

# EXPLANATORY STATEMENT

## *ASIC (Supervisory Cost Recovery Levy—Annual Determination) Instrument 2018/1063*

Prepared by the Australian Securities and Investments Commission

The Australian Securities and Investments Commission (*ASIC*) makes the *ASIC (Supervisory Cost Recovery Levy—Annual Determination) Instrument 2018/1063* under section 73 of the *ASIC Supervisory Cost Recovery Levy Regulations 2017* (the ***Cost Recovery Regulations***).

### 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 *ASIC Supervisory Cost Recovery Levy Act 2017* (the ***Cost Recovery Act***), the Cost Recovery Regulations, the *ASIC Supervisory Cost Recovery Levy (Collection) Act 2017* (the ***Collection Act***) 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.
- 1.6 The Cost Recovery Regulations prescribe 6 sectors and 48 sub-sectors for the 2017 – 2018 financial year as follows:
  - (a) the ***corporate sector*** (comprising 6 sub-sectors);
  - (b) the ***deposit-taking and credit sector*** (comprising 6 sub-sectors);
  - (c) the ***investment management, superannuation and related services sector*** (comprising 7 sub-sectors);
  - (d) the ***financial advice sector*** (comprising 4 sub-sectors);
  - (e) the ***market infrastructure and intermediaries sector*** (comprising 22 sub-sectors);

- (f) the *insurance sector* (comprising 3 sub-sectors).
- 1.7 Either a *basic levy component* or a *graduated levy component* is applied to each sub-sector. A liable entity may form part of 2 or more sub-sectors in a sector. The amount of levy payable by a liable entity is the sum of each levy component the entity has for the financial year.
- 1.8 The *basic levy component* and the *graduated levy component*, for a liable entity for a sub-sector for a financial year, is worked out according to formulae specified in the Cost Recovery Regulations.

## 2. Purpose of the instrument

- 2.1 The purpose of the instrument is to specify certain matters for the 2017 – 2018 financial year. These matters are numbers, amounts or percentages that are used in the formulae specified in the Cost Recovery Regulations to work out the *basic levy component* and the *graduated levy component*, and a liable entity's *levy component*.
- 2.2 These matters are:
  - (a) the *sub-sector population*;
  - (b) the *sub-sector metrics* in relation to the *basic levy component* and the *graduated levy component*;
  - (c) the *IT percentage* of sub-sector regulatory costs in relation to the *large futures exchange participants* sub-sector; and
  - (d) the *IT percentage* of sub-sector regulatory costs in relation to the *large securities exchange participants* sub-sector.
- 2.2 The instrument is to be read in conjunction with the *ASIC (Supervisory Cost Recovery Levy—Regulatory Costs) Instrument 2018/1062*. That instrument specifies ASIC's *regulatory costs* and the *sub-sector regulatory costs* for the 2017 – 2018 financial year. The *sub-sector regulatory costs* are also used in the formulae for working out the *basic levy component* and the *graduated levy component*, for a liable entity for a sub-sector for the financial year.
- 2.3 Together, these instruments provide ASIC with the necessary figures to enable it to calculate the levies payable by each liable entity for the financial year. ASIC will use the figures in these instruments in preparing and sending the levy invoices in January 2019.
- 2.4 The objectives, as set out in subsection 9(2) of the Cost Recovery Act, are:
  - (a) that the total amount of levy payable by all liable entities in relation to the financial year equals the amount of ASIC's regulatory costs for the financial year; and
  - (b) that the total amount of levy payable by all liable entities in a particular sector or sub-sector in a financial year equals the amount of ASIC's regulatory costs relating to that sector or sub-sector for that financial year.

### 3. Operation of the instrument

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

3.2 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 2018.

#### Sub-sector population

3.3 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.

3.4 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 the returns lodged with ASIC under section 11 of the Collection Act.

#### Sub-sector metrics in relation to the basic levy component and the graduated levy component

3.5 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.

3.6 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 leviable entity that forms part of the sub-sector for the financial year. The **basic rate entity metric** for each leviable 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 leviable entity for that sub-sector will be 1.

3.7 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 leviable entities that form part of the sub-sector for the financial year. The **graduated entity metric** means the entity's **entity metric** for the sub-sector for the financial year.

3.8 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	

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>
		of financial reports	
2	Australian derivative trade repository operators	Number of days the repository was operated	
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
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 exchange operators	Number of days the exchange was operated	
14	Large futures exchange participants		Messages and transactions
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	
25	Operators of investor directed portfolio services		Gross revenue
26	Overseas market operators	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>
		market was operated	
27	Over-the-counter traders		Number of persons acting on behalf of the entity
28	Payment product providers	Number of days the licence was held	
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
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 amount credit providers	Gross amount of credit provided	
37	Small derivative market operators	Number of days the market was operated	
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	Number of days the licence was held	

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

### **IT percentage in relation to the large futures exchange participants**

- 3.10 The levy component for a liable entity that forms part of the **large futures exchange participants sector** is based on, among other things, the **IT percentage** of the **graduated levy component** for the entity for the sub-sector.
- 3.11 Section 8 of the instrument specifies a percentage of 25.02% for the purposes of subsection 64(5) of the Cost Recovery Regulations.
- 3.12 This percentage corresponds to the extent to which the **sub-sector regulatory costs** in relation to the **large futures exchange participants** sub-sector for the financial year are attributable to costs relating to information technology.
- 3.13 ASIC worked out the **IT percentage** in relation to the **graduated levy component** based on the information contained in the returns lodged with ASIC under section 11 of the Collection Act.

### **IT percentage in relation to the large securities exchange participants**

- 3.14 The levy component for a liable entity that forms part of the **large securities exchange participants sector** is based on, among other things, the **IT percentage** of the **graduated levy component** for the entity for the sub-sector.
- 3.15 Section 9 of the instrument specifies a percentage of 28.38% for the purposes of subsection 65(5) of the Cost Recovery Regulations.
- 3.16 This percentage corresponds to the extent to which the **sub-sector regulatory costs** in relation to the **large securities exchange participants** sub-sector for the financial year are attributable to costs relating to information technology.
- 3.17 ASIC worked out the **IT percentage** in relation to the **graduated levy component** based on the information contained in the returns lodged with ASIC under section 11 of the Collection Act.

## **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 numbers, amounts and percentages that are calculated based on the information contained in the returns lodged with ASIC under section 11 of the Collection Act and applied according to pre-determined formulae set out in the Cost Recovery Regulations.
- 4.4 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.

- 4.5 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.

## 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—Annual Determination) Instrument 2018/1063***

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**

Section 73 of the *ASIC Supervisory Cost Recovery Levy Regulations 2017* (the **Cost Recovery Regulations**), which is made under the *ASIC Supervisory Cost Recovery Levy Act 2017*, enables ASIC to make an annual determination specifying matters required or permitted by those regulations.

The purpose of the instrument is to allow ASIC to recover, through the imposition of levies, the costs of its regulatory activities for the 2017 - 2018 financial year from the entities which generate the need for regulation.

The instrument specifies certain numbers, amounts or percentages that are used to work out a leviable entity's levy component for the financial year according to pre-determined formulae set out in the Cost Recovery Regulations.

#### **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.