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Manager
Banking, Insurance and Capital Markets Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: supervisorylevies@treasury.gov.au

Dear Sir/Madam

APRA Financial Institutions Supervisory Levies

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission on the *Proposed Financial Institutions Supervisory Levies for 2017-18*.

About ASFA

ASFA is a non-profit, non-political national organisation whose mission is to continuously improve the superannuation system so people can live in retirement with increasing prosperity. We focus on the issues that affect the entire superannuation system. Our membership, which includes corporate, public sector, industry and retail superannuation funds, plus self-managed superannuation funds and small APRA funds through its service provider membership, represent over 90 per cent of the 14.8 million Australians with superannuation.

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If you have any queries regarding the contents of our submission, please contact Andrew Craston on (02) 8079 0817 or by email acraston@superannuation.asn.au, or me on (02) 8079 0808 or by email gmccrea@superannuation.asn.au.

Yours sincerely



Glen McCrea
Chief Policy Officer

Executive Summary

ASFA has some concerns regarding the determination of the Financial Institutions Supervisory Levies (FISLs), as outlined in the Government's Discussion Paper for the proposed FISLs for 2017-18 (the Discussion Paper). ASFA has expressed similar concerns in submissions to the consultation processes for prior years' FISL determinations.

In general, ASFA considers there is a lack of transparency regarding the costs recovered via the FISLs. The Discussion Paper is not sufficiently detailed for industry to adequately understand how the 2017-18 levies are determined and how they are allocated between, and utilised by, the relevant agencies. Further, the lack of information on FISL determinations for preceding years means it is not possible for industry to assess whether the relevant agencies are delivering value for money, nor the degree to which the superannuation industry might effectively be cross-subsidising other participants in the financial services industry.

ASFA has particular concerns with the SuperStream component of the FISLs. In particular, for the period beyond 2017-18, there is a need for greater clarity around the future funding of 'business as usual' (BAU) SuperStream activities. In this regard, ASFA considers that Treasury and the ATO should advise industry of the proposed funding model for SuperStream BAU costs.

With respect to SuperStream projects, the current levy arrangements cease in 2017-18. However, it is not clear whether the ATO's total SuperStream project expenditure (including for proposed projects) will ultimately exceed the total SuperStream levies collected (including for 2017-18). In this regard, it is not clear whether the Government would seek to fund the difference from consolidated revenue, or by imposing additional levies.

The SuperStream levy arrangements should recognise that the beneficiaries of SuperStream are not limited to APRA-regulated superannuation funds and their members. Treasury should reinvestigate options to subject Self Managed Superannuation Funds (SMSFs) to the SuperStream levy component, and consider whether a portion of the SuperStream component reflecting the benefits delivered to non-levied entities should be met from consolidated revenue.

ASFA has concerns about the transparency of the ASIC component of the levy. From 1 July 2017, none of ASIC's ongoing costs will be recovered from the FISLs, but instead via the ASIC industry funding model. The Discussion Paper notes that some of ASIC's costs will continue to be recovered via the FISLs – including for the Superannuation Complaints Tribunal (SCT). However, for 2017-18, the Discussion Paper does not provide sufficient information on which costs would be recovered via the FISLs, and whether the amounts are appropriate.

Under the Government's proposed external dispute resolution framework, the SCT will continue to operate – and be funded via the FISLs – until 30 June 2020. ASFA considers that it is imperative that the SCT receive adequate resourcing for it to clear its caseload by that time. ASIC should also be required to provide more detailed information about the funding provided to the SCT for its operational purposes until wind-up.

Detailed comments

1. General lack of transparency regarding costs recovered via the FISLs

ASFA has long had concerns with the lack of transparency in the levy determination process for the FISLs. ASFA has highlighted these concerns in its submissions to the consultation processes for prior years' FISL determinations, and has raised similar concerns in responses to the Financial System Inquiry and the Government's consultation process for the ASIC industry funding model.

Broadly speaking, ASFA considers that the information provided as part of the levy determination process is not sufficiently detailed for industry to adequately understand how levies are determined and how they are allocated between, and utilised by, the relevant agencies. This includes the information in the annual FISL Discussion Papers and the annual Cost Recovery Impact Statements (CRISs).

- The Discussion Paper (for the *Proposed Financial Institutions Supervisory Levies for 2017-18*) identifies a total levy amount allocated to each agency with respect to regulation of the superannuation industry. There is little detail on how those amounts relate to the various activities conducted by each agency.
- Similarly, the most recent CRIS (June 2016) contains only a high-level breakdown of APRA's supervisory effort by industry. As has been the case in previous years, an updated CRIS was not released with the FISLs Discussion Paper to inform industry's consideration of the proposed levies for 2017-18.

Given this, it is not possible for industry to assess whether the relevant regulators and agencies are delivering value for money, nor the degree to which the superannuation industry might effectively be cross-subsidising other participants in the financial services industry.

The superannuation industry is currently facing increased scrutiny, including as a result of the Productivity Commission's review of efficiency and competitiveness of the superannuation system, and the enhanced disclosure requirements in relation to fees and costs. As such, ASFA considers it appropriate that a high level of scrutiny should apply with respect to the costs recovered from industry via the FISLs.

2. SuperStream levy component

Since its implementation, ASFA has expressed concerns about the SuperStream component of the FISLs. In particular, ASFA has expressed concerns about the lack of transparency regarding the levy calculation and the details of project expenditure, and that the government seeks cost-recovery only from APRA-regulated funds. ASFA has raised these concerns in its submissions to prior years' Discussion Papers on the FISLs.

Lack of transparency of SuperStream costs

As has been the case in previous years, it is ASFA's view that the Discussion Paper does not provide sufficient information for industry to determine whether the total cost recovery for SuperStream – \$422 million over the period 2012-13 to 2017-18 – is justified.

The Discussion Paper does not contain sufficient detail on the costs of SuperStream. With respect to the proposed levies for 2017-18, the paper includes only a high-level list of the activities to be undertaken by the ATO, and there is no indication of the anticipated cost of these activities. Although the vast majority of the 2017-18 amount would relate to SuperStream projects, some would relate to BAU costs. There is, however, no information about the relative amounts.

Similarly, there is no detail regarding prior years' levies. Given that annual levies are based on anticipated expenditure (for the coming financial year), the Discussion Paper should provide information on how prior years' levies have been spent. In ASFA's view, the need for such information is heightened where the amounts involved are significant, as is the case for SuperStream.

SuperStream costs beyond 2017-18

For the period beyond 2017-18, there is a need for greater clarity around the future funding of BAU SuperStream activities, as well as funding arrangements for SuperStream project expenditure.

With respect to how future BAU costs for SuperStream will be funded, ASFA anticipates that, given the move in 2015-16 to full cost recovery of the ATO's activities in relation to superannuation, the ATO will seek to recover these costs via the annual FISLs. Although ASFA is not opposed to this in principle, ASFA considers that the framework for levy determination would need improvement.

ASFA considers that Treasury and the ATO should advise industry of the proposed funding model for SuperStream BAU costs. ASFA considers that any ongoing funding allocation for the ATO for its BAU SuperStream activities must be sufficiently transparent for the industry to understand the activities performed and to assess the ATO's performance in conducting those activities. In this regard, ASFA's comments elsewhere in this submission are relevant – that is, the lack of transparency, to date, in relation to the determination and utilisation of the supervisory levy in general and the SuperStream component in particular.

With respect to SuperStream projects, the current levy arrangements cease in 2017-18. However, it is not clear whether the ATO's total SuperStream project expenditure (including for proposed projects) will ultimately exceed the total SuperStream levies collected (including for 2017-18). In this regard, it is not clear whether the Government would seek to fund the difference from consolidated revenue, or by imposing additional levies.

With respect to the latter issue in particular, the ATO plans to introduce its SMSF Verification service in 2018-19. SMSFs will be the main beneficiaries of this proposed capability. However, it is not clear how much this project will cost, and whether APRA-regulated funds would be levied to recover the costs.

Similarly, the ATO is proposing to introduce a Member Account Transaction Service (MATS) as part of SuperStream. MATS will, among other things, replace the employer obligation to report Superannuation Guarantee contributions paid to employees. Currently, this requirement is funded through the ATO's Single Touch Payroll program. Should the ATO proceed with the MATS project, it is not clear whether APRA-regulated funds would be levied to recover the costs.

Given that the current levy arrangements are scheduled to cease in 2017-18, ASFA also considers

that it would be appropriate for the Treasury and the ATO to provide a detailed costing of the full SuperStream program against the levies collected. This should include an analysis of any realised cost reductions, say from increased processing efficiency, for the ATO from SuperStream. It is ASFA's view that any such cost reductions should be reported in future years' Discussion Papers (for levy determination), and that future levies should be reduced accordingly.

Application of SuperStream component only to APRA-regulated superannuation entities

ASFA considers the levy amount recovered from APRA-regulated funds should relate to the SuperStream activity directly attributable to APRA-regulated funds. This is not currently the case.

ASFA has previously noted that SMSFs will benefit from SuperStream through more efficient rollover processes (from other funds), and more efficient mechanisms for receiving contributions from employers who do not have a direct connection with the SMSF trustees. As such, ASFA can see no reason why the SMSF levy legislation cannot be amended to allow a SuperStream levy to be applied.

ASFA has also noted the benefits of SuperStream to non-superannuation entities. One of the key goals of SuperStream, and in particular the establishment of infrastructure to support the implementation of the contributions and payments data standards, is to simplify the employer process for paying contributions. Research undertaken for the ATO confirms that this objective is coming to fruition, with the Deputy Commissioner for Superannuation stating that "the majority of employers that have implemented SuperStream are already experiencing benefits, including an overall 70 per cent reduction in the time it takes to meet their superannuation obligations".¹

As such, ASFA considers that, given the benefits to non-levied entities such as employers, a portion of the SuperStream component should be met from consolidated revenue.

3. Other levy components

In addition to the specific SuperStream component of \$32.0 million for 2017-18, the Discussion Paper proposes a further recoument of \$35.0 million of costs from the superannuation industry in relation to activities of agencies other than APRA. This comprises:

- \$13.7 million for ASIC, to recover costs related to the SCT as well as other activities
- \$17.8 million for the ATO, in relation to administration of the Superannuation Lost Member Register and the Unclaimed Superannuation Money framework
- \$5.1 million for the DHS, in relation to administration of the Early Release of Superannuation Benefits on Compassionate Grounds programme.

ASFA notes that methodology used to allocate APRA's regulatory costs (and thus the levies for APRA's regulatory activities) among industry sectors, and to institutions in those sectors, is also used with respect to the levies that APRA collects for other agencies.

The Australian National Audit Office (ANAO) has previously recommended that Treasury and APRA consider the appropriateness of applying the APRA levy methodology to calculate the levies APRA

¹ ATO 2016, *SuperStream research-employers and APRA funds*, media release 22 March 2016.

collects on behalf of other agencies.² Although this recommendation has been acknowledged both by APRA and Treasury, it is not clear whether the ANAO's concerns have been addressed.

ASIC levy component

The Discussion Paper confirms that from 2017-18, none of ASIC's ongoing costs will be recovered from the FISLs. Instead, the Government will recover these costs from separate levies via the ASIC industry funding model.

ASFA has addressed its concerns with the ASIC industry funding model in other submissions to government.³ In principle, ASFA supports the adequate and appropriate funding of ASIC, and considers that all regulated entities should contribute to that funding. ASFA has, however, a number of concerns with the funding model. Some of these mirror ASFA's concerns with FISL determination – that is, ASIC needs to demonstrate that the funding model levies are set and spent appropriately.

With respect to the 2017-18 FISLs, the Discussion Paper proposes the ASIC component for the superannuation industry would be \$13.7 million. This is lower than for 2016-17, which reflects that ASIC's ongoing costs will be recovered via the industry funding model. However, there is not sufficient information for industry to determine whether the level, or the composition, of the (remaining) levy is appropriate.

The Discussion Paper notes that the FISLs will incorporate cost-recovery of the SCT's operations for 2017-18, however the relevant levy amount is not specified. The 2017-18 Budget Papers suggest that SCT funding will be \$5.2 million in 2017-18, down from \$8.3 million in 2016-17 (Section 4 of this submission discusses SCT funding in greater detail).⁴

The Discussion Paper also notes that the FISLs will incorporate funding for non-ongoing capital costs for improving ASIC's systems (including internal data management and data analytics capabilities).⁵ The 2016-17 Budget Papers note that these capital costs were expected to total \$18.8 million in 2017-18.⁶ However, the Discussion Paper does not specify the associated levy amount for the superannuation industry (or for other sectors).

Based on the above numbers, and excluding cost-recovery of SCT operations, the ASIC component for the superannuation industry would be \$8.5 million for 2017-18. If this was solely for recovering ASIC's non-ongoing capital costs, then the superannuation industry would be funding almost half of these costs – a disproportionately large portion. An alternate explanation is that the ASIC component includes other costs, although none of these should be ongoing costs as these will be recovered via the ASIC industry funding model.

² Australian National Audit Office 2013, *Determination and Collection of Financial Industry Levies – Australian Prudential Regulation Authority*, Auditor-General Audit Report No. 9, recommendation 2(c), paragraph 3.56.

³ ASFA's most recent submission was in response to the draft regulations for the ASIC industry funding model (the draft ASIC Supervisory Cost Recovery Levy Regulations 2017).

⁴ Includes \$1.1 million of capital funding. The Australian Government 2016, *2016-17 Budget*, Budget Paper No. 2, page 148.

⁵ This funding is part of the 2016-17 Budget measure *Improving Outcomes in Financial Services*. Funding for capital costs are expected to cease in 2018 19, and the APRA levy would be expected to decline accordingly.

⁶ The Australian Government 2017, *2017-18 Budget*, Budget Paper No. 2, page 162.

This underscores the need for enhanced transparency regarding ASIC's cost recovery arrangements during the transition phase of the ASIC industry funding model. This includes detailed information on any ASIC activities that may continue to be cost recovered via the FISLs.

ATO and DHS levy components

As was the case in previous years, the Discussion Paper proposes full recovery of the costs incurred by the ATO and DHS in relation to the Superannuation Lost Member Register, the Unclaimed Superannuation Money framework and the Early Release of Superannuation Benefits on Compassionate Grounds programme.

The Discussion Paper states that the estimated cost to the DHS and the ATO for undertaking these activities is \$17.8 million and \$5.1 million respectively, however the paper provides little detail to substantiate these figures. In the absence of more detailed information, it is difficult for industry to ascertain the reasonableness of the proposed levies. Detailed information of this nature should be included in the CRIS for 2017-18 (and for future years).

4. Funding and resourcing the Superannuation Complaints Tribunal

The Government has proposed a new complaints resolution body for all financial and superannuation disputes – the Australian Financial Complaints Authority – that will replace the Financial Ombudsman Service, the Credit and Investments Ombudsman and the SCT. With respect to the SCT, the Government proposes that it will continue to operate until 1 July 2020 to resolve its current backlog of complaints.

ASFA considers that it is critical that the SCT receives adequate funding during this period.

As noted in Section 3 of this submission, the Discussion Paper does not specify the levy amount for recovering the cost of the SCT's operations for 2017-18 (as has been the case for several years). However, the 2017-18 Budget papers suggest that funding for the SCT will be reduced to \$5.2 million in 2017-18, and will remain at this level in each of the two subsequent years.⁷

As ASFA noted in its recent submission on the Government's External Dispute Resolution and Complaints Framework consultation package, the SCT will likely require an increase in operational funding (over the current level) to complete its caseload before the proposed wind-up date. Underfunding the SCT may jeopardise its ability to clear its caseload.

In the 2016-17 Budget, the SCT was awarded additional funding of \$5.2 million (including \$2.7 million in capital funding) to improve its processes and reduce its complaints backlog. ASFA acknowledges that it may no longer be considered appropriate to expend allocated monies on capital works that were intended to deliver medium and long-term improvements in the SCT's performance. However, ASFA considers it imperative that the SCT retains access to the full (additional) \$5.2 million and is empowered to apply it as needed toward clearing its caseload by 1 July 2020.

⁷ The Australian Government 2017, *2017-18 Budget*, Budget Paper No. 2, page 162.

ASFA notes that the SCT is currently undertaking a modelling exercise to ascertain its funding and resourcing needs for the wind-down period.⁸ ASFA urges Treasury, APRA and ASIC to take the output of this modelling into account in finalising the SCT's funding for its remaining years of operation.

With respect to future FISL determination processes, the associated documentation should, for the duration of the transition period, clearly specify the amount of funding allocated for the operation of the SCT. ASIC should also be required to provide a high degree of transparency regarding the monies made available to the SCT for its operational purposes until wind-up.

5. Minimum and maximum amount for the restricted component

ASFA agrees with the conceptual basis for making the distinction between the types of activities covered by the restricted and unrestricted component.

The setting of a minimum and maximum amount for the restricted component makes sense, as many of the costs of prudential supervision are fixed, and those which are variable are not in direct proportion to fund assets. However, care needs to be taken to ensure that the minimum and maximum amounts are determined on an appropriate and equitable basis, and that they reflect the actual minimum and maximum costs of supervising entities, without cross-subsidisation.

In this respect, ASFA notes that the minimum amount for the restricted component for a superannuation fund has been increased from \$2,500 to \$3,500 for 2017-18, and the maximum levy amount has been increased from \$260,000 to \$300,000. There is no explanation for these changes in the Discussion Paper.

Treasury has previously acknowledged industry's concerns that the annual consultation papers provide little explanation of the rationale for the setting of the minimum and maximum amounts, and indicated that APRA would, via its CRIS, provide more transparency regarding the calculation of the minimum and maximum amounts⁹. We note, however, that the CRIS published for 2016-17 does not include any such information.

⁸ Ms Helen Davis, Chair of the Superannuation Complaints Tribunal - Senate Economics Legislation Committee Estimates, 31 May 2017.

⁹ The Treasury 2014, *The Financial Industry Supervisory Levy Methodology Review: Response Paper*, 16 April 2014, page 8.

