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SUBMISSION

Submission to ASIC — Cost Recovery Implementation Statement: ASIC industry funding 2019–20

24 July

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Australian Securities and Investments Commission

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24 July 2020

Dear Sir/Madam

Cost Recovery Implementation Statement: ASIC industry funding 2019–20

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 2019-20.

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 $2.7 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.

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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@superannuaiton.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 2019–20 shows a significant rise in levies for the superannuation industry.

For a medium-sized fund, ASIC levies are expected to be around $300,000 for 2019-20. This is substantially higher than previously. Funds also pay other industry levies – most notably, the Financial Institutions Supervisory Levies (FISLs) that are administered by APRA – which have also increased for 2019-20.

The increase in ASIC levies represents an increased cost burden for funds. Ultimately, increased levies will be borne by fund members and will be reflected in members' retirement incomes.

As such, 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.

ASFA considers that total levies on the superannuation industry should be reduced due the impacts of the COVID-19 crisis. The expanded early release scheme in response to COVID-19 has led to a substantial reduction in the assets of APRA-regulated superannuation funds – ultimately, It is expected that total payments under the scheme – as presently designed – will be over $30 billion.

General comments

ASIC levies on the superannuation industry

The ASIC Cost Recovery Implementation Statement (CRIS) for 2019-20 shows that ASIC's levies on the superannuation industry for 2019-20 are substantially higher than for previous years.

ASIC estimates that total levies with respect to the regulation of superannuation trustees for 2019-20 to be $24.9 million, up from $17.2 million for 2018-19 and $9.6 million for 2017-18. The estimated levy amount for 2019-20 represents an increase of around 160 per cent over two years.

For a medium-sized fund, it is estimated that levies for 2019-20 will be around $300,000. This is substantially higher than for previous years. An equivalent fund would have paid around $200,000 for 2018-19, and $100,000 for 2017-18.

Many trustees are also subject to additional levies under the ASIC funding model. This includes levies with respect to the provision of advice services and insurance, and the operation of investment platforms.

Industrial levies should be reduced due to COVID-19

The federal government's expanded early release scheme in response to COVID-19 has led to a substantial reduction in the assets of APRA-regulated superannuation funds. Since the inception of the expanded scheme, funds have made payments totalling $25 billion (to 12 July 2020). It is expected that total payments under the scheme – as presently designed – is likely to be much higher (over $30 billion).

The impact on APRA-regulated funds has not been homogenous. Funds with members who are in industries particularly affected by the crisis have been disproportionately impacted. Not surprisingly, funds which have a heavy concentration of members employed in hospitality, restaurants and clubs have the highest rates of early release so far, at between 15 and 20 per cent of the accounts in such funds.

As such, ASFA considers that total levies on the *Superannuation trustees* sub-sector should be reduced – by a similar proportion as the reduction in total superannuation assets from the expanded early release scheme.

The superannuation industry pays other levies

The superannuation industry also pays levies for recovering the costs of the regulatory activities of other agencies. In particular, the superannuation industry pays Financial Institutions Supervisory Levies (FISLs) for the regulatory activities of APRA and the ATO (Table 1). The FISL component for the Superannuation Complaints Tribunal (SCT) relates to the remaining work of the Tribunal ahead of its expected winding-up. Other smaller components relate to the Treasury's regulatory activities and the Gateway Network Governance Body (GNGB).

Table 1: Financial Institutions Supervisory Levies – superannuation industry

Regulator	Cost recovery	
	2018-19 ($m)	2019-20 ($m)
APRA	32.7	43.6
ATO	31.0	36.3
ASIC	9.0	0.0
SCT	7.5	8.4
GNGB	0.6	0.7
Treasury	1.5	0.2

With respect to ASIC, 2018-19 was the last year for which any of ASIC's direct costs were recovered through the FISLs. Cost recovery of ASIC's regulatory activities is now solely via the ASIC levies.

For 2019-20, total FISLs paid by the superannuation industry will be in the order of $90 million.[1] The two largest components of the FISLs (with respect to the superannuation industry), are for APRA and the ATO. For 2019-20, it is estimated that these components have increased by 33 and 17 per cent respectively compared with the previous year.

For a medium-sized fund, APRA's estimate for the FISLs for 2019-20 is around $1,300,000, which is an increase of almost 20 per cent on the previous year.

In this context, the increase in the ASIC levies for 2019-20 (as outlined in ASIC's CRIS) 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.

The composition of levies on superannuation trustees has changed

The increase in ASIC levies with respect to superannuation trustees largely reflects the cost recovery of surveillance and enforcement activities. This is the case, more generally, with respect to ASIC's broader regulated population. As is noted in the CRIS, it reflects ASIC's revised approach to regulation that involves more intensive supervision and a greater enforcement emphasis.

For superannuation trustees, the recovered cost of surveillance activities for 2019-20 is estimated to be $4.0 million, compared with $0.8 million for the previous year (an increase of around 400 per cent). The recovered cost of enforcement activities for 2019-20 is $6.4 million, compared with $4.9 million for the previous year (an increase of 32 per cent). With respect to industry engagement, it is noted in the CRIS that costs for 2018-19 were unusually high reflecting ASIC's work in preparation for the Royal Commission (Table 2).

[1] The Australian Government the Treasury, *Proposed Financial Institutions Supervisory Levies for 2019-20*, June 2019.

Table 2: Recovery of direct costs of regulatory activity – superannuation trustees

Regulatory activity	Cost recovery		
	2018-19 ($m)	2019-20 ($m)	% increase
Surveillance	0.80	4.03	406
Enforcement	4.85	6.42	32
Financial Capability	0.98	1.18	21
Industry engagement	2.13	0.35	-83
Education	0.04	0.05	40
Guidance	0.11	0.55	389
Policy advice	0.21	1.46	590

Greater transparency is required

Given the large increases in levies 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 show that the levies are set and spent appropriately.

ASFA acknowledges that ASIC has improved its transparency around its allocation of costs. The ASIC CRIS for 2019-20 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 2 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 surveillance activities is a case in point. The increase in the cost of surveillance suggests a marked change in ASIC's regulatory activities. However, there is little information in the CRIS about the particulars of ASIC's surveillance activities in respect of superannuation trustees, and the key driver(s) of the 400 per cent increase in costs. Issues around the increased costs of ASIC's enforcement activities, more generally, are addressed in the next section.

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.

ASIC's transparency and accountability – system level

The quantum of industry levies – in absolute terms and as a share of ASIC's total resourcing – have increased substantially over the past year.

- For 2019-20, $325 million of ASIC's total budgeted resources of $430 million (or 76 per cent) are expected to be recovered via industry levies.
- For 2018-19, $277 million of ASIC's total budgeted resources of $406 million (or 68 per cent) were recovered via industry levies.

These changes highlight the need for ASIC to demonstrate transparency and accountability regarding the regulation of the broader financial system.

- In addition to demonstrating that levies are set and spent appropriately (as noted in the preceding section), 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.

ASIC's enforcement activities

Over 50 per cent of the levies collected from ASIC's regulated population, that are related to ASIC's direct regulatory costs, are for cost recovery of enforcement activities. As noted in the ASIC Capability Review, historically ASIC's resource allocation to enforcement has exceeded that of peer domestic and international regulators.[2] Since the time of the Review, ASIC's allocation to enforcement has increased.[3]

ASIC's strong enforcement focus magnifies the problems of cross-subsidisation of enforcement activities. The CRIS reports that around 30 per cent of total industry levies are associated with activities that are cross-subsidised between industry subsectors. Of that, around 75 per cent is related to enforcement – in particular, ASIC's Enforcement Special Account (Table 3).

Table 3: Recovery of direct costs of regulatory activity – total regulated population

Regulatory activity	**2019-20**	
	Not cross-subsidised ($m)	Cross-subsidised ($m)
Surveillance	53.89	5.04
Enforcement	54.13	42.03
Financial Capability	0.00	8.41
Industry engagement	7.86	0.01
Education	0.72	0.00
Guidance	4.33	0.00
Policy advice	4.53	0.01

In previous submissions regarding ASIC's funding model, ASFA has stated that, as a general principle, cost-recovery from industry should be limited to regulatory activities where identifiable industry recipients have created demand for those activities. This is consistent with the Australian Government's Charging Framework. In particular, the Framework's equity principle states that *where specific demand for a government activity is created by identifiable individuals or groups they should be charged for it*.[4]

ASIC's enforcement activities involve ASIC ensuring compliance with the law in specific instances – that is, ensuring that regulated entities undertake prescribed conduct and/or cease prohibited conduct. However, under the industry funding model all regulated entities will bear the cost of enforcement activities (in particular, for the cost recovery of ASIC's Enforcement Special Account).

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[2] The Australian Government the Treasury 2015, *ASIC Capability Review*, p.11.

[3] In 2014-15, around 38 per cent of resources were allocated to enforcement (The Australian Government the Treasury 2015, *ASIC Capability Review*, p.11).

[4] Australian Government 2015, *Australian Government Charging Framework*.

Given this, ASIC should have to demonstrate that its mix of regulatory tools is appropriate and is achieving ASIC's regulatory objectives at least cost. This should form part of ASIC's broader performance reporting requirements via the Government's performance framework (which applies to all Commonwealth entities and companies).[5]

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 $44 million for 2019-20.

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.[6] 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.

ASIC levies: methodological issues

Double-counting of FUM

Many funds will be subject to levies in addition to the trustee levy.

A shortcoming of the FUM-based approach is the potential for double-counting FUM when determining the regulatory effort related to discrete entities. Although ASFA's comments relate to the proposed methodology for the *Investment management, superannuation and related services* sector, they have relevance to other sectors/sub-sectors in the industry funding model.

To apportion the costs of regulatory effort, the funding model assigns levies by function/activity. With respect to the *Investment management, superannuation and related services* sector, this includes AFS licensees with authorisations to:

- operate as superannuation trustees and responsible entities
- issue interests in managed investment schemes

[5] Under the *Public Governance, Performance and Accountability Act 2013*.
[6] Australian Government 2015*, Fit for Future: A Capability Review of the Australian Securities and Investments Commission*, December, page 160.

- operate investor directed portfolio services.

Double-counting of regulatory effort could occur where different authorisations apply to the same pool of assets. For example, for entities that have authorisations to operate as a superannuation trustee and as an operator of investor directed portfolio services (IDPS), assets of the trustee also may be assets of the IDPS.

ASFA understands that there are minimum costs associated with regulating separate authorisations. However, with reference to the above example, it is not clear that a single pool of assets subject to multiple authorisations would require the same degree of regulatory effort as separate asset pools subject to the equivalent individual authorisations. ASIC should look to refine its methodology in this regard.