

EXPLANATORY STATEMENT

Issued by authority of the Treasurer

ASIC Supervisory Cost Recovery Levy Act 2017

ASIC Supervisory Cost Recovery Levy Amendment (Claims Handling and Settling Services Providers) Regulations 2021

Section 13 of the *ASIC Supervisory Cost Recovery Levy Act 2017* 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.

Schedule 2 to the *Financial Sector Reform (Hayne Royal Commission Response) (2021 Measures No. 1) Regulations 2021* amend the *Corporations Regulations 2001* to make handling an insurance claim a 'financial service' under the *Corporations Act 2001*.

The purpose of the *ASIC Supervisory Cost Recovery Levy Amendment (Claims Handling and Settling Services Providers) Regulations 2021* (the Regulations) is to make amendments to the *ASIC Supervisory Cost Recovery Levy Regulations 2017* allow Australian Securities and Investments Commission (ASIC) to recover costs from its regulation of activities undertaken by people who handle insurance claims.

The *ASIC Supervisory Cost Recovery Levy Act 2017* requires the Minister be satisfied that the Regulations are consistent with the objectives of the cost recovery regime in subsection 9(2) of the *ASIC Supervisory Cost Recovery Levy Act 2017*.

The Regulations were consulted on as part of the public consultation for Schedule 2 to the *Financial Sector Reform (Hayne Royal Commission Response) (2021 Measures No. 1) Regulations 2021*. Public consultation on Schedule 2 to the *Financial Sector Reform (Hayne Royal Commission Response) (2021 Measures No. 1) Regulations 2021* was conducted between 29 November 2019 and 10 January 2020. Treasury received 37 submissions. Consultation included feedback from consumer groups, industry and ASIC.

The Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry has been certified as being informed by a process and analysis equivalent to a Regulation Impact Statement for the purposes of the Government decision to implement this reform. The Office of Best Practice Regulation has agreed that this measure will result in a compliance cost of \$4.8 million a year for business.

The Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry can be accessed through the Australian Parliament House website.¹

¹ <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22publicatio ns%2Ftabledpapers%2Fbc83795c-b7fa-4b42-a93b-fa012cffffc2%22>

Details of the Regulations are set out in Attachment A

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

The Regulations commenced on the day after the instrument is registered on the Federal Register of Legislation.

A statement of Compatibility with Human Rights is at Attachment B.

Details of the ASIC Supervisory Cost Recovery Levy Amendment (Claims Handling and Settling Services Providers) 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 (Claims Handling and Settling Services Providers) Regulations 2021* (the Regulations).

Section 2 – Commencement

This section provides that the Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

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

Section 4 – Schedule

This section provides that each instrument that is specified in the Schedules to this instrument will be amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules 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 Australian Securities and Investments Commission (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 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*.

Item 1 – Section 72AA

Item 1 inserts a new provision into the *ASIC Supervisory Cost Recovery Levy Regulations 2017* to enable ASIC to recover its regulatory costs associated with supervising people who handle insurance claims.

Section 72AA creates a new sub-sector called the 'claims handling and settling services providers' sub-sector in the insurance sector for the purposes of calculating the amount of levy payable.

An entity forms part of the new claims handling and settling services providers subsector if they hold an Australian financial services licence which authorises them to provide claims handling and settling services.

A leviable entity's levy component in respect of the new sub-sector includes the minimum levy component for the sub-sector and the graduated levy component for the sub-sector.

The minimum levy component is \$500 for each licence and the graduate levy component will be worked out in accordance with section 10 of the *ASIC Supervisory Cost Recovery Levy Regulations 2017*.

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 enforceable and surveillance activities for each sub-sector, new section 72AA includes a leviable entity's entity metric to be the number of claims the entity handles during the financial year. ASIC will prescribe the amount for each claim handled as part of its annual legislative instrument for each financial year.

Item 2 – Application of the amendments

Item 2 inserts an application provision into new Division 2 of Part 5 of the *ASIC Supervisory Cost Recovery Levy Regulations 2017* to provide that the amendments to this instrument made by Schedule 1 to the Regulations apply in relation to the 2021-22 financial year and later financial years.

Item 3 – Amendment to Schedule 1 to the *ASIC Supervisory Cost Recovery Levy Regulations 2017*

The Regulations also makes a consequential amendment to Schedule 1 to the *ASIC Supervisory Cost Recovery Levy Regulations 2017* to include claims handling and settling services providers in the list of sub-sectors.

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 (Claims Handling and Settling Services Providers) Regulations 2021

The *ASIC Supervisory Cost Recovery Levy Amendment (Claims Handling and Settling Services Providers) 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 purpose of the Regulations is to make amendments to the *ASIC Supervisory Cost Recovery Levy Regulations 2017* (the Cost Recovery Levy Regulations) to allow ASIC to recover costs from its regulation of activities undertaken by people who handle insurance claims.

Human rights implications

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

Conclusion

This Regulations are compatible with human rights as it does not raise any human rights issues.