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Manager
Banking, Insurance and Capital Markets Unit
Financial System Division
The Treasury
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Dear Sir/Madam

Proposed Financial Institutions Supervisory Levies for 2018-19

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the discussion paper for the proposed Financial Institutions Supervisory Levies for the 2018-19 financial year.

About ASFA

ASFA is a non-profit, non-political national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its $2.6 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing over 90 per cent of the 14.8 million Australians with superannuation.

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If you have any queries or comments in relation to the content of our submission, please contact Andrew Craston, Senior Research Advisor, on (02) 8079 0817 or by email acraston@superannuation.asn.au.

Yours sincerely

Glen McCrea
Chief Policy Officer

Executive summary

ASFA supports the adequate and appropriate funding of APRA, ASIC and other regulators for the superannuation industry. Further, ASFA considers that all regulated entities should contribute to that funding. That outcome is, in ASFA's view, far more equitable and appropriate than funding regulators solely from consolidated revenue.

That said, where industry does contribute to regulators' funding, it is incumbent upon those regulators to provide genuine transparency and accountability regarding the manner in which they determine their funding requirements and utilise their funding. Genuine transparency and accountability provides industry with greater insight into regulators' activities, and builds confidence within industry that regulators are functioning well.

With respect to the Financial Institutions Supervisory Levies (FISLs), ASFA considers that the discussion paper for the proposed FISLs for 2018-19 (the FISLs Discussion Paper) does not provide sufficient detail for industry to adequately understand how the 2018-19 levies are determined and how they are allocated between, and utilised by, the relevant agencies. ASFA has expressed similar concerns in submissions to consultation processes for prior years' FISLs determinations.

For APRA, the FISLs Discussion Paper proposes an increase in the APRA levy component (with respect to all regulated entities). The increase reflects, in part, the recovery of government funding for APRA's involvement in the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* (the Royal Commission).

For the next two financial years the superannuation industry will pay two sets of levies to ASIC: levies under the new ASIC Industry Funding Model and the FISLs. This underscores the need for enhanced transparency regarding ASIC's cost recovery arrangements. However, with respect to the FISLs, the FISLs Discussion Paper does not provide a sufficient disaggregation of the ASIC levy component for 2018-19 (including for the Superannuation Complaints Tribunal).

For the ATO, the FISLs Discussion Paper proposes a 44 per cent increase in levies for administering the Superannuation Lost Member Register and the Unclaimed Superannuation Money Framework. ASFA supports improved processes to reunite individuals with lost and unclaimed superannuation. However, given the significant increase in levies, ASFA considers the ATO should provide more details of its programmes. The FISLs Discussion Paper does not state whether the levies (in whole or in part) relate to 2018-19 Budget measure *Protecting Your Super*.

The superannuation industry is currently facing increased scrutiny, including as a result of the Productivity Commission's review of efficiency and competitiveness of the superannuation system, and the enhanced disclosure requirements in relation to fees and costs. As such, ASFA considers it appropriate that a high level of scrutiny should apply with respect to the costs recovered from industry via the FISLs.

1. Detailed comments on levy components for the superannuation industry

The FISLs Discussion Paper proposes an aggregate levy requirement for each agency with respect to their regulation of the superannuation industry. However, generally speaking, there is little detail on how the levy requirements of each agency relate to their regulatory activities – as has been the case in prior years' FISLs determinations.

APRA levy component

The FISLs Discussion Paper does not provide sufficient detail on the particular regulatory costs the proposed APRA levy component will recover. ASFA considers that future years' FISLs Discussion Papers should provide a more detailed disaggregation of APRA's regulatory activities in respect of the superannuation industry, and the corresponding levy amounts.

The proposed APRA levy component – for all regulated entities – totals $141.6 million for 2018-19, up from $136.1 million for 2017-18. For the superannuation industry the proposed APRA levy component is $32.7 million, up from $31.9 million.

These proposed increases reflect, in part, the impact of the 2018-19 Budget measure *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry — further support*, which provides APRA with $2.7 million in 2018-19 "to assist in their involvement in the Royal Commission".[1] The Budget measure includes an increase in the FISLs to recover fully APRA's costs (from all regulated entities).

There is not sufficient information – either in the 2018-19 Budget documents or in the FISLs Discussion Paper – for industry to determine whether the additional funding is justified (in whole or in part), or whether it would be more appropriate for APRA to reprioritise other activities. There is no information regarding the composition of APRA's anticipated costs in relation to this measure.

Beyond the levies related to the Royal Commission process, the FISLs Discussion Paper does not provide sufficient detail regarding the particular regulatory costs the APRA component levies will recover – as has been the case in prior years' FISLs determinations. With respect to the superannuation industry, the FISLs Discussion Paper states that APRA's supervisory activities will "cover a range of issues, including continued focus on how RSE licensees are approaching strategic and business planning and the assessment of member outcomes."[2]

[1] The Australian Government 2018, *2018-19 Budget*, Budget Paper No. 2, page 188.
[2] The Australian Government 2018, *Proposed Financial Institutions Supervisory Levies For 2018–19*, May, page 14.

ASIC levy component

For the next two financial years the superannuation industry will pay two sets of levies to ASIC: levies in respect of the new ASIC Industry Funding Model and the FISLs. This underscores the need for enhanced transparency regarding ASIC's cost recovery arrangements.

As such, FISLs Discussion Papers should provide more details – including levy amounts – for the main elements of the ASIC levy component.

From 1 July 2018, the superannuation industry (and the broader financial sector) will pay levies to ASIC under the ASIC Industry Funding Model. For the next two financial years industry will also pay levies to ASIC via the FISLs.

- The FISLs Discussion Paper states that from 2020-21, none of ASIC's costs will be recovered from the FISLs.

The proposed ASIC levy component of the FISLs for the superannuation industry is $16.5 million for 2018-19. However, the FISLs Discussion Paper does not provide a disaggregation of the levies for the main elements of the ASIC levy component (for the superannuation industry).

<u>Superannuation Complaints Tribunal</u>

The FISLs Discussion Paper notes that the ASIC levy component will recover the operating costs of the Superannuation Complaints Tribunal (SCT) from the superannuation industry, although the relevant levy amount is not specified.

The combination of announced government measures in the *2017-18 Budget* and the *2017-18 Mid-Year Economic and Fiscal Outlook* suggests that funding for the SCT will be $10.1 million in 2018-19.[3]

- This level of funding is higher than for previous years – to help the SCT resolve its backlog of complaints ahead of its wind-up.
- Notwithstanding the increase, ASFA has some concerns regarding SCT funding – which are discussed in more detail in Section 2 of this submission.

<u>Improving Outcomes in Financial Services</u>

The other major element of the ASIC levy component relates to capital and non-capital costs for improving ASIC's systems (including internal data management and data analytics capabilities), as part of the 2016-17 Budget measure *Improving Outcomes in Financial Services* (the Outcomes Measure).

- The Outcomes Measure involves funding of $121.3 million over four years from 2016-17 to 2019-20.

[3] Includes an additional $4.9 million for 2018-19. The Australian Government 2017, *2017-18 Mid-Year Economic and Fiscal Outlook*, page 189.

The FISLs Discussion Paper does not provide the levy amount for the Outcomes Measure for 2018-19, nor a breakdown of the levy amount by regulated sector. For the superannuation industry, given the (assumed) figure for SCT funding, the levy figure for the Outcomes Measure (for the superannuation industry) would be $6.4 million.

This figure appears to be consistent with APRA's broad estimate for its regulatory effort in respect of the superannuation industry, although this is not possible to confirm from the available data.

- For the Outcomes Measure, the 2016-17 Budget earmarked funding of $25.2 million for 2018-19 (although actual funding may differ).
- The $6.4 million levied on the superannuation industry (as calculated above), represents around 25 per cent of the total figure.
- The FISLs Discussion Paper reports that the superannuation industry is expected to account for between 21-25 per cent of APRA's regulatory effort in 2018-19.[4]

As noted above, the Outcomes Measure involves funding over four years to 2019-20. For 2019-20, there is no analysis in the FISLs Discussion Paper on the (expected) remaining funding for the Outcomes Measure, and the associated levies on industry. Enhanced transparency around this funding is important given that the superannuation industry will pay two sets of levies to ASIC for 2019-20 (as is also the case for 2018-19).

ATO levy component

For 2018-19, the proposed levies to recover the ATO's costs for administering the Superannuation Lost Member Register and the Unclaimed Superannuation Money Framework are 44 per cent higher than for 2017-18.

ASFA supports improved processes to reunite individuals with lost and unclaimed superannuation. However, given the significant increase levies, ASFA considers the ATO should provide more details of the drivers of the increase in ATO expenditure. The FISLs Discussion Paper does not state whether the levies (in whole or in part) relate to 2018-19 Budget measure *Protecting Your Super*.

ASFA considers the ATO should assess the effectiveness of its programmes to reunite individuals with lost and unclaimed superannuation when the required data is available, and publish that assessment.

As has been the case in previous years, the FISLs Discussion Paper proposes full recovery of costs related to the Superannuation Lost Member Register (LMR), the Unclaimed Superannuation Money (USM) framework and the Early Release of Superannuation Benefits on compassionate grounds (ERSB) programme.

[4] The Australian Government 2018, *Proposed Financial Institutions Supervisory Levies For 2018–19*, May, page 9.

Superannuation Lost Member Register and Unclaimed Superannuation Money framework

The proposed levies for administering the LMR and USM in 2018-19 total $25.7 million, compared with $17.8 million in 2017-18 (a 44 per cent increase). This reflects an increase in funding in the 2018-19 Budget of an additional $31.9 million over four years ($7.8 million in 2018-19) for the ATO to "fully recover the cost of superannuation activities". The additional funding is contained in the Budget measure *Full Cost Recovery of Superannuation Activities*.[5]

ASFA supports enhanced ATO strategies and processes to reunite individuals with lost and unclaimed superannuation. However, given the significant increase in funding and levies, ASFA considers that industry should be provided with more detailed information to help industry understand the nature of the increased expenditure.

The FISLs Discussion Paper states that the ATO's costs in respect of the LMR and USM framework have increased due to a significant increase in the number and value of USM accounts and increased engagement by individuals seeking to locate and consolidate or claim their lost and unclaimed superannuation monies. The FISLs Discussion Paper also lists a number of ATO initiatives (current and prospective).

The FISLs Discussion Paper does not state whether the additional funding (in whole or in part) relates to 2018-19 Budget measure *Protecting Your Super*, which involves the transfer to the ATO of all inactive superannuation accounts with balances below $6,000, and an expansion of the ATO's data matching processes to reunite inactive superannuation accounts with an active account. ASFA's position on the government's proposed mechanism is outlined in its recent submission to Treasury on the *Protecting Your Super* package.[6]

Regardless of the drivers of the increase in funding, ASFA considers the ATO should assess the effectiveness of its programmes to reunite individuals with lost and unclaimed superannuation when the required data is available, and publish that assessment.

Early Release of Superannuation Benefits on compassionate grounds programme

With respect to the ERSB programme, the ATO will assume responsibility for administering the programme during 2018 (the Department of Social Services currently administers the programme). The FISLs Discussion Paper states that the estimated cost of administering the ERSB programme is $5.3 million in 2018-19 – a slight increase from 2017-18. The FISLs Discussion Paper provides little detail to substantiate this figure.

[5] The Australian Government 2018, *2018-19 Budget*, Budget Paper No. 2, page 27.
[6] ASFA response to the exposure draft Treasury Laws Amendment (Protecting Superannuation) – Bill 2018 (Draft Bill) and the related draft Explanatory Materials (https://www.superannuation.asn.au/ArticleDocuments/711/201814_Treasury_Exposure_draft_legislation_and_explanatory_materials_for_the_Protecting_Your_Super_package.pdf.aspx?Embed=Y).

2. Transparency around funding and resourcing the SCT needs to improve

ASIC should provide greater transparency around the funding made available to the SCT for its operational purposes until wind-up.

The Australian Financial Complaints Authority (AFCA) will replace the Financial Ombudsman Service, the Credit and Investments Ombudsman and the SCT. Although AFCA is scheduled to commence hearing complaints from 1 November 2018, the Government proposes the SCT will continue to operate for a period to resolve its outstanding complaints.

The *2017-18 Mid-Year Economic and Fiscal Outlook* (2017-18 MYEFO) earmarked additional funding of $9.5 million over three years from 2017-18 to ASIC for the SCT to resolve outstanding complaints prior to its wind-up. While ASFA supports this additional funding, the SCT's funding may still not be sufficient for it to resolve all its outstanding complaints.

The additional funding in the 2017-18 MYEFO was based on a proposed AFCA start date of 1 July 2018, whereupon the SCT would not receive any further complaints. However, since the release of MYEFO the AFCA start date has been deferred to 1 November 2018. This means the SCT will now continue to receive new complaints until 30 October. As such, it is likely the SCT will receive a higher number of complaints than was assumed for the 2017-18 MYEFO, and so may not be able to resolve all its outstanding complaints by 30 June 2020 – when the SCT's current funding ceases.

ASFA considers the government should assess the impact of the revised AFCA start date on the SCT's funding requirements, and make any required adjustments to SCT funding through the forthcoming MYEFO process.

Regardless of the outcome of this process, ASFA considers that the increase in the SCT's funding in the 2017-18 MYEFO should be accompanied by an improvement in transparency around the monies made available to the SCT. As ASFA has stated in unrelated submissions, for the duration of the SCT's transition period, FISLs documentation should specify the amount of funding allocated for the operations of the SCT. As noted in Section 1 of this submission, the FISLs Discussion Paper does not specify the levy amount for recovering the cost of the SCT's operations for 2018-19 (as has been the case for several years).

Additionally, once the SCT has resolved its final outstanding complaint, it will be necessary to conduct a process to formally wind-up (close) the SCT. ASFA anticipates that there will be some costs associated with this process, and we note that it is not clear how these will be funded.

3. Transparency around determining minimum and maximum levies for the restricted component of the FISLs needs to improve

Future years' FISLs Discussion Papers should provide more detailed explanations for changes in the minimum and maximum levy amounts for the restricted component of the FISLs.

ASFA understands that ongoing adjustments to the minimum and maximum levy amounts (for the restricted component) may be required, from time to time, to try to limit cross-subsidisation. The FISLs Discussion Paper references APRA analysis which indicates that current minimum amounts are generally too low, but that maximum amounts are broadly appropriate.

The FISLs Discussion Paper proposes an increase in the minimum amount for a superannuation fund from $3,500 to $5,000 for 2018-19, and an increase in the maximum amount from $300,000 to $325,000. No explanation is provided for the change in the maximum amount.

Treasury has previously acknowledged industry's concerns that the annual consultation papers provide little explanation for the setting of minimum and maximum amounts, and indicated that APRA would, via its annual Cost Recovery Implementation Statement (CRIS), provide more transparency regarding the calculation of the minimum and maximum amounts.[7] As has been the case in previous years, an updated CRIS was not released with the FISLs Discussion Paper to inform industry's consideration of the proposed levies for 2018-19.

[7] The Treasury 2014, *The Financial Industry Supervisory Levy Methodology Review: Response Paper*, 16 April 2014, page 8.