

SUBMISSION

Submission to ASIC —
Cost Recovery
Implementation
Statement: ASIC industry
funding 2020–21

13 August 2021

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Via email: policy.submissions@asic.gov.au

13 August 2021

Dear Sir/Madam

Cost Recovery Implementation Statement: ASIC industry funding 2020-21

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the consultation on ASIC's Cost Recovery Implementation Statement for 2020-21.

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 \$3.1 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 almost 90 per cent of the 16 million Australians with superannuation.

If you have any queries or comments in relation to the content of our submission, please contact Andrew Craston on (02) 8079 0817 or by email acraston@superannuation.asn.au, or Glen McCrea on (02) 8079 0808 or by email amccrea@superannuation.asn.au.

Yours sincerely

Glen McCrea

Deputy CEO and Chief Policy Officer

Executive summary

ASFA considers that ASIC has a crucial role as a conduct and disclosure regulator in maintaining confidence in superannuation and the financial system more broadly.

As such, ASFA supports the adequate and appropriate funding of ASIC. Further, ASFA considers that all regulated entities should contribute to that funding. This is more equitable and appropriate than funding ASIC solely from consolidated revenue.

ASIC's Cost Recovery Implementation Statement (CRIS) for 2020-21 shows a significant rise in levies for the superannuation industry.

Depending on FUM, superannuation funds face an increase in ASIC levies of around 10 to 20 per cent from the previous financial year. For a medium-sized fund (with FUM of \$20 billion), ASIC levies are expected to be around \$335,000 for 2020-21. An equivalent fund would have paid around \$282,000 in 2019-20. Funds also pay other industry levies – most notably, the Financial Institutions Supervisory Levies (FISLs) that are administered by APRA – which have also risen.

The superannuation industry is currently facing greater scrutiny, including as a result of the Government's *Your Future, Your Super* reforms. In particular, the performance benchmarking of MySuper products (and in time, other products) incorporates administration fees. Any increase in ASIC levies, or other similar industry levies, will ultimately be borne by members – as higher fees (or indirect costs) than otherwise would be the case.

As such, ASFA considers it appropriate that a high level of scrutiny should apply to the costs recovered from industry via levies. ASFA considers that it is incumbent on ASIC to demonstrate transparency and accountability regarding its regulation of the superannuation industry (and the broader financial system). To this end, ASIC needs to demonstrate that the levies are set and spent appropriately and it is improving the efficiency of its regulatory effort – including by minimising the impact of regulation on the regulated population.

Although ASFA's comments largely relate to superannuation trustees, many of these issues are relevant to ASIC's broader regulated population.

General comments

ASIC levies on the superannuation industry have increased

The ASIC Cost Recovery Implementation Statement (CRIS) for 2020-21 shows that levies under the ASIC Industry Funding Model with respect to the superannuation industry for 2020-21 are substantially higher than for 2019-20.

ASIC estimates that levies with respect to the regulation of superannuation trustees will total \$29.2 million for 2020-21, up from \$23.8 million for 2019-20. The estimated levy amount for 2020-21 represents an increase of 23 per cent.

For a medium-sized fund (with FUM of \$20 billion), it is estimated that levies for 2020-21 will be around \$335,000. An equivalent fund would have paid around \$282,000 in 2019-20.

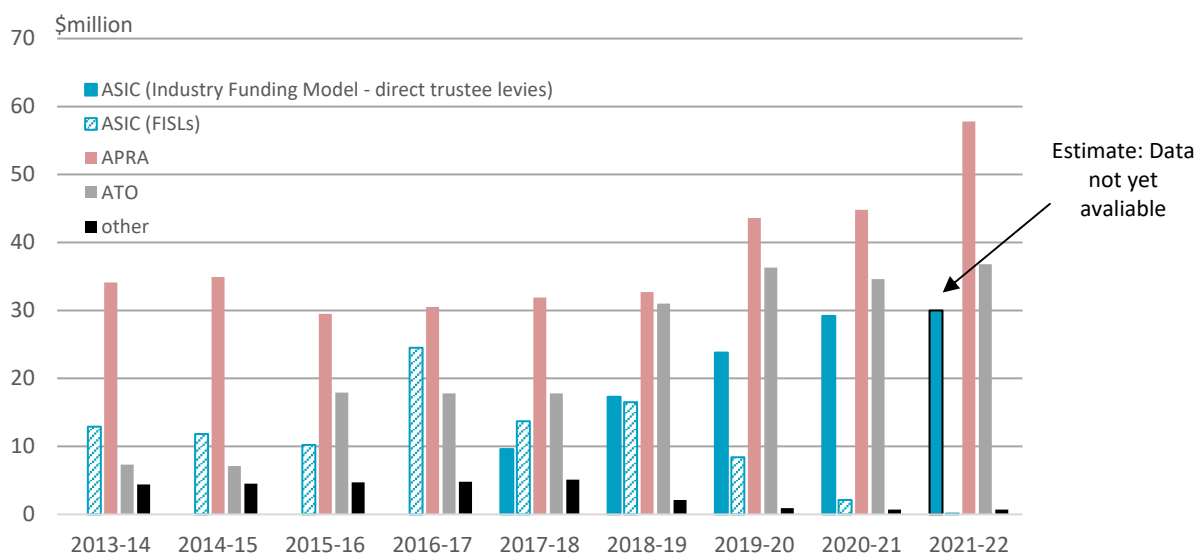
These levy amounts relate to ASIC’s regulatory activities around trustee obligations to consumers, including disclosure and advice to members and ensuring members have access to complaints processes. Many funds are also subject to additional levies under the ASIC Industry Funding Model, including levies with respect to the provision of advice services and insurance, and the operation of investment platforms.

The superannuation industry pays other levies – which have also increased

In addition to levies in accordance with the ASIC Industry Funding Model (ASIC IFM levies), superannuation trustees pay Financial Institutions Supervisory Levies (FISLs), which are administered by APRA.

With respect to FISLs, total levies on superannuation trustees are estimated to be \$82.2 million for 2020-21 and \$95.5 million for 2021-22. For both years, FISLs on superannuation trustees largely relate to the estimated cost (recovery) of regulatory activities of APRA and the ATO (the red and grey bars respectively in Chart 1). Minor components of the FISLs on superannuation trustees relate to ASIC (see next section below), the Gateway Network Governance Body and Treasury (the latter two are combined in the *other* component in Chart 1 – the black bars).

Chart 1: Superannuation industry levies



Source: ASIC, APRA, Treasury and ASFA calculations

With respect to ASIC's regulatory activities, the recovery of costs from superannuation trustees has shifted gradually over time from FISLs (blue pattern bar in Chart 1) to ASIC IFM levies (blue solid bar). For 2020-21 and 2021-22, FISLs on superannuation trustees relate only to the remaining costs of the Superannuation Complaints Tribunal, which is being wound up. Indeed, 2018-19 was the last year for which any of ASIC's regulatory costs were recovered via FISLs. Cost recovery of ASIC's regulatory activities is now solely via the ASIC IFM levies.

- FISLs with respect to superannuation trustees are estimated to be \$8.4 million for 2020-21 and \$0.1 million for 2021-22.
- ASIC IFM levies with respect to superannuation trustees are estimated to be \$29.2 million for 2020-21. ASIC has yet to publish IFM levy estimates for 2021-22.
- There were no major announcements in the 2021-22 Budget for ASIC's regulatory activities in respect of the superannuation industry. As such, ASIC IFM levies for 2021-22 (on superannuation trustees) would be expected to be at least \$30 million.

Many superannuation funds pay additional ASIC IFM levies – in particular, levies related to the provision of advice services and insurance, and the operation of investment platforms. ASIC publishes aggregate estimates for levies related to such products/services, rather than disaggregated estimates by the type of entity that provides the products/services. Thus, an estimate for the additional levies on the superannuation industry is not available. Using the available data, ASFA estimates that the additional ASIC IFM levies on the superannuation industry will be in the order of \$5 million for 2020-21.

Overall, this suggests that total ASIC IFM levies on superannuation funds will be in the order of \$35 million for 2020-21, and at least this amount for 2021-22.

Thus, for the superannuation industry, the combination of FISLs and ASIC IFM levies is likely to be in the order of \$115 million for 2020-21 and \$130 million for 2021-22. For 2021-22, this would represent an increase of around 120 per cent on the combined levies for 2013-14.¹

In this context, the increase in the ASIC IMF levies for 2020-21 represents a substantial increase of an already-high cost burden on superannuation entities. Ultimately, increased levies will be borne by fund members and will be reflected in members' future retirement incomes.

For superannuation funds, levies are typically funded through administration fees charged to members' accounts. For the APRA-regulated superannuation industry, the latest annual data show that total administration fees were around \$3.5 billion for 2019-20, or around 0.2 per cent of total assets (as at June 2019).² Based on this figure, the total levy amount payable by industry in 2021-22 would represent around 4 per cent of total administration fees.

An estimated impact on MySuper members can be calculated (assuming that the cost of levies for funds are distributed on a pro-rata basis, according to assets, across superannuation fund members). For all MySuper products, the average administration fee (weighted by total assets) is around \$150 per annum for a representative member (with a balance of \$50,000).³ For the representative member, the amount payable with respect to the combined levies is around \$6. Given that combined levies have increased by around 120 per cent since 2013-14, the equivalent amount payable for a representative member would have been just under \$3 (in today's dollars) in 2013-14. In addition to the direct impact of levies, administration fees

¹ Does not include levies for Super Stream.

² As at end of June 2019, total assets of the APRA-regulated sector were \$1.923 trillion. As at March 2021, total assets of the APRA-regulated sector were \$2.132 trillion.

³ Based on *APRA MySuper Product Heatmap*.

also reflect the cost to funds of complying with ongoing regulatory change. Indeed, these costs are likely to have a greater impact on administration fees for the representative member.

The superannuation industry is currently facing greater scrutiny, including as a result of the Government’s *Your Future, Your Super* reforms. In particular, the performance benchmarking of MySuper products (and in time, other products) incorporates administration fees. Any increase in ASIC IFM levies, or other similar industry levies, will ultimately be borne by members – as higher fees (or indirect costs) than otherwise would be the case.

As such, ASFA considers it appropriate that a high level of scrutiny should apply to the costs recovered from industry via the ASIC IFM levies. In this regard, it is incumbent on ASIC to demonstrate transparency and accountability regarding its regulation of the superannuation industry (and the broader financial system).

Greater transparency of ASIC’s regulatory costs is required

In addition to demonstrating that levies are set and spent appropriately, ASIC needs to demonstrate that its mix of regulatory tools is appropriate – particularly given its relatively heavy reliance on enforcement as a regulatory tool.

ASIC also needs to demonstrate that it is working to improve its regulatory efficiency – by cooperating with other regulators to exploit regulatory synergies and minimise the impact of regulation on the regulated population.

Levies on superannuation trustees are rising, and the composition is shifting to enforcement costs

As noted in the previous section, for the regulation of superannuation trustees, ASIC estimates that IFM levies will total \$29.2 million for 2020-21, up from \$23.8 million for 2019-20. The estimated levy amount for 2020-21 represents an increase of 23 per cent

The increase in ASIC IFM levies with respect to superannuation trustees largely reflects the cost recovery of surveillance and enforcement activities (Table 1). This is the case, more generally, with respect to ASIC’s broader regulated population.

For superannuation trustees, the recovered cost of surveillance activities for 2020-21 is estimated to be \$4.9 million, compared with \$4.0 million for 2019-20 (an increase of 22 per cent). The recovered cost of enforcement activities for 2020-21 is \$10.5 million, compared with \$6.4 million for 2019-20 – an increase of 63 per cent.

Table 1: Recovery of direct costs of regulatory activity – superannuation trustees

Regulatory activity	Cost recovery	
	2019-20 (\$m)	2020-21 (\$m)
Surveillance	4.03	4.92
Enforcement	6.42	10.47
Industry engagement	0.35	0.39
Education	0.05	0.12
Guidance	0.55	0.72
Policy advice	1.46	1.26

Source: ASIC and ASFA calculations

ASFA acknowledges that ASIC has improved its transparency around its allocation of costs. The ASIC CRIS for 2020-21 provides a break-down of ASIC’s required resources for regulating various sub-sectors of its

regulated population, including for the *Superannuation trustees* sub-sector (which is reflected in Table 1 above) in the *Investment management, superannuation and related services* sector. This disaggregated data assists industry to make informed judgements about whether the quantum and allocation of regulatory effort and cost is appropriate.

In this regard, ASFA considers that the disaggregated cost data in the CRIS should be accompanied by more details of the major cost centres, particularly where there is a material change in the quantum and/or allocation of costs from year to year.

With respect to the *Superannuation trustees* sub-sector, the cost of enforcement activities is a case in point. The increase in enforcement costs suggests a shift in ASIC's regulatory focus, however there is little information in the CRIS in this regard.

In the future, ASIC should incorporate more details of major regulatory costs in the CRIS (and other documentation that deals with prospective costs for a particular financial year), as well as in documentation related to cost outcomes.

Recognise synergies in regulation

In the context of ASIC's broader industry funding model, it is not clear whether allocations of regulatory cost fully take into account the extent to which some sectors or sub-sectors are also subject to regulation by another regulator(s), and the resultant regulatory synergies. A regulator's supervisory efforts would be expected to change an entities' behaviour beyond the direct area of supervision – which would reduce the required regulatory effort by other regulators.

The *Superannuation trustees* sub-sector of the *Investment management, superannuation and related services* sector is subject to prudential supervision by APRA – the levies for which are estimated to be around \$45 million for 2020-21.

APRA's supervision of superannuation trustees includes enforcement of prudential standards that govern trustees' conduct across a wide range of areas. ASIC's direct regulatory and supervisory responsibilities in respect of the APRA-regulated superannuation sector relates to matters and conduct with respect to the 'issue' of interests in superannuation funds and to disclosure.

Compliance with APRA's prudential standards has required superannuation trustees to implement robust compliance and risk frameworks. Although ASIC applies a conduct-focussed lens, as opposed to APRA's prudential approach, it cannot be denied that synergies exist and that regulatory efficiencies arise due to the prudential supervision applied to superannuation trustees. Indeed, with respect to enforcement activity, ASFA members have indicated that they observe overlap between ASIC and APRA.

The ASIC Capability Review noted that ASIC should consider whether regulatory outcomes could be achieved by using existing regulation administered by another regulator, or other collaborative arrangements, to ensure an integrated regulatory framework and to reduce costs for regulated entities.⁴ Ultimately, greater recognition of synergies would allow Australian regulators to allocate their resources to where they are most needed, and would lead to a more efficient regulatory environment.

⁴ Australian Government 2015, *Fit for Future: A Capability Review of the Australian Securities and Investments Commission*, December, page 160.