



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC (Supervisory Cost Recovery Levy—Annual Determination) Instrument 2023/778

This is the Explanatory Statement for the *ASIC (Supervisory Cost Recovery Levy—Annual Determination) Instrument 2023/778*. The Explanatory Statement is approved by the Australian Securities and Investments Commission (*ASIC*).

Summary

1. 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.
2. This instrument specifies certain matters about size and composition of ASIC's regulated population and of the metrics that apply to each industry sub-sector within that regulated population for the 2022-23 financial year.

Purpose of the instrument

3. The purpose of the instrument is to specify certain matters that are used in the formulae specified in 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**).
4. The matters are the **sub-sector population** and the **sub-sector metrics** in relation to the **basic levy component** and the **graduated levy component**.
5. This instrument, together with *ASIC (Supervisory Cost Recovery Levy—Regulatory Costs) Instrument 2023/777*, 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 the industry in January 2024.
6. The Cost Recovery Regulations prescribe 6 sectors and 52 sub-sectors for the 2022–23 financial year as follows:
 - (a) the **corporate sector** (comprising 6 sub-sectors);
 - (b) the **deposit-taking and credit sector** (comprising 6 sub-sectors);

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- (c) the *investment management, superannuation and related services sector* (comprising 8 sub-sectors);
 - (d) the *financial advice sector* (comprising 4 sub-sectors);
 - (e) the *market infrastructure and intermediaries sector* (comprising 24 sub-sectors);
 - (f) the *insurance sector* (comprising 4 sub-sectors).
7. Either a *basic levy component* or a *graduated levy component* is applied to each sub-sector. A leviable entity may form part of 2 or more sub-sectors in a sector. The amount of levy payable by a leviable entity is the sum of each levy component the entity has for the financial year.
 8. The *basic levy component* and the *graduated levy component*, for a leviable entity for a sub-sector for a financial year, is worked out according to formulae specified in the Cost Recovery Regulations.
 9. ASIC confirms that:
 - (a) before ASIC made this instrument for the financial year, it was satisfied, having regard to information provided to ASIC, that the instrument is consistent with the objectives stated in subsection 9(2) of the Cost Recovery Act; and
 - (b) this instrument was made after the last day by which returns relating to the financial year must be lodged with ASIC under section 11 of the Collection Act. ASIC determined that day to be 27 September 2023.

Consultation

10. 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.
11. 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.
12. ASIC did not engage in consultation before making this legislative instrument. The reason why no consultation was undertaken was because the instrument specifies numbers and amounts that are calculated based on the information contained in the returns lodged with ASIC under section 11 of the *ASIC Supervisory Cost Recovery Levy (Collection) Act 2017* (the *Collection Act*).

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13. In certain circumstances, ASIC may give a liable entity a notice (a **default notice**) stating the amount that, in ASIC's opinion, is the levy payable by the liable entity for a financial year. These circumstances, which are set out in section 12 of the Collection Act, includes where a person has failed to provide to ASIC a return containing information relating to the liable entity or ASIC is not satisfied with information provided by a person in a return.
 14. The amount stated in the default notice is taken to be the levy payable by the person for the financial year, unless the contrary is proved. While the issue of default notices involves the exercise by ASIC of a discretionary power where the amount of the levy stated in the default notice is based on ASIC's opinion, it is anticipated that ASIC would only have cause to issue default notices in a minority of cases.

Operation of the instrument

15. The legislative instrument applies in relation to the **2022–23 financial year**.
16. The instrument specifies certain matters (numbers and amounts) that are used in the formulae specified in the Cost Recovery Regulations.

Sub-sector population

17. Section 6 of the instrument specifies the **sub-sector population** for the financial year. The sub-sector population, in relation to a sub-sector, for a financial year, means the number of entities that form part of the sub-sector at any time in the financial year.
18. ASIC worked out the number of entities that form part of the sub-sector at any time in the financial year based on the information contained in ASIC's registers and in the returns lodged with ASIC under section 11 of the Collection Act.

Sub-sector metrics—basic levy component and the graduated levy component

19. Section 7 of the instrument specifies the **sub-sector metric** in relation to the **basic levy component** and the **graduated levy component** for the financial year.
20. The **sub-sector metric** in relation to the **basic levy component** is the sum of the amounts of the **basic rate entity metric** for each liable entity that forms part of the sub-sector for the financial year. The **basic rate entity metric** for each liable entity for each sub-sector is the entity's **entity metric** for that sub-sector for the financial year. However, not all sub-sectors have an **entity metric**. In those cases, the **basic rate entity metric** for each liable entity for that sub-sector will be 1: see section 9 of the Cost Recovery Regulations.
21. The **sub-sector metric** in relation to the **graduated levy component** means a number that is the sum of the amounts of the **graduated entity metric** for all liable entities that form part of the sub-sector for the financial year. The **graduated entity metric** means:

- (a) unless paragraph (b) applies—the entity’s *entity metric* for the sub-sector for the financial year; or
- (b) if Part 3 of the Cost Recovery Regulations specifies a *minimum levy threshold* for the sub-sector for the financial year—the difference between the entity’s *entity metric* for the sub-sector for the financial year and the *minimum levy threshold*: see section 10 of the Cost Recovery Regulations.

22. The following table gives a brief description of the *entity metric* to which the numbers specified in the table in section 7 of the instrument relate. If Part 3 of the Cost Recovery Regulations does not make provision for an amount to be the *entity metric* for a sub-sector, then the following table describes the *entity metric* as “not applicable”.

Column 1	Column 2	Column 3	
Item	Sub-sectors	Description of entity metric	
		<i>Basic levy component (as applicable)</i>	<i>Graduated levy component (as applicable)</i>
1	Auditors of disclosing entities	Total of the fees paid or payable to the entity for the auditing and review of financial reports	
2	Australian derivative trade repository operators	Number of days the repository was operated	
2A	Benchmark administrators	Number of days the entity administered the financial benchmark	
2B	Claims handling and settling services providers		Number of claims under insurance products in relation to which the entity provides claims handling and settling services
3	Corporate advisors		Gross revenue
4	Credit intermediaries		Number of credit representatives
5	Credit providers		Gross amount of credit provided
6	Credit rating agencies		Number of days the licence was held
7	Custodians	“Not applicable”	
8	Deposit product providers		Value of deposits
8A	Established specialised market operators	Number of days the market was operated	
9	Exempt CS facility operators	Number of days the facility was operated	
10	Exempt market operators	Number of days the market was operated	
11	Insurance product distributors	“Not applicable”	
12	Insurance product providers		Gross amount of premiums and other revenue
13	Large futures	Number of days the	

Column 1	Column 2	Column 3	
Item	Sub-sectors	Description of entity metric	
		<i>Basic levy component (as applicable)</i>	<i>Graduated levy component (as applicable)</i>
	exchange operators	exchange was operated	
14	Large futures exchange participants		Messages and lots
15	Large proprietary companies	“Not applicable”	
16	Large securities exchange operators	Value of all transactions on exchange	
17	Large securities exchange participants		Messages and transactions
18	Licensees that provide only general advice to retail clients or wholesale clients	“Not applicable”	
19	Licensees that provide personal advice on relevant financial products to retail clients		Number of financial advisers
20	Licensees that provide personal advice to only wholesale clients	“Not applicable”	
21	Licensees that provide personal advice to retail clients on only products that are not relevant financial products	Number of days the licence was held	
22	Listed corporations		Market capitalisation
23	Managed discretionary account providers	Number of days the licence was held	
24	Margin lenders	Number of days the licence was held	
24A	New specialised market operators	Number of days the market was operated	
25	Operators of investor directed portfolio services		Gross revenue
25A	Operators of notified foreign passport funds and regulated former notified funds		Value of Australian assets
26	Overseas market operators	Number of days the market was operated	
27	Over-the-counter traders		Number of persons acting on behalf of the entity
28	Payment product providers		Gross revenue received in connection with non-cash payment products issued by the entity less expenses incurred from dealing in non-cash payment facilities
29	Public companies (unlisted)	“Not applicable”	
30	Registered company auditors	“Not applicable”	
31	Registered liquidators		Appointments, notices and lodged documents
32	Responsible entities		Value of assets in all registered schemes

Column 1	Column 2	Column 3	
Item	Sub-sectors	Description of entity metric	
		<i>Basic levy component (as applicable)</i>	<i>Graduated levy component (as applicable)</i>
33	Retail over-the-counter derivatives issuers	Number of days the licence was held	
34	Risk management product providers	Number of days the licence was held	
35	Securities dealers		Value of transactions in securities
36	Small and medium amount credit providers	Gross amount of credit provided	
38	Small futures exchange operators	Number of days the exchange was operated	
39	Small securities exchange operators	Number of days the exchange was operated	
40	Small securities exchange operators with self-listing function only	Number of days the exchange was operated	
41	Superannuation trustees		Value of assets in all registrable superannuation entities
42	Tier 1 clearing and settlement facility operators	Number of days the facility was operated	
43	Tier 2 clearing and settlement facility operators	Number of days the facility was operated	
44	Tier 3 clearing and settlement facility operators	Number of days the facility was operated	
45	Tier 4 clearing and settlement facility operators	Number of days the facility was operated	
46	Traditional trustee company service providers	Number of days the licence was held	
47	Wholesale electricity dealers	“Not applicable”	
48	Wholesale trustees		Value of assets in all unregistered managed investment schemes

23. ASIC worked out each *sub-sector metric* based on the information contained in ASIC’s registers and in the returns lodged by the leviable entities with ASIC under section 11 of the Collection Act.

Commencement and date of effect

24. This instrument is a disallowable legislative instrument.
25. 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

26. Subsection 12(2) (retrospective application of legislative instruments) of the Legislation Act does not apply to this instrument: see subsection 9(9) of the Cost Recovery Act.

Legislative authority

27. Section 73 of the Cost Recovery Regulations, which is made for the purposes of subsection 9(6) of the Cost Recovery Act, enables ASIC to make an annual determination specifying matters required or permitted by those regulations.
28. ASIC makes this instrument under section 73 of the Cost Recovery Regulations.

Statement of Compatibility with Human Rights

29. 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*.

ASIC (Supervisory Cost Recovery Levy—Annual Determination) Instrument 2023/778

Overview

1. Section 73 of the *ASIC Supervisory Cost Recovery Levy Regulations 2017*, which is made for the purposes of subsection 9(6) of the *ASIC Supervisory Cost Recovery Levy Act 2017*, enables ASIC to make an annual determination specifying matters required or permitted by those regulations.
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 certain matters about size and composition of ASIC's regulated population and of the metrics that apply to each industry sub-sector within that regulated population 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*.