

EXPLANATORY STATEMENT

ASIC (Supervisory Cost Recovery Levy—Regulatory Costs) Instrument 2018/1062

Prepared by the Australian Securities and Investments Commission

The Australian Securities and Investments Commission (*ASIC*) makes the *ASIC (Supervisory Cost Recovery Levy—Regulatory Costs) Instrument 2018/1062* under subsection 12A(6) of the *Australian Securities and Investments Commission Act 2001* (the *ASIC Act*) for the purposes of subsection 10(2) of the *ASIC Supervisory Cost Recovery Levy Act 2017* (the *Cost Recovery Act*).

Subsection 10(1) of the *Cost Recovery Act* provides that ASIC's regulatory costs for a financial year means the amount determined in an instrument under subsection 10(2) for the financial year.

Subsection 10(2) of the *Cost Recovery Act* provides that ASIC must, by legislative instrument, make a determination specifying the amount of its regulatory costs for a financial year and the extent to which those costs are attributable to each sub-sector.

Subsection 12A(6) of the *ASIC Act* provides that ASIC has power to do whatever is necessary for or in connection with, or reasonably incidental to, the performance of its functions. This includes functions conferred on ASIC by or under the *Cost Recovery Act*. The power in subsection 12A(6) of the *ASIC Act* extends to the making of instruments in connection with the performance of those functions.

1. Background

- 1.1 On 20 April 2016, the Government accepted a recommendation of the Financial System Inquiry to introduce an industry funding model for ASIC.
- 1.2 The benefits of an industry funding model include improving equity, as only those entities that are regulated by ASIC and create the need for regulation will bear its costs, rather than ordinary taxpayers. It also encourages regulatory compliance as good conduct will reduce supervisory levies. Further, it improves ASIC's resource allocation, by providing ASIC with richer data to better identify emerging risks, enhancing ASIC's transparency and accountability.
- 1.3 On 1 July 2017, the first phase of the ASIC industry funding model commenced with the introduction of industry levies to recover the costs of ASIC's regulatory activities. The first phase is reflected in the *Cost Recovery Act, ASIC Supervisory Cost Recovery Levy Regulations 2017* (the *Cost Recovery Regulations*), *ASIC Supervisory Cost Recovery Levy (Collection) Act 2017* and other related regulations.
- 1.4 The Government has also committed that ASIC's costs for specific regulatory activities requested by an entity should be fully recovered from that entity. This is referred to as 'fees for service' and is the second and final phase of the ASIC industry funding model. The second phase is reflected in the reforms made on or about 28 and 29 June 2018, including by the *Corporations (Fees) Amendment (ASIC Fees) Act 2018* and the *Treasury Laws Amendment (ASIC Fees) Regulations 2018*.
- 1.5 The instrument relates to industry levies. Industry levies are imposed on the industry on an annual basis. The annual levies are aimed at recovering ASIC's regulatory costs for the previous financial year. Any entity which is a *leviable entity* is required to pay a levy for each *sub-sector* they were a part of at any time during the relevant financial year. The sub-sectors are determined by the *Cost Recovery Regulations*.

2. Purpose of the instrument

- 2.1 The purpose of the instrument is to specify ASIC's regulatory costs and their attribution to each sub-sector for the 2017 – 2018 financial year. The instrument is to be read in conjunction with the *ASIC (Supervisory Cost Recovery Levy—Annual Determination) Instrument 2018/1063*.
- 2.2 Together, these instruments provide ASIC with the necessary figures to enable it to calculate the levies payable by each leviable entity for the 2017 – 2018 financial year. ASIC will use the figures in these instruments in preparing the invoices for the levies which will be sent out to the industry in January 2019.

3. Operation of the instrument

- 3.1 The legislative instrument applies in relation to the **2017 – 2018 financial year**.

Amount of ASIC's regulatory costs for the 2017 – 2018 financial year

- 3.2 Section 6 of the instrument specifies the amount of ASIC's regulatory costs for the financial year. ASIC's regulatory costs were \$236,582,384.
- 3.3 ASIC confirms that the amount of its regulatory costs for the financial year does not exceed the sum of all amounts appropriated by the Parliament for the purposes of ASIC for the financial year, that sum being \$387,490,000.
- 3.4 ASIC confirms that the amount of its regulatory costs for the financial year did *not* include:
- (a) any amounts relating directly to the regulation of persons and entities that are not leviable entities;
 - (b) any 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*; or
 - (c) any costs of the kind mentioned in section 5 of the Cost Recovery Regulations.
- 3.5 ASIC confirms that the amount of its regulatory costs for the financial year included the following amounts:
- (a) costs relating directly or indirectly to the regulation of leviable entities, including costs relating to surveillance, education, guidance, engagement with industry and policy advice;
 - (b) the total of all amounts that, in the financial year, are debited against an appropriation and credited to a special account established under paragraph 78(1)(a) of the *Public Governance, Performance and Accountability Act 2013* (even if the debits from the special account in the financial year fall short of the amount of those credits);
 - (c) depreciation of capital costs;
 - (d) ASIC's operating costs for a financial year before the 2017 – 2018 financial year as permitted by section 5A of the Cost Recovery Regulations.

- 3.6 ASIC confirms that no adjustment was made under subsection 10(6) of the Cost Recovery Act, for under or over collection of levy.

Attribution of costs to sub-sectors for the 2017 – 2018 financial year

- 3.7 Section 7 of the instrument specifies how ASIC’s regulatory costs have been attributed to each sub-sector.

- 3.8 There are 48 sub-sectors in relation to the 2017 – 2018 financial year. They are:

1. Auditors of disclosing entities
2. Australian derivative trade repository operators
3. Corporate advisors
4. Credit intermediaries
5. Credit providers
6. Credit rating agencies
7. Custodians
8. Deposit product providers
9. Exempt CS facility operators
10. Exempt market operators
11. Insurance product distributors
12. Insurance product providers
13. Large futures exchange operators
14. Large futures exchange participants
15. Large proprietary companies
16. Large securities exchange operators
17. Large securities exchange participants
18. Licensees that provide only general advice to retail or wholesale clients
19. Licensees that provide personal advice on relevant financial products to retail clients
20. Licensees that provide personal advice to only wholesale clients
21. Licensees that provide personal advice to retail clients on only products that are not relevant financial products
22. Listed corporations
23. Managed discretionary account providers
24. Margin lenders
25. Operators of investor directed portfolio services
26. Overseas market operators
27. Over the counter traders
28. Payment product providers
29. Public companies (unlisted)
30. Registered company auditors
31. Registered liquidators
32. Responsible entities
33. Retail over the counter derivatives issuers
34. Risk management product providers
35. Securities dealers
36. Small amount credit providers
37. Small derivative market operators
38. Small futures exchange operators
39. Small securities exchange operators
40. Small securities exchange operators with self listing function only
41. Superannuation trustees
42. Tier 1 clearing and settlement facility operators
43. Tier 2 clearing and settlement facility operators
44. Tier 3 clearing and settlement facility operators
45. Tier 4 clearing and settlement facility operators
46. Traditional trustee company service providers
47. Wholesale electricity dealers
48. Wholesale trustees

- 3.9 ASIC had regard to the following principles in attributing its regulatory costs to a sub-sector:
- (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) amounts credited to a special account established under paragraph 78(1)(a) of the *Public Governance, Performance and Accountability Act 2013* 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.

4. Consultation

- 4.1 Section 17 of the *Legislation Act 2003* provides that, before a legislative instrument is made, the rule-maker must be satisfied that there has been undertaken any consultation that is considered by the rule-maker to be appropriate, and reasonably practicable to undertake.
- 4.2 In determining whether any consultation that was undertaken is appropriate, the rule-maker may have regard to any relevant matter, including the extent to which the consultation drew on the knowledge of persons having expertise in fields relevant to the proposed instrument.
- 4.3 ASIC did not engage in consultation before making this legislative instrument. The reason why no consultation was undertaken was because the instrument specifies information that is exclusively within ASIC's knowledge, being the amount of ASIC's regulatory costs for the financial year, and the extent to which those costs are attributable to each sub-sector.

Statement of Compatibility with Human Rights

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

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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

Subsection 10(2) of the *ASIC Supervisory Cost Recovery Levy Act 2017* requires ASIC to make a determination, by legislative instrument, specifying the amount of its regulatory costs for a financial year and the extent to which those costs are attributable to each sub-sector.

This legislative instrument specifies ASIC's regulatory costs and their attribution to each of the 48 sub-sectors for the 2017 – 2018 financial year.

The purpose of the instrument is to allow ASIC to recover the costs of its regulatory activities for that financial year from the entities which generate the need for regulation.

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.