

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Assistant Treasurer, Minister for Housing and Minister for Homelessness, Social and Community Housing**

*ASIC Supervisory Cost Recovery Levy Act 2017*

*ASIC Supervisory Cost Recovery Levy Amendment (Corporate Insolvency Reforms)  
Regulations 2021*

Section 13 of the *ASIC Supervisory Cost Recovery Levy Act 2017* (the Cost Recovery 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 Cost Recovery Levy Act imposes a levy on entities regulated by the Australian Securities and Investments Commission (ASIC) to enable ASIC to recover its regulatory costs. Section 9 of the Cost Recovery Levy Act provides that the amount of levy payable for a leviable entity in a financial year is the amount worked out in accordance with the regulations.

The purpose of the *ASIC Supervisory Cost Recovery Levy Amendment (Corporate Insolvency Reforms) Regulations 2021* (the Regulations) is to make amendments to the *ASIC Supervisory Cost Recovery Levy Regulations 2017* (the Cost Recovery Levy Regulations). The amendments are necessary to allow ASIC to recover costs from its regulation of activities undertaken by a small business restructuring practitioner in the new formal debt restructuring process.

The economic consequences of the COVID-19 pandemic highlights the need for a system of external administration that can accommodate the needs of small businesses. In these situations, complex, lengthy and rigid procedures can be unsuitable.

In response to these challenges, the Australian Government announced a package of reforms to the corporate insolvency framework, including major changes to accommodate eligible small businesses. The reforms are designed to meet the needs of small businesses by reducing the complexity and costs in insolvency processes. The reforms are implemented through the *Corporations Amendment (Corporate Insolvency Reforms) Act 2020*, the *Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020* and the *Corporations Amendment (Corporate Insolvency Reforms) Rules 2020*.

The Regulations are additional to these reforms to Australia's corporate insolvency framework. In particular, the proposed Regulations would make amendments to the Cost Recovery Levy Regulations to allow ASIC to recover supervisory costs related to the new formal debt restructuring process.

Public consultation did not occur in relation to the Regulations. However, the Regulations make only consequential amendments to the Cost Recovery Levy

Regulations to allow ASIC to recover supervisory costs from the regulation of activities related to the new formal debt restructuring process.

Public consultation was conducted in relation to the new formal debt restructuring process. The *Corporations Amendment (Corporate Insolvency Reforms) Act 2020* was publicly released in exposure draft form between 7 and 12 October 2020. Similarly, the *Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020* were publicly released in exposure draft form between 17 and 24 November 2020. As part of these consultation processes, submissions were received from various industry participants and industry bodies.

Details of the Regulations are set out in [Attachment A](#).

A Statement of Compatibility with Human Rights, in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*, is at [Attachment B](#).

The Rules form part of the reforms to the corporate insolvency framework. These reforms will deliver significant regulatory savings for impacted businesses and individuals. A Regulatory Impact Statement for the corporate insolvency reforms is included in the explanatory statement to the *Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020* (OBPR Ref: 25694).

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

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

The Regulations commence on the day after the Regulations are registered.

## ATTACHMENT A

### Details of the *ASIC Supervisory Cost Recovery Levy Amendment (Corporate Insolvency Reforms) Regulations 2021*

#### Section 1 – Name of the Regulations

This section provides that the name of the Regulations is the *ASIC Supervisory Cost Recovery Levy Amendment (Corporate Insolvency Reforms) Regulations 2021* (the Regulations).

#### Section 2 – Commencement

This section provides that the Regulations commence on the day after the Regulations are registered.

#### Section 3 – Authority

The Regulations are made under the *ASIC Supervisory Cost Recovery Levy Act 2017* (the Cost Recovery Levy Act).

#### Section 4 – Schedule

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

## Schedule 1 – Amendments to the *ASIC Supervisory Cost Recovery Levy Regulations 2017*

Entities that are regulated by ASIC are required to pay a levy (the cost recovery levy) to enable ASIC to recover its regulatory costs. The levy is payable once ASIC issues the leviable entity with a notice setting out its liability for the levy. The 'industry pays' model means that the funding of regulatory activities undertaken by ASIC is met by those creating the need for regulation, rather than the Australian taxpayer.

The levy is imposed by the Cost Recovery Levy Act and the amount of levy payable by a leviable entity for a financial year is the amount worked out in accordance with the *ASIC Supervisory Cost Recovery Levy Regulations 2017* (the Cost Recovery Levy Regulations).

### **Amendments to the registered liquidator entity metric**

For the purposes of the cost recovery levy, a registered liquidator is a leviable entity (see section 7 of the Cost Recovery Levy Act). Registered liquidators are a sub-sector for the purposes of calculating the amount of levy payable (see section 20(1) of the Cost Recovery Levy Regulations). A leviable entity's levy component in respect of the registered liquidators sub-sector includes both the minimum levy component for the sub-sector and the graduated levy component for the entity for the sub-sector (see section 20(1) of the Cost Recovery Levy Regulations).

One factor required for the calculation of a leviable entity's graduated levy component is the leviable entity's entity metric. The entity metric is designed to represent a leviable entity's overall contribution to ASIC's enforcement and surveillance activities for each sub-sector. The cost to undertake these regulatory activities varies significantly—the conduct and behaviour of industry participants influences ASIC's risk assessment of the sub-sector and the level of regulatory oversight required.

In order to represent a leviable entity's overall contribution to ASIC's enforcement and surveillance activities for each sub-sector, section 20 of the Cost Recovery Levy Regulations includes in a leviable entity's entity metric:

- the number of prescribed appointments under Chapter 5 of the Corporations Act (relating to external administration) made by the entity in the financial year;
- the number of prescribed events published on ASIC's published notices website by the entity in the financial year; and
- the number of prescribed documents lodged with ASIC by the entity in the financial year.

Schedule 1 to the *Corporations Amendment (Corporate Insolvency Reforms) Act 2020* establishes a new formal debt restructuring process as form of external administration. As with the treatment of other forms of external administration, a leviable entity's involvement with the debt restructuring process is to contribute to its entity metric. As

such, the Regulations amend section 20(3) of the Cost Recovery Levy Regulations to prescribe the following events as contributors to a leviable entity's entity metric:

- the number of appointments as a restructuring practitioner for a company (see section 453B of the *Corporations Act 2001* and regulation 5.3B.50 of the *Corporations Regulations 2001*);
- the number of appointments as restructuring practitioner for a restructuring plan (see regulation 5.3B.54 and, generally, Subdivision D, Division 3, Part 5.3B of the *Corporations Regulations 2001*); and
- the number of documents lodged with ASIC giving notice of the making of a restructuring plan (see subregulation 5.3B.55(b) of the *Corporations Regulations 2001*).

*[Schedule 1, items 1, 2 and 4, regulations 20(3)(a) and (d) of the Cost Recovery Levy Regulations]*

The Regulations also make a consequential change to cross-referencing in regulation 20(3)(b) of the Cost Recovery Levy Regulations to reflect the insertion of the number of appointments as a restructuring practitioner. *[Schedule 1, item 3, regulation 20(3)(b) of the Cost Recovery Levy Regulations]*

## **ATTACHMENT B**

### **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 (Corporate Insolvency Reforms) Regulations 2021***

The Regulations are 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 (Corporate Insolvency Reforms) Regulations 2021* (the Regulations) make amendments to the *ASIC Supervisory Cost Recovery Levy Regulations 2017*. The amendments are necessary to allow ASIC to recover costs from its regulation of activities undertaken by a small business restructuring practitioner in the new formal debt restructuring process.

### **Human rights implications**

The Regulations do not engage any of the applicable rights or freedoms.

### **Conclusion**

The Regulations are compatible with human rights as they do not raise any human rights issues.