



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC (Supervisory Cost Recovery Levy—Regulatory Costs) Instrument 2023/777

This is the Explanatory Statement for the *ASIC (Supervisory Cost Recovery Levy—Regulatory Costs) Instrument 2023/777*. The Explanatory Statement is approved by the Australian Securities and Investments Commission (*ASIC*).

Summary

1. This instrument relates to levies imposed on ASIC's regulatory population. These industry levies are imposed on an annual basis. The annual levies are aimed at recovering ASIC's regulatory costs for the financial year.
2. This instrument specifies ASIC's regulatory costs and their attribution to each industry sub-sector for the 2022-23 financial year.

Purpose of the instrument

3. The purpose of the instrument is to determine ASIC's regulatory costs and their attribution to each industry sub-sector for the 2022-23 financial year so as to facilitate the collection of industry levies to recover those regulatory costs.
4. 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 *ASIC Supervisory Cost Recovery Levy Regulations 2017* (the **Cost Recovery Regulations**). The Cost Recovery Regulations are made for the purposes of the *ASIC Supervisory Cost Recovery Levy Act 2017* (the **Cost Recovery Act**).
5. This instrument, together with *ASIC (Supervisory Cost Recovery Levy—Annual Determination) Instrument 2023/778*, provide ASIC with the figures to enable it to calculate the levies payable by each leviable entity for the 2022-23 financial year. ASIC will use the figures in these instruments in preparing the invoices for the levies which will be sent out to industry in January 2024.

Consultation

6. Section 17 of the *Legislation Act 2003* (the **Legislation Act**) 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.

7. 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.
8. 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.

Operation of the instrument

9. The legislative instrument applies in relation to the **2022-23 financial year**.

Amount of ASIC's regulatory costs for the 2022-23 financial year

10. Section 6 of the instrument specifies the amount of ASIC's regulatory costs for the financial year. ASIC's regulatory costs were \$349,531,836.
11. 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 \$426,323,000.
12. 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.
13. 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).

14. ASIC's regulatory costs for the 2022-23 financial year was increased by \$3,725,646 to take account of the shortfall of collected levy for the 2021-22 financial year (but not taking account the shortfall to the extent it arises because of a waiver under section 15 of the *ASIC Supervisory Cost Recovery Levy (Collection) Act 2017*).

Attribution of costs to sub-sectors for the 2022–23 financial year

15. Section 7 of the instrument specifies how ASIC's regulatory costs have been attributed to each sub-sector.
16. There are 52 sub-sectors in relation to the 2022–23 financial year. They are:
1. Auditors of disclosing entities
 2. Australian derivative trade repository operators
 - 2A. Benchmark administrators
 - 2B. Claims handling and settling services providers
 3. Corporate advisors
 4. Credit intermediaries
 5. Credit providers
 6. Credit rating agencies
 7. Custodians
 8. Deposit product providers
 - 8A. Established specialised market operators
 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
 - 24A. New specialised market operators
 25. Operators of investor directed portfolio services
 - 25A. Operators of notified foreign passport funds and regulated former notified funds
 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

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36. Small and medium amount credit providers
 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
17. 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) an excess or shortfall that creates an adjustment under subsection 10(6) of the Cost Recovery Act is attributable the sub-sector in which the excess or shortfall arose;
 - (d) 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.

Commencement and date of effect

18. This instrument is a disallowable legislative instrument.
19. The instrument commences on the day after it is registered on the Federal Register of Legislation, but it takes effect in accordance with paragraphs 11(3)(a) and 11(4)(a) of the Cost Recovery Act. This means the instrument takes effect at the end of the special disallowance period, being (unless notice of a motion of disallowance is given in either House of Parliament), a period of 5 sitting days after the instrument has been tabled in both Houses of Parliament. The instrument does not take effect to the extent it is disallowed by either House of Parliament.

Retrospective application

20. Subsection 12(2) (retrospective application of legislative instruments) of the Legislation Act does not apply to this instrument: see subsection 10(8) of the Cost Recovery Act.

Legislative authority

21. ASIC makes this instrument 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 Cost Recovery Act.
22. 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.
23. 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.
24. 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. This power extends to the making of instruments in connection with the performance of those functions.

Statement of Compatibility with Human Rights

25. The Explanatory Statement for a disallowable legislative instrument must contain a Statement of Compatibility with Human Rights under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is in the Attachment.

Statement of Compatibility with Human Rights

This Statement of Compatibility with Human Rights is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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Overview

1. 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 industry sub-sector.
2. The instrument relates to levies imposed on ASIC's regulatory population. These industry levies are imposed on an annual basis. The annual levies are aimed at recovering ASIC's regulatory costs for the financial year.
3. This instrument specifies ASIC's regulatory costs and their attribution to each industry sub-sector for the 2022-23 financial year.

Assessment of human rights implications

4. This instrument does not engage any of the applicable rights or freedoms.

Conclusion

5. This 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*.