



# **ASIC Supervisory Cost Recovery Levy Act 2017**

**No. 43, 2017**

**An Act to impose a levy on persons regulated by the  
Australian Securities and Investments Commission,  
and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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**An Act to impose a levy on persons regulated by the  
Australian Securities and Investments Commission,  
and for related purposes**

*[Assented to 19 June 2017]*

The Parliament of Australia enacts:

## **1 Short title**

This Act is the *ASIC Supervisory Cost Recovery Levy Act 2017*.

## Section 2

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### 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Act	1 July 2017.	1 July 2017

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### 3 Act binds the Crown

This Act binds the Crown in right of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island. However, it does not bind the Crown in right of the Commonwealth.

### 4 External Territories

This Act extends to every external Territory.

### 5 Extraterritorial application

This Act extends to acts, omissions, matters and things outside Australia.

## 6 Act does not impose levy on property of a State

- (1) This Act does not impose a tax on property of any kind belonging to a State.
- (2) In this section, *property of any kind belonging to a State* has the same meaning as in section 114 of the Constitution.

## 7 Definitions

In this Act:

*ASIC* means the Australian Securities and Investments Commission.

*audit entity* means:

- (a) a registered company auditor (within the meaning of the *Corporations Act 2001*); or
- (b) a partnership or unincorporated association that is an audit firm (within the meaning of the *Corporations Act 2001*); or
- (c) an audit company (within the meaning of the *Corporations Act 2001*); or
- (d) an authorised audit company (within the meaning of the *Corporations Act 2001*); or
- (e) an individual auditor (within the meaning of the *Corporations Act 2001*); or
- (f) a person regulated by ASIC who is in a class of persons prescribed by the regulations.

*company-like entity* means:

- (a) a Part 5.1 body (within the meaning of the *Corporations Act 2001*); or
- (b) a Part 5.7 body (within the meaning of the *Corporations Act 2001*); or
- (c) a body (other than a company) that is a disclosing entity under subsection 111AC(1) of the *Corporations Act 2001*; or
- (d) a person regulated by ASIC who is in a class of persons prescribed by the regulations.

*credit services entity* means:

- (a) a licensee within the meaning of the *National Consumer Credit Protection Act 2009*; or
- (b) a person who is exempt from the operation of section 29 of the *National Consumer Credit Protection Act 2009* (which is about the requirement to hold a credit licence) under any of the following provisions of that Act:
  - (i) paragraph 109(1)(a);
  - (ii) paragraph 109(3)(a);
  - (iii) paragraph 110(a);but only if the person is required to notify ASIC that the person is so exempt; or
- (c) a person who contravenes section 29 of the *National Consumer Credit Protection Act 2009*; or
- (d) a person regulated by ASIC who is in a class of persons prescribed by the regulations.

**exempt entity**, for a financial year, means a regulated entity that is in a class of persons prescribed by the regulations for the financial year.

**financial services entity** means:

- (a) a financial services licensee (within the meaning of the *Corporations Act 2001*); or
- (b) an RSE licensee; or
- (c) a person who is exempt from the requirement in section 911A of the *Corporations Act 2001* to hold an Australian financial services licence for a financial service under any of the following provisions of that Act:
  - (i) subsection 911A(2);
  - (ii) paragraph 926A(2)(a);
  - (iii) paragraph 926B(1)(a);but only if the person is required to notify ASIC that the person is so exempt; or
- (d) a person who contravenes subsection 911A(1) of the *Corporations Act 2001*; or
- (e) a person regulated by ASIC who is in a class of persons prescribed by the regulations.



**leviable entity**, for a financial year, means a person who:

- (a) is a regulated entity at any time in the financial year; and
- (b) is not an exempt entity for the financial year.

**liquidator entity** means:

- (a) a registered liquidator (within the meaning of the *Corporations Act 2001*); or
- (b) a person regulated by ASIC who is in a class of persons prescribed by the regulations.

**market infrastructure entity** means:

- (a) a market licensee (within the meaning of Chapter 7 of the *Corporations Act 2001*); or
- (b) a person who operates a financial market that is exempt under section 791C from the operation of Part 7.2 of the *Corporations Act 2001*; or
- (c) a person who is exempt under paragraph 907D(2)(a) of the *Corporations Act 2001* from the operation of section 905A of that Act, but only if the person is required to notify ASIC that the person is so exempt; or
- (d) a person who:
  - (i) is a participant in a licensed market for the purposes of Chapter 7 of the *Corporations Act 2001*; or
  - (ii) would be such a participant if the definition of **participant** in section 761A of that Act covered a person who is allowed to indirectly participate in the facility or market concerned; or
- (e) a CS facility licensee (within the meaning of Chapter 7 of the *Corporations Act 2001*); or
- (f) a person who operates a clearing and settlement facility that is exempt under section 820C from the operation of Part 7.3 of the *Corporations Act 2001*; or
- (g) a derivative trade repository licensee (within the meaning of Chapter 7 of the *Corporations Act 2001*); or
- (h) a person who contravenes section 791A of the *Corporations Act 2001* (which is about the requirement to hold a market licence); or

- (i) a person who contravenes section 820A of the *Corporations Act 2001* (which is about the requirement to hold an Australian CS facility licence); or
- (j) a person who contravenes section 905A of the *Corporations Act 2001* (which is about the requirement for certain derivative trade repositories to be licensed); or
- (k) a person regulated by ASIC who is in a class of persons prescribed by the regulations.

**person** has a meaning affected by section 12.

**regulated entity** means:

- (a) a company that is registered under the *Corporations Act 2001*; or
- (b) a financial services entity; or
- (c) a credit services entity; or
- (d) a market infrastructure entity; or
- (e) an audit entity; or
- (f) a liquidator entity; or
- (g) a company-like entity; or
- (h) a person regulated by ASIC who is in a class of persons prescribed by the regulations.

**regulatory costs**, for a financial year, has the meaning given by section 10.

**RSE licensee** has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

**sector** means:

- (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
- (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** means a group of one or more entities each of which meets the criteria specified in the regulations for the sub-sector.

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

## 8 Imposition of levy

Levy payable in accordance with section 8 of the *ASIC Supervisory Cost Recovery Levy (Collection) Act 2017* is imposed.

## 9 Amount of levy

- (1) The amount of levy payable by a liable entity for a financial year is the amount worked out in accordance with the regulations.

### *Objectives*

- (2) The objectives are:
  - (a) that the total amount of levy payable by all liable entities in relation to a financial year equals the amount of ASIC's regulatory costs for the financial year; and
  - (b) that the total amount of levy payable by all liable entities in a particular sector or sub-sector in a financial year equals the amount of ASIC's regulatory costs relating to that sector or sub-sector for that financial year.
- (3) For the purposes of subsection (2), disregard the effect of section 15 of the *ASIC Supervisory Cost Recovery Levy (Collection) Act 2017* (about waiver of levy payable).

### *Regulations*

- (4) Before the Governor-General makes regulations under subsection (1), the Minister must be satisfied that the regulations are consistent with the objectives stated in subsection (2).
- (5) Without limiting subsection (1), the regulations may do one or more of the following:
  - (a) specify an amount or a method for determining an amount;
  - (b) specify different amounts or methods for different classes of liable entities, different sectors or different sub-sectors;

- (c) specify a nil amount, or a method resulting in a nil amount;
- (d) specify methods that refer to acts done or circumstances existing before either the commencement of the regulations or the commencement of this Act, or both.

*Annual legislative instrument*

- (6) Regulations made for the purposes of subsection (1) may provide for ASIC to make, by legislative instrument, for each financial year, a determination specifying one or more of the following:
  - (a) amounts to be used for that financial year in a method or methods specified in the regulations;
  - (b) the number of leviable entities in a particular class, sector or sub-sector in that financial year.
- (7) Before ASIC makes a legislative instrument as mentioned in subsection (6) for a financial year, ASIC must be satisfied, having regard to information provided to ASIC, that the legislative instrument is consistent with the objectives stated in subsection (2).
- (8) A legislative instrument made by ASIC as mentioned in subsection (6) 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 11 of the *ASIC Supervisory Cost Recovery Levy (Collection) Act 2017*.

*Retrospective application of instruments*

- (9) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply in relation to the following:
  - (a) regulations made for the purposes of subsection (1);
  - (b) a legislative instrument made by ASIC as mentioned in subsection (6).

## 10 Meaning of *regulatory costs*

- (1) ASIC's *regulatory costs* for a financial year means the amount determined in an instrument under subsection (2) for the financial year.
- (2) ASIC must, by legislative instrument, make a determination:
  - (a) specifying the amount of its regulatory costs for a financial year; and
  - (b) specifying the extent to which those costs are attributable to each sub-sector.

### *Limit on amount of regulatory costs*

- (3) The amount determined by ASIC under paragraph (2)(a) must not exceed the sum of all amounts appropriated by the Parliament for the purposes of ASIC for the financial year.

### *Amounts that ASIC must not include*

- (4) In determining an amount for a financial year under paragraph (2)(a), ASIC must not include the following amounts:
  - (a) amounts relating directly to the regulation of persons and entities that are not leviable entities;
  - (b) costs giving rise to amounts debited from a special account established under paragraph 78(1)(a) of the *Public Governance, Performance and Accountability Act 2013*;
  - (c) amounts prescribed by the regulations for the purposes of this paragraph.

### *Amounts that ASIC may include*

- (5) In determining an amount for a financial year under paragraph (2)(a), ASIC may, subject to subsection (4), include the following amounts:
  - (a) costs relating directly or indirectly to the regulation of leviable entities;
  - (b) without limiting paragraph (a), costs relating to the following:

- (i) surveillance;
- (ii) education;
- (iii) guidance;
- (iv) engagement with industry;
- (v) policy advice;
- (c) the total of all amounts that, in the financial year, are debited against an appropriation and credited to a special account of the kind referred to in paragraph (4)(b) (even if the debits from the special account in the financial year fall short of the amount of those credits);
- (d) depreciation of capital costs, whether the costs were incurred before, on or after the commencement of this Act;
- (e) amounts prescribed by the regulations for the purposes of this paragraph.

Note: An Appropriation Act provides for amounts to be credited to a special account if any of the purposes of the account is a purpose that is covered by an item in the Appropriation Act.

*Adjustment for under or over collection in prior year*

- (6) 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, to the extent the shortfall does not arise because of section 15 of the *ASIC Supervisory Cost Recovery Levy (Collection) Act 2017* (about waiver of levy payable).

*Attributing regulatory costs to sub-sectors*

- (7) In determining, for the purposes of paragraph (2)(b), the extent to which regulatory costs for a financial year are attributable to a sub-sector, ASIC must have regard to the following principles:

- (a) costs relating to the direct regulation of leviable entities in particular sub-sectors are attributed to that sub-sector;
- (b) costs relating indirectly to the regulation of leviable entities are attributed to each sub-sector in proportion to the regulatory resources dedicated to that sub-sector;
- (c) an excess or shortfall that creates an adjustment under subsection (6) is attributable to the sub-sector in which the excess or shortfall arose;
- (d) amounts credited to a special account as referred to in paragraph (5)(c) are to be attributed, over time and in a reasonable manner, to the sub-sectors to which the costs giving rise to debits to the special account relate.

*Retrospective application of instruments*

- (8) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply in relation to the following:
  - (a) regulations made for the purposes of paragraph (4)(c) or (5)(e);
  - (b) a legislative instrument made for the purposes of subsection (2).

**11 Disallowance and effect of instruments**

- (1) This section applies to the following:
  - (a) an instrument made by ASIC as mentioned in subsection 9(6);
  - (b) an instrument made by ASIC under subsection 10(2).

*Disallowance*

- (2) The *Legislation Act 2003* applies to the instrument as if:
  - (a) references in sections 42 and 47 of that Act to 15 sitting days were instead references to 5 sitting days; and
  - (b) subsection 42(2) provided that an instrument or provision specified in a notice of motion to which that subsection applies is taken *not* to have been disallowed (instead of being

taken to have been disallowed and to cease at that time to have effect).

*When instrument takes effect*

- (3) If neither House of Parliament passes a resolution disallowing the instrument or a provision of the instrument, the instrument takes effect:
  - (a) on the day immediately after the last day upon which such a resolution could have been passed; or
  - (b) if a later day is specified in the instrument—on that later day.
- (4) If either House of Parliament passes a resolution disallowing a provision of the instrument, the remaining provisions of the instrument take effect:
  - (a) on the day immediately after the last day upon which a resolution disallowing the instrument or a provision of the instrument could have been passed; or
  - (b) if a later day is specified in the instrument—on that later day.
- (5) If either House of Parliament passes a resolution disallowing the instrument, the instrument does not take effect.

## **12 Treatment of partnerships, unincorporated associations and multiple trustees**

*Application to partnerships*

- (1) This Act applies to a partnership as if the partnership were a person. However, obligations that would be imposed on the partnership are imposed instead on each partner, but may be discharged by any of the partners.

*Application to unincorporated associations*

- (2) This Act applies to an unincorporated association as if the unincorporated association were a person. However, an obligation that would otherwise be imposed on the association is imposed on each member of the association's committee of management instead, but may be discharged by any of the members.



*Application to RSE licensee that is a group of individual trustees*

- (3) This Act applies to an RSE licensee that is a group of individual trustees as if the group were a person. However, an obligation that would otherwise be imposed on the group is imposed on each individual, but may be discharged by any of the individuals.

*Application to multiple trustees treated as single entity*

- (4) Subsections (5), (6) and (7) apply if a trustee or trustees of a trust are treated during a period as constituting:
- (a) a single legal entity (the **notional entity**) under section 761FA of the *Corporations Act 2001*; or
  - (b) a single person (also the **notional entity**) under section 15 of the *National Consumer Credit Protection Act 2009*.
- (5) This Act applies to the notional entity during the period as if the notional entity were a person, but with the changes set out in subsections (6) and (7).
- (6) During the period, or any part of the period, that the trust has 2 or more trustees, an obligation that would otherwise be imposed on the notional entity by this Act is imposed instead on each trustee, but may be discharged by any of the trustees.
- (7) During the period, or any part of the period, that the trust has only one trustee, an obligation that would otherwise be imposed on the notional entity by this Act is imposed instead on that single trustee.

### **13 Regulations**

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed by the regulations; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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*[Minister's second reading speech made in—  
House of Representatives on 30 March 2017  
Senate on 13 June 2017]*

*(60/17)*

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*ASIC Supervisory Cost Recovery Levy Act 2017*

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