

EXPLANATORY STATEMENT

Issued by authority of the Minister for Revenue and Financial Services

ASIC Supervisory Cost Recovery Levy Act 2017
Corporations (Fees) Act 2001
Corporations (Review Fees) Act 2003

ASIC Supervisory Cost Recovery Levy Amendment (Enhancements) Regulations 2018

The *ASIC Supervisory Cost Recovery Levy Act 2017* (the Levy Act) imposes a levy on entities regulated by the Australian Securities and Investments Commission (ASIC) to recover its regulatory costs. Section 13 of the Levy Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Corporations (Fees) Act 2001* (the Fees Act) imposes fees for chargeable matters under the *Corporations Act 2001*. Section 8 of the Fees Act provides that the Governor-General may make regulations for the purposes of prescribed sections of the Fees Act.

The *Corporations (Review Fees) Act 2003* (the Review Fees Act) provides for an annual review fee with respect to the review date of a company or registered scheme. Section 8 of the Review Fees Act provides that the Governor-General may make regulations for the purposes of the Review Fees Act and section 1351 of the *Corporations Act 2001*.

The *ASIC Supervisory Cost Recovery Levy Regulations 2017* (the Levy Regulations) apply either a basic or a graduated levy to entities in each industry subsector regulated by ASIC. The type of levy and the formula for calculating the amount of levy payable is different for each industry subsector. The Levy Regulations also establish the criteria for determining the subsector/s an entity forms part of, sets out the formulas and metrics to be used for calculating the amount of levy payable for entities in each industry subsector and prescribes certain amounts that should not be part of ASIC's regulatory costs.

The *ASIC Supervisory Cost Recovery Levy Amendment (Enhancements) Regulations 2018* (the Regulations) amend the Levy Regulations to:

- provide for the recovery of ASIC's operating costs incurred under the previous ASIC market supervisory cost recovery regime (Schedule 1);
- exempt registered charities and not-for-profits from the levy and allow ASIC to recover its enforcement, compliance and surveillance costs relating to individuals regulated by ASIC (Schedule 2);
- clarify that exempt foreign entities only have to pay a levy in relation to their securities held in Australia (Schedule 3);

- expand the ‘small amount credit providers’ subsector to also cover medium amount credit providers (Schedule 4);
- remove possible double counting of assets for the purpose of calculating the levy amount payable by entities that fall within both the responsible entities and wholesale trustees subsectors (Schedule 5);
- exclude employer-sponsored receivables from the value of assets in a registerable superannuation entity for the purposes of calculating the amount of levy payable by superannuation trustees (Schedule 6);
- provide that specialised market operators no longer fall within the small securities exchange operators subsector (Schedule 7);
- create new subsectors for new and established specialised market operators (Schedule 8);
- make minor technical adjustments to the operation of the levy as it applies to over-the-counter (OTC) traders, retail over-the-counter derivative issuers, wholesale electricity dealers and securities dealers (Schedules 9 and 13);
- establish a new industry subsectors to reflect the recently introduced licensing scheme for financial benchmark administrators (Schedule 10);
- modify the credit rating agencies subsector to differentiate between credit rating agencies that have a supervisory college and credit rating agencies that do not (Schedule 11); and
- simplify the operation of the levy metric for the large futures exchange participants and large securities exchange participants subsectors (Schedule 12).

The Regulations also amend the:

- *Corporations (Review Fees) Regulations 2003* (the Review Fees Regulations) to factor in ASIC’s regulatory costs for proprietary companies into their annual review fee (Schedule 15); and
- *Corporations (Fees) Regulations 2001* (the Fees Regulations) to remove certain lodgement fees for publishing prescribed notices on ASIC’s publication website (Schedule 16).

Public consultation on the Regulations was conducted between 23 April 2018 and 14 May 2018. There were 15 submissions received before the consultation period concluded from various industry participants and industry bodies. The Regulations were adapted in response to the feedback received.

The Fees Act and the Review Fees Act specify no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Levy Act requires the Minister to be satisfied that the Regulations are consistent with the objectives of the cost recovery regime in subsection 9(2) of the Act.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on the day after registration. Some of the amendments will apply from the 2017-18 financial year onwards while others will only apply from the 2018-19 financial year onwards (Schedule 14). The explanation of the amendments provided in the Attachment specifies when each amendment starts to apply.

All the amendments apply prospectively from the day after the instrument is registered or in some cases 1 July 2018. While some of the amendments apply to activities undertaken in the 2017-18 financial year, they only affect the prospective rights and obligations of regulated entities.

Details of the ASIC Supervisory Cost Recovery Levy Amendment (Enhancements) Regulations 2018

This Attachment sets out further details of the *ASIC Supervisory Cost Recovery Levy Amendment (Enhancements) Regulations 2018* (the Regulations). All references are to the Regulations unless otherwise stated. The Regulations provide for amendments to the *ASIC Supervisory Cost Recovery Levy Regulations 2017* (the Levy Regulations), *Corporations (Review Fees) Regulations 2003* (the Review Fees Regulations) and *Corporations (Fees) Regulations 2001* (the Fees Regulations).

Part 1 – Preliminary

Clause 1 – Name

This section provides that the title of the instrument is the *ASIC Supervisory Cost Recovery Levy Amendment (Enhancements) Regulations 2018*.

Clause 2 – Commencement

This section provides that the Regulations commence on the day after the instrument is registered. Some of the amendments will apply from the 2017-18 financial year onwards while others will only apply from the 2018-19 financial year onwards. The explanation of the amendments provided below specifies when each amendment starts to apply.

Clause 3 - Authority

This section provides that the Regulations are made under the *ASIC Supervisory Cost Recovery Levy Act 2017* (the Levy Act), the *Corporations (Fees) Act 2001* (the Fees Act) and the *Corporations (Review Fees) Act 2003* (the Review Fees Act).

Clause 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and any other items in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Regulatory costs

Item 1 of Schedule 1 amends the Levy Regulations to provide that ASIC's regulatory costs for a financial year may include its unrecovered past operating costs incurred under the previous market supervisory cost recovery regime. The market supervisory cost recovery regime allowed ASIC to recover its operational costs over a number of years. ASIC had not fully recovered its past operational costs when the market supervisory cost recovery regime was replaced by the industry funding regime established in the Levy Act. Item 29 of Schedule 1 to the *ASIC Supervisory Cost Recovery Levy (Consequential Amendments) Act 2017* preserved ASIC's ability to recover all costs incurred prior to the replacement of the market supervisory cost recovery regime with the industry funding regime on 1 July 2017.

The amendment in Schedule 1 provides that ASIC's previously unrecovered operating costs are regulatory costs that are to be recovered as part of the industry funding regime. The amendment takes effect from the day after the Regulations are registered and applies in relation to the 2017-18 financial year and future financial years.

Schedule 2 – Exempt and regulated entities

Exempt entities

Item 1 of Schedule 2 amends the Levy Regulations to provide that entities that are registered under the *Australian Charities and Not-for-profits Commission Act 2012* (ACNC Act) are exempt entities. The effect of this amendment is to ensure that registered charities and not-for-profits are not leviable entities and will not therefore have to pay the Levy. The amendment takes effect from the day after the Regulations are registered and applies in relation to the 2017-18 financial year and future financial years. An entity will fall within the exemption for a financial year if it is registered under the ACNC Act on 30 June of that financial year.

As charities and not-for-profits will not be leviable entities, the portion of ASIC's costs relating to these entities will not be part of ASIC's regulatory costs and therefore will not be recoverable through the levy (as per paragraph 10(4)(a) of the Levy Act). As such, exempting charities and not-for-profits from the levy will not affect the amount to be paid by other entities in relevant subsectors with the Government meeting the shortfall.

It is appropriate to exclude entities registered under the ACNC Act from the levy as the charities and not-for-profit sector is unique and not directly comparable to other sectors as funds can only be used for recognised charitable purposes that are for the public benefit. Any levy charged by ASIC would necessarily be drawn from the pool of funds otherwise available for charitable purposes.

Regulated entities

Item 1 of Schedule 2 also amends the Levy Regulations to provide that individuals regulated by ASIC fall within the definition of 'regulated entities' under section 7 of the Levy Act and therefore become leviable entities under the industry funding regime. The effect of this amendment is to ensure that ASIC's costs relating to the individuals it regulates can be recovered under the industry funding regime.

As there is no specific subsector for the individuals regulated by ASIC, the relevant costs will be allocated to the various existing subsectors to which the costs relate. Individuals regulated by ASIC will not therefore have to directly pay the levy. For example, as there is no specific subsector for company directors, ASIC's costs in relation to company directors will be recoverable through the proprietary and public companies subsectors. The amendment takes effect from the day after the Regulations are registered and applies in relation to the 2017-18 financial year and future financial years.

Schedule 3 – Listed Corporations

Item 1 of Schedule 3 will amend the listed corporations subsector in section 19 of the Levy Regulations to clarify that exempt foreign entities under the listing rules of the Australian Stock Exchange Limited will only be required to pay a levy in relation to their securities held in Australia. The amendment only applies to exempt foreign entities under the listing rules of the Australian Stock Exchange Limited as there are no other exchanges in Australia that have authorisations to allow for foreign exempt listings. The amendment takes effect from the day after the Regulations are registered and applies in relation to the 2017-18 financial year and future financial years.

Schedule 4 - Small and medium amount credit providers

The amendments in Schedule 4 will extend the existing ‘small amount credit providers’ subsector in section 24 of the Levy Regulations so that it also includes medium amount credit providers as defined in the *National Consumer Credit Protection Act 2009*. The amendments only apply to levies payable in relation to the 2018-19 financial year and later financial years.

As a result of the amendments, an entity will now fall within the ‘small and medium amount credit providers’ subsector for the 2018-19 financial year and later financial years if it holds an Australian credit licence authorising it to engage in credit activities as a credit provider and the entity provides credit under a small or medium amount credit contract.

Entities in the subsector will pay a levy calculated in accordance with the basic levy component formula in section 9 of the Levy Regulations. However as the subsector will also include medium amount credit providers, ASIC’s costs in relation to those entities will also be attributed to the subsector. The subsector’s regulatory costs will be shared between entities based on each entity’s share of the total amount of credit provided under small and medium amount credit contracts in the financial year.

Schedule 5 – Responsible entities and wholesale trustees

The amendments in Schedule 5 amend the responsible entities (section 35 of the Levy Regulations) and wholesale trustees (section 37 of the Levy Regulations) subsectors to prevent possible double counting of assets for the purposes of calculating the levy amount payable by entities that fall within both subsectors. The amendment applies from the 2017-18 financial year onwards.

The entity metric for the responsible entities subsector is amended to include an additional carve out that would apply to disregard any assets that are an interest in unregistered managed investment schemes issued by the entity for the purposes of calculating the amount of levy payable by the entity. The carve out only applies where the entity is also a wholesale trustee.

Similarly, the entity metric for the wholesale trustees subsector is amended to include an additional carve out that would apply to disregard any assets that are an interest in registered schemes operated by the entity for the purposes of calculating the amount of levy payable by the entity. The carve out only applies where the entity is also a responsible entity.

Schedule 6 – Superannuation trustees

A recent amendment to the accounting standards requires the inclusion of employer-sponsored receivables in calculating the amount of assets in a registerable superannuation entity. The amount of employer-sponsored receivables as part of a registerable superannuation entity's assets does not impact on ASIC's costs in supervising the relevant superannuation trustee but would distort the amount of levy payable by those trustees. To address this distortion, the entity metric for superannuation trustees (section 36 of the Levy Regulations) is amended so that employer-sponsored receivables will not count towards the value of the assets in registerable superannuation entities for the purposes of calculating the amount of levy a superannuation trustee is required to pay each financial year. The amendment applies from the 2017-18 financial year onwards.

Schedule 7 – Small securities exchange operators

The amendment in Schedule 7 provides that an entity will only fall within the small securities exchange operators subsector (section 48 of the Levy Regulations) if the market being operated by an entity is a prescribed financial market as defined in section 9 of the *Corporations Act 2001*. The amendment is required to ensure that operators of specialised markets no longer fall within this subsector. They will instead fall within the new specialised market operators and established specialised market operators subsectors provided for in Schedule 8 of the Regulations.

The amendments apply to levies payable in relation to the 2018-19 financial year and later financial years.

Schedule 8 - New and established specialised market operators

The existing 'small derivatives market operators' subsector in section 50 of the Levy Regulations will be repealed so that it does not apply from the 2018-19 financial year onwards. The subsector will be replaced with two new subsectors from 2018-19 onwards that differentiate between operators of new specialised markets and operators of established specialised markets.

Section 52A - New specialised market operators

The amendments in Schedule 8 provide for a subsector for new specialised market operators. An entity will fall within this subsector for a two year period after it is licensed to operate a specialised market under subsection 795B(1) of the *Corporations Act 2001*.

An entity will only fall within the subsector if it is operating a new market that has never been previously operated in Australia or overseas and the entity has never previously held an Australian Market Licence. However, an entity will not fall within this subsector if the market being operated is:

- an overseas market (see section 46 of the Levy Regulations);
- a small securities (self-listing) exchange (see section 47 of the Levy Regulations);

- a small securities exchange (see section 48 of the Levy Regulations);
- a small futures exchange (see section 49 of the Levy Regulations);
- a large securities exchange (see section 51 of the Levy Regulations); or
- a large futures exchange (see section 52 of the Levy Regulations).

Entities that fall within this subsector will pay a levy calculated in accordance with the basic levy component formula in section 9 of the Levy Regulations. Under this formula, ASIC's regulatory costs for the subsector will be shared between all entities in the subsector in proportion to the number of days each entity operates each market that falls within the subsector. ASIC will prescribe its regulatory costs for the subsector and the cumulative number of days all relevant markets in the subsector were operated as part of its annual legislative instrument.

After operating the market for two years, an entity will cease to fall within the 'new specialised market operators' subsector and instead fall within the 'established specialised market operators' subsector.

Section 52B - Established specialised market operators

The amendments in Schedule 8 provide for a subsector for established specialised market operators. An entity will fall within this new subsector if it:

- operates a market in Australia that has previously been operated by it or another entity in Australia or overseas; or
- operates a new type of market that has never been previously operated in Australia or overseas but the entity holds or previously held an Australian Market Licence; or
- has already operated a new market that has never been previously operated in Australia or overseas for more than 2 years.

An entity will not however fall within this subsector if the market being operated is:

- an overseas market (see section 46 of the Levy Regulations);
- a small securities (self-listing) exchange (see section 47 of the Levy Regulations);
- a small securities exchange (see section 48 of the Levy Regulations);
- a small futures exchange (see section 49 of the Levy Regulations);
- a large securities exchange (see section 51 of the Levy Regulations); or
- a large futures exchange (see section 52 of the Levy Regulations).

Entities that fall within this subsector must pay a levy calculated in accordance with the basic levy component formula in section 9 of the Levy Regulations. Under this formula, ASIC's regulatory costs for the subsector will be shared between all entities in the subsector in proportion to the number of days each entity operates each market

that falls within the subsector. ASIC will prescribe its regulatory costs for the subsector and the cumulative number of days all relevant markets in the subsector were operated as part of its annual legislative instrument.

Schedule 9 – Participant in a clearing and settlement facility

The subsector definition for the OTC derivative issuers (section 61 of the Levy Regulations), wholesale electricity dealers (section 62 of the Levy Regulations) and securities dealers (section 67 of the Levy Regulations) subsectors currently provides that an entity will not be part of those subsectors if the entity was a participant in a clearing and settlement facility at any time during the financial year. Determining whether relevant entities were a participant in a clearing and settlement facility at any time during the financial year would require additional data collection and impose excessive compliance burdens on relevant entities and ASIC. As such, the entity metric for these subsectors is amended to remove the provisions that state an entity will not fall within the subsectors if the entity was a participant in a clearing and settlement facility. The amendment applies from the 2017-18 financial year onwards.

Schedule 10 – Benchmark administrators

The amendments in Schedule 10 of the Regulations provide for a new industry subsector for benchmark administrator licence holders. Entities that hold a benchmark administrator licence to administer a financial benchmark during the 2018-19 financial year and future financial years will have to pay a levy calculated in accordance with the basic levy component formula in section 9 of the Levy Regulations. Under this formula, ASIC's regulatory costs for the subsector will be shared in proportion to the number of days each entity administers each financial benchmark it is licensed to administer. ASIC will prescribe its regulatory costs for the subsector and the cumulative number of days all relevant financial benchmarks are administered as part of its annual legislative instrument.

Schedule 11 – Credit rating agencies

Section 60 of the Levy Regulations provides for a flat levy for entities that have an Australian Financial Services Licence (AFSL) with an authorisation to provide general advice by issuing a credit rating. The amendments in Schedule 11 will repeal the existing subsector and replace it with a subsector that is still called 'credit rating agencies' but will include a graduated levy. The amendment applies from the 2017-18 financial year onwards.

An entity will continue to fall within the credit rating agencies subsector if it holds an AFSL that authorises it to provide general advice by issuing a credit rating.

All entities that fall within the amended credit rating agencies subsector will pay a minimum levy of \$2,000. Entities within the subsector that have a supervisory college will also pay a levy calculated in accordance with the graduated levy formula in section 10 of the Levy Regulations. This will be a variable component based on the number of days in a financial year the entity had the necessary licence and for which there was a supervisory college for the entity. As part of its annual legislative instrument, ASIC will prescribe its regulatory costs, the cumulative number of days

that all credit rating agencies in the subsector had the necessary licence, and whether there was a supervisory college for any of the entities.

Schedule 12 – Large futures exchange participants and large securities exchange participants

Items 1 – 4 of Schedule 12 of the Regulations amend the large futures exchange participants subsector (section 64 of the Levy Regulations) to simplify the calculation of the graduated component of the levy for the subsector. The graduated component will be based on each entity's share of the total number of messages sent and lots entered or reported to a large securities exchange that are recognised by ASIC's Market Surveillance System. Where there are multiple reports relating to the same message or lot that contains the same information, each message or lot will only be counted once for the purposes of calculating the amount of levy payable.

The current split between information technology costs and non-information technology costs will be removed. Instead, 90 per cent of ASIC's costs relating to the subsector will be recovered based on the number of recognised lots reported to a large securities exchange and the remaining 10 per cent of ASIC's costs relating to the subsector will be recovered based on the number of recognised messages reported to a large securities exchange.

All entities will continue to pay the existing \$9,000 minimum levy amount and ASIC will prescribe its regulatory costs and the total number of reported messages and lots recognised by the Market Surveillance System for the financial year as part of its annual legislative instrument.

The amendments only apply to levies payable in relation to the 2018-19 financial year and later financial years.

Items 5 – 8 of Schedule 12 of the Regulations amend the large securities exchange participants subsector (section 65 of the Levy Regulations) to simplify the calculation of the graduated component of the levy for the subsector. The graduated component will continue to be based on each entity's share of the total number of messages sent and transactions entered or reported to a large futures exchange that are recognised by ASIC's Market Surveillance System. Where there are multiple reports containing the same information relating to the same message or transaction, each message or transaction will only be counted once for the purposes of calculating the amount of levy payable.

The split between information technology costs and non-information technology costs will be removed. Instead, 90 per cent of ASIC's costs relating to the subsector will be recovered based on the number of recognised transactions reported to a large futures exchange and the remaining 10 per cent of ASIC's costs relating to the subsector will be recovered based on the number of recognised messages reported to a large futures exchange.

All entities will continue to pay the existing \$9,000 minimum levy amount and ASIC will continue to prescribe its regulatory costs and the total number of reported messages and transactions recognised by the Market Surveillance System for the financial year as part of its annual legislative instrument.

The amendments only apply to levies payable in relation to the 2018-19 financial year and later financial years.

Schedule 13 – Over-the-counter (OTC) traders and securities dealers

Items 1 to 3 in Schedule 13 adjust the OTC traders subsector (section 66 of the Levy Regulations) to clarify the scope of the subsector.

At present, an entity will not fall within the OTC traders subsector if it is part of any of the following subsectors:

- responsible entities (section 35);
- superannuation trustees (section 36);
- wholesale trustees (section 37).

The purpose of the carve out was to exempt entities in those subsectors from having to also pay the OTC traders subsector levy where they only deal in OTC products pursuant to their activities related to those subsectors. However, as a large number of OTC traders have a broad range of licence authorisations, the existing carve-out may have the effect of excluding OTC traders from the subsector merely because they have a licence authorisation that would make them part of the responsible entities, superannuation trustees or wholesale trustees subsectors. To address this, the carve-out is being amended so that an entity will only qualify for the exemption if at all times the entity is part of that other subsector, the entity deals in or holds out that it deals in OTC financial products only as part of its activities relevant to those subsectors. The amendment takes effect from the day after the Regulations are registered and applies from the 2017-18 financial year onwards.

Item 4 in Schedule 13 clarifies that where there are multiple reports containing the same information relating to the transaction, each transaction will only be counted once for the purposes of calculating the amount of levy payable.

Schedule 14 – Application and transitional provisions

Schedule 14 (in conjunction with section 4 of the Regulations) prescribes the application provisions for each of the amendments in the Regulations. The table below groups the amendments based on their commencement and application.

| Applies from the 2017-18 financial year onwards | Applies from the 2018-19 financial year onwards | Fee change takes effect 1 July 2018 (see section 4) |
|--|--|--|
| <ul style="list-style-type: none"> • ASIC's recovery of previous operating costs (Schedule 1) | <ul style="list-style-type: none"> • Extending the small amount credit provider subsector to also include medium amount credit providers (Schedule 4) | <ul style="list-style-type: none"> • Increasing the review fee for proprietary companies (Schedule 16) |
| <ul style="list-style-type: none"> • Exempting registered charities and not-for-profits from the levy • ASIC's costs relating to | <ul style="list-style-type: none"> • New and existing Specialised market operators will no longer fall within the small securities exchange | <ul style="list-style-type: none"> • Removing the fee for publishing prescribed notices on AISC's publication website (Schedule 17) |

| Applies from the 2017-18 financial year onwards | Applies from the 2018-19 financial year onwards | Fee change takes effect 1 July 2018 (see section 4) |
|--|---|--|
| the individuals it regulates (Schedule 2) | operators subsector (Schedule 7) | |
| <ul style="list-style-type: none"> Exempt foreign entities will only be required to pay the levy in relation to their securities held in Australia (Schedule 3) | <ul style="list-style-type: none"> New and established specialised market operators subsectors (Schedule 8) | |
| <ul style="list-style-type: none"> Remove possible double counting of assets for the purpose of calculating the levy amount payable by entities that are responsible entities and wholesale trustees (Schedule 5) | <ul style="list-style-type: none"> Creating a new subsector for benchmark administrators (Schedule 10) | |
| <ul style="list-style-type: none"> Employer-sponsored receivables will not count towards the value of the assets in registerable superannuation entities for calculating the levy (Schedule 6) | <ul style="list-style-type: none"> Simplifying the large securities exchange participants and large futures exchange participants subsectors (Schedule 12) | |
| <ul style="list-style-type: none"> Clearing and settlement facility exclusions (Schedule 9) | | |
| <ul style="list-style-type: none"> Adjusting the credit rating agency subsector (Schedule 11) | | |
| <ul style="list-style-type: none"> Clarifying the over-the-counter traders subsector (Schedule 13) | | |

All the amendments apply prospectively from the day after the instrument is registered or in some cases 1 July 2018. While some of the amendments apply to activities undertaken in the 2017-18 financial year, they only affect the prospective rights and obligations of entities.

Schedule 15 – Review fee for small proprietary companies

The amendments in Schedule 15 provide for ASIC's regulatory costs in relation to small proprietary companies to be recovered through a \$4 increase to the annual review fee for proprietary companies in the Review Fees Regulations. This approach will minimise the regulatory burden of the Industry Funding Model on small proprietary companies by ensuring that they only have to pay one fee each year.

The \$4 increase will apply from 1 July 2018 to ensure it operates consistently with the payment of levies under the industry funding regime which only occur after the end of the 2017-18 financial year. The \$4 fee will be subject to indexation together with the rest of the annual review fees.

The \$4 increase is also incorporated into the cost for the 10 year upfront payment option for proprietary companies that pay their review fees in advance.

As the \$4 increase applies to all proprietary companies, ASIC will reduce its regulatory costs for large proprietary companies (section 16 of the Levy Regulations) by an amount equal to the additional \$4 large proprietary companies will pay through the increase to the annual review fee in the Review Fee Regulations.

Schedule 16 – Repeal of lodgement fees for insolvency related notices on ASIC's publication website

The amendments in schedule 16 of the Regulations will repeal section 4 of the Fees Regulations which prescribes a \$5 fee for publishing prescribed notices on ASIC's publication website. The fee is being removed as it relates to activities that will be cost recovered under the Levy Regulations.

The lodgement fee for these publications was temporarily reduced to the current \$5 fee from 1 July 2017 under the *ASIC Supervisory Cost Recovery Levy (Consequential Amendments) Regulations 2017* to allow modifications to be made to the technology portal to allow lodgements to be made without requiring a fee to be paid. The total amount of fees recovered through the prescribed lodgements for the 2017-18 financial year will be deducted from ASIC's regulatory costs for regulating registered liquidators under the Levy Regulations to ensure that the Government does not recover an amount greater than ASIC's regulatory costs for that subsector for the year.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

ASIC Supervisory Cost Recovery Levy Amendment (Enhancements) Regulations 2018

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *ASIC Supervisory Cost Recovery Levy Amendment (Enhancements) Regulations 2018* (the Regulations) amend the *ASIC Supervisory Cost Recovery Levy Regulations 2017* (the Levy Regulations) to:

- provide for the recovery of ASIC's operating costs incurred under the previous ASIC market supervisory cost recovery regime (Schedule 1);
- exempt registered charities and not-for-profits from the levy and allow ASIC to recover its enforcement, compliance and surveillance costs relating to individuals regulated by ASIC (Schedule 2);
- clarify that exempt foreign entities only have to pay a levy in relation to their securities held in Australia (Schedule 3);
- expand the 'small amount credit providers' subsector to also cover medium amount credit providers (Schedule 4);
- remove possible double counting of assets for the purpose of calculating the levy amount payable by entities that fall within both the responsible entities and wholesale trustees subsectors (Schedule 5);
- exclude employer-sponsored receivables from the value of assets in a registerable superannuation entity for the purposes of calculating the amount of levy payable by superannuation trustees (Schedule 6);
- provide that specialised market operators no longer fall within the small securities exchange operators subsector (Schedule 7);
- create new subsectors for new and established specialised market operators (Schedule 8);
- make minor technical adjustments to the operation of the levy as it applies to over-the-counter (OTC) traders, retail over-the-counter derivative issuers, wholesale electricity dealers and securities dealers (Schedules 9 and 13);
- establish a new industry subsector to reflect the recently introduced licensing scheme for financial benchmark administrators (Schedule 10);

- modify the credit rating agencies subsector to differentiate between credit rating agencies that have a supervisory college and credit rating agencies that do not (Schedule 11); and
- simplify the operation of the levy metric for the large futures exchange participants and large securities exchange participants subsectors (Schedule 12).

The Regulations would also amend the:

- *Corporations (Review Fees) Regulations 2003* (the Review Fees Regulations) to factor in ASIC's regulatory costs for proprietary companies into their annual review fee (Schedule 15); and
- *Corporations (Fees) Regulations 2001* (the Fees Regulations) to remove certain lodgement fees for publishing prescribed notices on ASIC's publication website (Schedule 16).

All the amendments apply prospectively from the day after the instrument is registered or in some cases 1 July 2018. While some of the amendments apply to activities undertaken in the 2017-18 financial year, they only affect the prospective rights and obligations of regulated entities.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.