



ASIC Supervisory Cost Recovery Levy (Collection) Act 2017

No. 44, 2017

**An Act to provide for the collection of levies
imposed 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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[Assented to 19 June 2017]

The Parliament of Australia enacts:

Section 1

1 Short title

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

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.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	At the same time as the <i>ASIC Supervisory Cost Recovery Levy Act 2017</i> commences. However, the provisions do not commence at all if that Act does not commence.	1 July 2017

Note: This table relates only to the provisions of this Act as originally enacted.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 Simplified outline of this Act

This Act is about the collection of levy imposed by the *ASIC Supervisory Cost Recovery Levy Act 2017*.

ASIC must give a notice specifying when levy is due for payment.

Late payment penalty will be payable if levy remains unpaid after it becomes due for payment.

Leviable entities must provide returns to ASIC for a financial year. Notice of when and how a return is to be provided will be published on ASIC's website.

There are rules dealing with returns that are not given, are unsatisfactory, or are false or misleading.

4 Act binds the Crown

- (1) 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.
- (2) This Act does not make the Crown liable to a pecuniary penalty or to be prosecuted for an offence.

5 External Territories

This Act extends to every external Territory.

6 Extraterritorial application

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

7 Definitions

In this Act:

approved form has the meaning given by section 27.

ASIC means the Australian Securities and Investments Commission.

late payment penalty means penalty payable under section 10.

leviable entity, for a financial year, has the same meaning as in the *ASIC Supervisory Cost Recovery Levy Act 2017*.

levy means levy imposed by the *ASIC Supervisory Cost Recovery Levy Act 2017*.

levy month means one of the 12 months of the calendar year.

offence against this Act includes an offence against Chapter 7 of the *Criminal Code* that relates to this Act.

person has a meaning affected by sections 23, 24, 25 and 26.

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

shortfall penalty means penalty payable under section 13.

8 Liability to levy

A person who is a leviable entity for a financial year that ends after the commencement of the *ASIC Supervisory Cost Recovery Levy Act 2017* is liable to pay levy for that financial year.

9 When levy due for payment

- (1) Levy payable by a person for a financial year is due and payable on a business day that is:
 - (a) specified in a notice that ASIC gives to the person in relation to the financial year; and
 - (b) not earlier than 30 days after the day on which the notice is given.
- (2) If the person nominates another person by written notice given to ASIC:
 - (a) the notice under paragraph (1)(a) may be given to the nominated person; and
 - (b) the obligation imposed on the person by subsection (1) may be discharged by the nominated person.
- (3) To avoid doubt, subsection (2) does not otherwise affect the person's liability under section 8.

10 Late payment penalty

- (1) If any levy payable by a person remains unpaid at the start of a levy month after the levy became due for payment, the person is liable to pay the Commonwealth, for that levy month, a penalty worked out using the following formula:

$$\text{Amount of the levy remaining} \\ \text{unpaid at the start of the levy month} \times \frac{0.2}{12}$$

- (2) Late payment penalty for a levy month is due and payable at the end of the levy month.
- (3) However, ASIC may, by written notice given to the person before, on or after the day on which late payment penalty would be due and payable apart from this subsection, specify a later day as the day on which the late payment penalty is due and payable. The notice has effect, and is taken always to have had effect, according to its terms.

11 Returns

- (1) A person who is a leviable entity in relation to a financial year must, for the purposes of the levy:
- (a) provide to ASIC a return, in the approved form; and
 - (b) do so by:
 - (i) unless subparagraph (ii) applies—31 October of the following financial year; or
 - (ii) if ASIC has determined a different day under subsection (5)—that day.
- (2) An approved form may require the return to contain:
- (a) information relating to the leviable entity; and
 - (b) information relating to one or more other leviable entities.
- (3) A person is not required to provide a return under subsection (1) if the approved form requires no information to be included in the return.
- (4) ASIC may, by notice published on ASIC's website, determine:

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- (a) the day on which a return must be provided to ASIC; and
- (b) the manner in which ASIC requires the return to be provided.

A notice under this subsection must state the date on which the notice was published on ASIC's website.

- (5) A day determined by ASIC under paragraph (4)(a):
 - (a) must be on or after 31 August of the following financial year; and
 - (b) must be 2 months or more after the day on which the notice is first published on ASIC's website; and
 - (c) may be a different day for different classes of leviable entity.

Offence

- (6) A person commits an offence if:
 - (a) the person is subject to a requirement under subsection (1); and
 - (b) the person omits to do an act; and
 - (c) the omission breaches the requirement.

Penalty: 10 penalty units.

- (7) An offence against subsection (6) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (8) Subsection (6) does not apply to the extent that the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code*).

- (9) A return under this section that is in the approved form is taken, for the purposes of the *Corporations Act 2001*, not to be a document lodged with ASIC.

12 Default notice

- (1) ASIC may give a leviable entity a notice stating the amount that, in ASIC's opinion, is the levy payable by the leviable entity for a financial year if:

- (a) a person fails to provide to ASIC a return containing information relating to the liable entity as required by section 11; or
 - (b) ASIC is not satisfied with information provided by a person in a return required by section 11, to the extent that it relates to the liable entity; or
 - (c) a person fails to comply with a requirement under section 17 to provide to ASIC information, or a document, relating to the liable entity.
- (2) The amount stated in the notice is taken to be the levy payable by the person for the financial year, unless the contrary is proved.

13 Shortfall penalty

- (1) Subsection (3) applies if:
- (a) a person makes a statement to ASIC in a return under section 11; and
 - (b) the statement is false or misleading in a material particular, whether because of things in it or omitted from it; and
 - (c) the amount of levy the person paid (the *paid amount*) was worked out on the basis of the statement; and
 - (d) the paid amount fell short of the levy payable by the person for the financial year (worked out on the basis of the statement not being false or misleading).
- (2) However, subsection (3) does not apply if the person took reasonable steps to ensure the statement was correct.
- (3) The person is liable to pay, by way of penalty, an amount equal to twice the amount of the shortfall worked out under paragraph (1)(d).
- (4) Shortfall penalty is due and payable on a business day that is:
- (a) specified in a notice that ASIC gives to the person in relation to the financial year; and
 - (b) not earlier than 30 days after the day on which the notice is given.

- (5) However, ASIC may, by written notice given to the person before, on or after the day on which shortfall penalty would be due and payable apart from this subsection, specify a later day as the day on which the shortfall penalty is due and payable. The notice has effect, and is taken always to have had effect, according to its terms.

14 Payment of levy, late payment penalty and shortfall penalty

Each of the following are payable to ASIC on behalf of the Commonwealth:

- (a) levy;
- (b) late payment penalty;
- (c) shortfall penalty.

15 Waiver of levy, late payment penalty and shortfall penalty

- (1) ASIC may, on behalf of the Commonwealth, waive the payment of the whole or a part of one or more of the following amounts payable by a person, if ASIC is satisfied that there are exceptional circumstances justifying the waiver:
 - (a) levy;
 - (b) late payment penalty;
 - (c) shortfall penalty.
- (2) ASIC may do so on its own initiative or on written application by a person.
- (3) Applications must be in the approved form.

16 Recovery of levy, late payment penalty and shortfall penalty

- (1) The following amounts may be recovered by the Commonwealth from a person as debts due to the Commonwealth:
 - (a) levy that is due and payable by the person;
 - (b) late payment penalty that is due and payable by the person;
 - (c) shortfall penalty that is due and payable by the person.

- (2) ASIC is authorised, as agent of the Commonwealth, to bring proceedings in the name of the Commonwealth for the recovery of a debt due to the Commonwealth of a kind mentioned in subsection (1).

17 Substantiation notices

- (1) This section applies to a person if:
 - (a) the person has provided to ASIC, in a return required by section 11, information (***required information***) relating to the person or to one or more other leviable entities; or
 - (b) the person is a leviable entity and information (also ***required information***) relating to the person is to be used by ASIC for the purposes of calculating the levy payable by the person.
- (2) ASIC may give the person a written notice that requires the person to do either or both of the following:
 - (a) give to ASIC, within the period and in the manner and form specified in the notice, information that could be capable of substantiating the required information;
 - (b) produce to ASIC, within the period and in the manner and form specified in the notice, documents that could be capable of substantiating the required information.
- (3) The notice must:
 - (a) name the person to whom it is given; and
 - (b) specify the information to which it relates; and
 - (c) explain the effect of sections 18 and 19.

18 Compliance with substantiation notice

- (1) A person who is given a substantiation notice must comply with the notice:
 - (a) within the period specified in the notice; or
 - (b) within such further time as ASIC allows under subsection (3).
- (2) A person given a substantiation notice under section 17 may apply to ASIC for further time to comply with the notice. An application

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must be in writing and made within 21 days after the notice is given to the person.

- (3) ASIC may, by written notice given to the person, extend the period within which the person must comply with the notice.

19 Failure to comply with substantiation notice

- (1) A person commits an offence if:
 - (a) the person is subject to a requirement under section 18; and
 - (b) the person refuses or fails to comply with the requirement.

Penalty: 10 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) Subsection (1) does not apply if the person complies with the notice to the extent to which the person is capable of complying with it.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code*).

- (4) Subsection (1) does not apply to the extent that the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code*).

- (5) It is a reasonable excuse for an individual to refuse or fail to answer a question or produce a document on the ground that to do so might tend to incriminate the individual or expose the individual to a penalty.

20 Exempting laws ineffective

- (1) Nothing in a law passed before the commencement of this section exempts a person from liability to pay levy.
- (2) If a law (including a provision of a law) passed after the commencement of this section purports to exempt a person from:
 - (a) liability to pay taxes under laws of the Commonwealth; or

- (b) liability to pay certain taxes under laws of the Commonwealth that would otherwise include levy; the law does not operate to exempt the person from liability to pay levy unless the exemption expressly refers to levy under this Act.
- (3) To avoid doubt, this section does not apply in relation to an exemption under this Act or the *ASIC Supervisory Cost Recovery Levy Act 2017*.

21 Internal review of certain decisions

- (1) A person who is affected by a decision of ASIC under section 15 may, if dissatisfied with the decision, request ASIC to reconsider the decision.
- (2) The request must:
 - (a) be made by notice given to ASIC in the approved form within:
 - (i) the period of 21 days after the day on which the person first receives notice of the decision; or
 - (ii) any further period that ASIC allows; and
 - (b) set out the reasons for making the request.
- (3) After receiving the request, ASIC must review the decision or cause the decision to be reviewed by a person:
 - (a) to whom ASIC's power under this section is delegated; and
 - (b) who was not involved in the making of the decision.
- (4) Within 30 business days after receiving the request, the person reviewing the decision must:
 - (a) reconsider the decision; and
 - (b) confirm, revoke or vary the decision, as the person thinks fit.
- (5) If the person reviewing the decision does not confirm, revoke or vary the decision within the period of 30 business days after receiving the request, he or she is taken to have confirmed the decision under subsection (4) immediately after the end of that period.

- (6) The person reviewing the decision must give a notice in writing to the person that made the request that sets out the result of the reconsideration of the decision and gives the reasons for his or her decision.

22 Administrative Appeals Tribunal review of certain decisions

Applications may be made to the Administrative Appeals Tribunal for review of:

- (a) a decision of ASIC that has been confirmed or varied under subsection 21(4) or a decision that has been taken to have been confirmed under subsection 21(5); or
- (b) a decision of ASIC under subsection 21(4) to revoke a decision.

23 Treatment of partnerships

- (1) This Act applies to a partnership as if it were a person, but with the changes set out in this section.
- (2) An obligation that would otherwise be imposed on the partnership by this Act is imposed on each partner instead, but may be discharged by any of the partners.
- (3) An offence against this Act that is committed by a partnership is taken to have been committed by each partner in the partnership, at the time the offence was committed, who:
 - (a) did the relevant act or made the relevant omission; or
 - (b) aided, abetted, counselled or procured the relevant act or omission; or
 - (c) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the partner).

24 Treatment of unincorporated associations

- (1) This Act applies to an unincorporated association as if it were a person, but with the changes set out in this section.

- (2) An obligation that would otherwise be imposed on the association by this Act is imposed on each member of the association's committee of management instead, but may be discharged by any of the members.
- (3) An offence against this Act that would otherwise have been committed by the unincorporated association is taken to have been committed by each member of the association's committee of management, at the time the offence was committed, who:
 - (a) did the relevant act or made the relevant omission; or
 - (b) aided, abetted, counselled or procured the relevant act or omission; or
 - (c) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the member).

25 Treatment of RSE licensees

- (1) This Act applies to an RSE licensee that is a group of individual trustees as if the group were a person, but with the changes set out in this section.
- (2) An obligation that would otherwise be imposed on the group by this Act is imposed on each individual, but may be discharged by any of the individuals.
- (3) An offence against this Act that would otherwise have been committed by the group is taken to have been committed by each individual trustee, at the time the offence was committed, who:
 - (a) did the relevant act or made the relevant omission; or
 - (b) aided, abetted, counselled or procured the relevant act or omission; or
 - (c) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the individual).

26 Treatment of multiple trustees

- (1) This section applies if the 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*.
- (2) 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 this section.
- (3) During the period, or any part of the period, that the trust has 2 or more trustees:
- (a) 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; and
 - (b) an offence against this Act that would otherwise have been committed by the notional entity is taken to have been committed by each trustee, at the time the offence was committed, who:
 - (i) did the relevant act or made the relevant omission; or
 - (ii) aided, abetted, counselled or procured the relevant act or omission; or
 - (iii) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the trustee).
- (4) During the period, or any part of the period, that the trust has only one trustee:
- (a) an obligation that would otherwise be imposed on the notional entity by this Act is imposed instead on that single trustee; and
 - (b) an offence against this Act that would otherwise have been committed by the notional entity is taken to have been committed by that single trustee.

27 Approved forms

- (1) A return, notice, statement, application or other document under this Act is in the **approved form** if, and only if:

- (a) it is in the form prescribed in the regulations, or, if the regulations do not prescribe a form, it is in a form approved, in writing, by ASIC; and
 - (b) it is provided in the manner prescribed in the regulations, or, if the regulations do not prescribe a manner, in the manner required by ASIC (which may include electronically).
- (2) A different approved form may be prescribed, or approved, for different classes of person.

28 Rules and regulations

Rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
- (a) required or permitted by this Act to be prescribed by the rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the rules may not do the following:
- (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.

Regulations

- (3) 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.

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

(62/17)

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