subsection 17(1) be expanded to apply to review decisions more than just those regarding waiving of the levy. Payment, recovery and shortfall should all be applicable to reviews to improve ASICs accountability.
- The SMSFA also propose subsection 17(5) be removed from the Collections Bill. This provision removes all accountability to industry from ASIC as it removes the conclusion of a review. It also is unclear how provision (6) works in conjunction with (5).



ASIC Supervisory Cost Recovery Levy (Consequential Amendments) Bill 2017

- The SMSFA believes that the requirement that ASIC publishes an annual dashboard regarding its regulatory costs “as soon as practicable after 31 October each year” is not a sufficiently rigorous reporting requirement.
- We believe a certain deadline for this reporting on annual basis is required due to the need for transparency on ASIC’s regulatory activity costs which drive its levying if regulated entities on a cost-recovery basis.

If you have any questions about our submission please do not hesitate in contacting us.

Yours sincerely,

A handwritten signature in black ink, appearing to read "A. Slattery".

Andrea Slattery
Managing Director/CEO
SMSF Association