



# Proposed Industry Funding Model for the Australian Securities and Investments Commission

9 October 2015

AIST Submission

## AIST

**The Australian Institute of Superannuation Trustees** is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public-sector funds.

As the principal advocate and peak representative body for the \$600 billion not-for-profit superannuation sector, AIST plays a key role in policy development and is a leading provider of research.

AIST provides professional training, consulting services and support for trustees and fund staff to help them meet the challenges of managing superannuation funds and advancing the interests of their fund members. Each year, AIST hosts the Conference of Major Superannuation Funds (CMSF), in addition to numerous other industry conferences and events.

## Contact

Richard Webb, Policy & Regulatory Analyst

03 8677 3835

Tom Garcia, Chief Executive Officer

03 8677 3800

## 1 Executive summary

### **In brief:**

Additional funding for ASIC is necessary for it to be a strong and effective regulator, able to fulfil its statutory obligations and community expectations.

AIST support an industry funding model that is consistent with the OECD regulator funding principles, especially for the risk-weighting of industry participants to be accurately reflected in the funding allocation.

Consistent with the Cost Recovery Guideline requirements, a published Cost Recovery Impact Statement (CRIS) regarding ASIC funding is a fundamental pre-condition for transparency and accountability.

Consultation on the funding model should have been undertaken as part of the Capability Review of ASIC and submit that both processes are weaker as a result of their separation.

SCT funding should be separated from ASIC funding.

## 2 Introduction

AIST welcomes the *Proposed Industry Funding Model for the Australian Securities and Investments Commission Consultation Paper 28 August 2015* (the “Consultation Paper”).

We have noted that this proposal comes at the same time as a review by Treasury into the capability of ASIC, and not long after the release of ASIC’s Regulator Performance Framework. We pointed out in our response to the capability review that in our opinion, the undertaking of these reviews separately represents a missed opportunity, where optimal results would have been obtained from running all these at the same time.

Indeed, as we have pointed out on a number of occasions, a strong and appropriately resourced regulator is capable of performing its role. AIST believes that the steps outlined on chapter 5 of the Consultation Paper should be followed before applying a new funding model. In particular, the ongoing lack of a Cost Recovery Impact Statement, coupled with greater transparency concerning the application of resources to ASIC’s key performance areas are needed.

We noted in our submission to the Senate Economics inquiry into ASIC in 2013<sup>1</sup>, that:

*In July 2013, Michael Quilter wrote in Business Spectator<sup>2</sup> that the general delay in responding to concerns by whistleblowers involved in the Commonwealth Financial Planning Limited (CFPL) case has been the major reason for this investigation.*

*Whilst we believe that questions should be asked as appropriate with respect to the alleged delay of 16 months, as with all investigations of wrongdoing, we encourage a rigorous approach to evidence and the rule of law. We note that at the end of this investigation, ASIC was able to respond by banning seven advisers and 1,127 customers being compensated. Our concerns are that in the haste to uncover why there was a delay in this case, the possibility that this investigation may not have been as successful as it was.*

*Quilter quotes figures in his article further emphasising that ASIC pursues nearly 200 investigations a year, and where litigation is required, is successful 90% of the time. This is a remarkable statistic, however it is notable that where ASIC fails to secure a ‘win’ such as in high profile cases (e.g. Jodee Rich), this can overshadow ASIC’s success rates.*

*Indeed, the general consensus that in the case involving Rich, ASIC significantly rushed their case alleging misleading conduct and were found not to have enough evidence to successfully prosecute.*

<sup>1</sup> Garcia, T. (2013). *Senate Economics References Committee: Inquiry into the performance of the Australian Securities and Investments Commission*. [pdf] Canberra: Senate Standing Committees on Economics (AIST submission dated 14 September 2013). Available at: <https://tinyurl.com/n4g2sed> [Accessed 5 Oct. 2015].

<sup>2</sup> Quilter, M. 2013. *A critical eye into ASIC’s performance*. [online] Available at: <http://tinyurl.com/o5ces6b> [Accessed: 18 Oct 2013].

*Whilst we support this inquiry examining the circumstances involving the CFPL case, the broader question must be whether ASIC are adequately resourced to perform their role.*

It is abundantly clear, however that since this inquiry, a number of other irregularities have surfaced. The Committee made it clear in its report on this inquiry at recommendation 7 that a royal commission was warranted. In the dissenting report from Senator David Bushby, the recommendation for a royal commission was opposed on the basis that CFPL had embarked upon a process of investigation and restitution. Senator Bushby's comments could not have foreseen the almost regular occurrence of problems at other institutions which would clearly impact even a well-resourced regulator's ability to perform its other tasks as resources are directed into the one activity, even with access to ASIC's Enforcement Special Account (ESA).

We wrote in our submission to Treasury on the capability review of ASIC, that:

*Our priority must be to ensure that ASIC is provided with an appropriate level of resourcing in order to carry out its role. We fail to understand how resources can be appropriately prioritised, if financial resources themselves are being reviewed separately.*

*Such an aggregation of issues would also be in line with the OECD's Best Practice Principles for Regulatory Policy<sup>3</sup>, where seven principles for good regulatory governance are outlined, being:*

- *Role clarity.*
- *Preventing undue influence.*
- *Accountability and transparency.*
- *Engagement.*
- *Funding.*
- *Performance evaluation.*

...

*AIST once again points to the need to ensure that ASIC is properly resourced to continue to investigate financial adviser misconduct. However, we also point to the scale of the problem, noting that since the report from the inquiry into the performance of ASIC handed down by the Senate Economics References Committee in June 2014, other problems have arisen at other large financial services firms.*

*We wrote in our submission to the inquiry that there appeared to be undue focus on the general delay in ASIC's response to the details of irregularities provided to ASIC by whistleblowers. Although it is reasonable*

<sup>3</sup> OECD, OECD Best Practice Principles on the Governance of Regulators, OECD 2012. Available at <http://www.oecd.org/gov/regulatory-policy/governance-regulators.htm>

*to expect that 'a few bad apples' should be reasonably easily investigated and resolved by a properly resourced regulator, we question whether this could be more accurately described as systemic misconduct, which even a highly resourced regulator would have difficulty processing.*

*AIST believes that the appearance of systemic misconduct is itself reason to revisit the recommendations of the Senate Economics inquiry, which recommended that a Royal Commission be set up to investigate this.*

However, we have concerns that the funding of ASIC is being built up as a solution to all problems facing the financial sector. It is not. Systemic problems identified in the financial advice space must be dealt with immediately and cauterised, but not at the expense of other activities which the regulator must perform. For this reason, we believe other avenues must be examined to ensure that these problems can be investigated at length without threatening the other activities carried out by the regulator.

At the same time, we agree with the findings of the Financial System Inquiry, where it found that ASIC's costs are not transparent to participants in the industry. We agree with the ramifications identified on page 1 of the Consultation Paper and note that industry understanding of the basis for costs, as well as the accountability of the regulator could go a long way to improving the trust in the industry from consumers.

In the future though, we realise that the regulator's activities with regards to the financial sector must be approached with the expectation that individuals and organisations present risks which must be addressed. It is in this context that we present our responses to the Consultation Paper. Please note that AIST does not plan to respond to all questions in the Consultation Paper.

Before turning to the specifics of the Consultation Paper, AIST wishes to outline the Principles which it supports regarding funding of regulators.

## 2.1 How the Consultation Paper meets the OECD funding of regulator principles

AIST sets out below the OECD regulator funding principles, and then turns to the specific questions which the OECD believes need to be answered when examining regulator funding.

### 2.1.1 OECD regulator funding principles

AIST notes and strongly supports the OECD<sup>4</sup> principles for funding regulators:

#### Supports outcomes efficiently

1. Funding levels should be adequate to enable the regulator, operating efficiently, to effectively fulfil the objectives set by government, including obligations imposed by other legislation.
2. Funding processes should be transparent, efficient and as simple as possible.

#### Regulatory cost recovery

3. Regulators should not set the level of their cost recovery fees, or the scope of activities that incur fees, without arm's-length oversight. These fees and the scope of activities subject to fees should be in accordance with the policy objectives and fees guidance set by government or, where these are not in place, the OECD's *Best Practice Guidelines for User Charging for Government Services*.
4. Where cost recovery is pursued, the regulator should avoid imposing unnecessary or inefficient administrative burdens or compliance costs on regulated entities.

#### Litigation and enforcement costs

5. Because of the significant and unpredictable costs involved, regulators should follow a defined process to obtain funding for major unanticipated court actions in the public interest that is consistent with the degree of independence of the regulator.

#### Funding of external entities by a regulator

6. A regulator should only fund other entities to deliver activities where they are directly related to the regulator's objectives, such as information and education about how to comply with regulation, or research to inform the regulator's priorities. Any funding of

<sup>4</sup> OECD, (2013). *OECD Principles for the governance of regulators: Public Consultation draft 21 June 2013* [online] OECD. Available at: <https://www.google.com.au/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-> [Accessed 8 October 2015]

representative or policy advocacy organisations should be the responsibility of the relevant Ministry, not the regulator.

## 2.1.2 OECD questions about regulator funding models

In setting out the above principles, the OECD also poses a series of questions which help guide whether the funding model being examined meets the principles. AIST examines each of these in light of the Consultation Paper:

- i. **OECD question: How much funding does the (independent or Ministerial) regulator require to achieve its objectives?**

While AIST strongly supports the consultation processes outlined in chapter 4 of the Consultation Paper, AIST does not believe that the superannuation industry is in a position to gauge whether the current level of funding is sufficient, since ASIC's Regulator Performance Framework was released only in July 2015.

- ii. **How much does it cost to meet the legislative obligations of an independent regulator outside its main functions?**

AIST refers to our answer to question (i).

- iii. **Are there particular funding models that better support efficient achievement of outcomes by regulators?**

AIST notes that funding sources may include consolidated revenue, cost recovery fees from regulated entities (and other sources), but that the mix should be appropriate to the particular circumstances of the regulator. In this regard – and subject to implementation of the revised model taking place only once the steps outlined in chapter 4 of the Consultation Paper are completed – AIST believes that the funding model outlined in the Consultation Paper is appropriate.

- iv. **Does the cost recovery scheme impose unnecessary burdens or costs on regulated entities that cannot be justified?**

AIST strongly believes that a Cost Recovery Impact Statement should be prepared prior to any implementation of the revised levy so that regulated entities are in a position to assess how current funding is used. The production of a CRIS would also be in line with item 36 of the Australian Government's Cost Recovery Guidelines, which state that there must be alignment between the expenses of the activity and the revenue.

- v. **If fees are charged to the regulated entities to fund the regulator, are they proportional to the costs these entities impose on the regulator?**

AIST refers to our answer to question (iv).

- vi. Does the annual report of the independent regulator, or the Ministry, state the regulator's total expenditure and revenues from budget funding, cost-recovery fees, penalties and fines?
- vii. Is there a clear rationale for this mix of funding sources for the regulator?

AIST refers to our answer to question (iv).

- viii. Are the level of cost recovery fees, and the scope of activities subject to fees approved by the Minister or legislature, rather than the regulator?

AIST believes that the processes outlined in chapter 4 of the Consultation Paper are suitable.

## 2.2 What steps need to be taken before implementing a new funding model

AIST strongly endorses the proposed consultation and review process for the industry funding model as set out in chart 4, Chapter 5 of the Consultation Paper. AIST strongly recommends, however, that revisions to the funding model do not take place until the following has occurred:

- Implementation and public reporting of the new Regulator Performance Framework takes place. This will provide transparency regarding program areas and the evaluation of performance, giving a better basis to assess resourcing needs.
- A Cost Recovery Impact Statement has been drafted. AIST notes that a CRIS has not been previously prepared regarding ASIC funding.
- The other consultation processes outlined in Chapter 5 take place.

## 3 Responses to Consultation Paper questions

### 3.1 Chapter 2 – Regulatory activities not to be funded by industry

#### 3.1.1 Question 1: Do you agree that the exclusion of these activities from cost recovery is appropriate? If not, why not?

AIST believes that we can only properly answer this question if a CRIS is produced. Without this information, it is difficult to determine whether the levy component includes matters which should be excluded. AIST notes that the Australian Government’s Cost Recovery Guidelines (on page 38) sets out which matters may be included or excluded from cost recovery via fees or levies:

**Figure 12: Composition of cost recovery charges**

	Cost recovery fee	Cost recovery levy
Examples of activity outputs and business processes	Activities performed for, or at the request of, or on the application of, a particular individual or organisation, such as: <ul style="list-style-type: none"> <li>the issue of permits, licences and registrations</li> <li>inspections as part of issuing permits, licences and registrations</li> <li>the approval of deviations from common standards</li> <li>the accreditation of agents or facilities.</li> </ul>	<ul style="list-style-type: none"> <li>compliance audits</li> <li>investigations</li> <li>development and promulgation of regulatory standards</li> <li>policy development</li> <li>drafting of legislation</li> <li>development and promulgation of general advisory material</li> <li>advice to the government and the Parliament</li> </ul>
Examples of costs that could be included	Costs of the activity output or business process that can be reasonably attributed to an <b>individual or organisation</b> (e.g. direct costs and an appropriate share of indirect costs).	Costs of the activity output or business process that can be reasonably attributed to a <b>group of individuals or organisations</b> (e.g. direct costs and an appropriate share of indirect costs).
Examples of costs that should not be included	Costs of the activity output or business process that cannot be reasonably attributed to an <b>individual or organisation</b> . These could include: <ul style="list-style-type: none"> <li>policy development</li> <li>drafting of legislation</li> <li>development and promulgation of general advisory material</li> <li>provision of general advice to the government and Parliament</li> <li>compliance and enforcement.</li> </ul>	Costs of the activity output or business process that cannot be reasonably attributed to a <b>group of individuals or organisations</b> (this includes general revenue-raising activities).

### **3.1.2 Question 2: Are there any other specific regulatory activities undertaken by ASIC, such as those that support innovation that should not be cost recovered from industry? If so, please provide examples.**

AIST reiterates that a Cost Recovery Impact Statement (CRIS), coupled with implementation of the Regulator Performance Framework is needed in order to assess the answer to this question.

## **3.2 Chapter 2 – Regulatory activities currently funded by industry**

### **3.2.1 Question 3: Do you support cost recovery arrangements for ASIC’s regulatory activities being consolidated within a single ASIC industry funding model? If not, why not?**

AIST would support this consolidation.

We note that activities carried out by AFS licensees and other industry participants are wide and varied, but can provide differing degrees of risk. We note that it may even be possible for two outwardly similar organisations to provide differing degrees of risk themselves. We consider that fragmentation into different funding models would add a level of complexity which is unnecessary.

### **3.2.2 Question 4: Are there any activities cost recovered by other agencies on ASIC’s behalf that should continue to be recovered by the current responsible agency? If so, please give reasons why.**

AIST does not and would not support the funding of the Superannuation Complaints Tribunal (SCT) to be collected by or on behalf of ASIC. We have provided more detail in our response to Question 6.

We also point to the requirement for a CRIS to be issued prior to consideration of any funding changes.

### **3.2.3 Question 5: The Government currently recovers most of the costs of operating the MoneySmart website through APRA’s supervisory levies. Should these costs no longer be recovered from industry? Why or why not?**

Financial literacy is a benefit that ASIC provides to the greater community. As people who are not necessarily financial services users benefit, it is appropriate that this not be recovered from industry.

### **3.2.4 Question 6: Do you support the SCT continuing to be funded through APRA’s levies on APRA-regulated superannuation funds? Why or why not?**

We must continue to ensure that the activities of the SCT (essentially judicial), which rules on matters regarding trustee conduct, are both separate from ASIC as the enforcement agency and also seen to be separate. For this reason, we call for the relationship between ASIC and the SCT to be reconfirmed and clarified that ASIC is a service provider to the Tribunal.

In addition, we consider that the present process, where there is no real transparency, must be changed to ensure that the industry is perfectly in the clear as to how much the SCT costs to operate. This process should contain three key steps:

- The SCT makes a submission containing an annual plan to Government explaining how much funding it needs;
- The submission specifies how the funding is to be spent; and
- Finally, the submission should be signed off by Treasury.

Ideally, we would prefer that the SCT submissions for funding went through the processes in the CRGs, and a CRIS should be completed at the Tribunal.

AIST supports collection of the SCT funding through the APRA levy. However, the SCT must be accountable to Parliament and the Industry and consider that this form the basis for SCT funding decisions.

### **3.2.5 Question 7: If the Government decided to introduce an industry funding model for ASIC, would you support not proceeding with the planned review of ASIC's market supervision and competition cost recovery arrangements? Why or why not?**

We are not certain that we can comment on this in the absence of a CRIS, as well as implementation and a review of tightly defined Key Performance Indicators (KPIs) and outcomes from the regulator.

## **3.3 Chapter 3 – International funding models**

### **3.3.1 Question 8: Are there any approaches to industry funding adopted by other regulators that you believe should be applied to an industry funding model for ASIC? If so, please describe and provide reasons why.**

AIST makes no particular comment on particular models of regulator funding, other than through endorsing the OECD principles. Of greater importance is the need for greater transparency regarding the sources of funding, how the funding is applied, and that the funding is in line with the Cost Recovery Guidelines. The production of a CRIS is needed to address these issues before implementation of a new model so that a proper assessment may be made. This is also needed to determine whether the proposed mix of funding sources is appropriate to properly resource ASIC.

## **3.4 Chapter 4 – Proposed levy arrangements**

### **3.4.1 Question 9: Is the proposed methodology for determining the levy mechanisms appropriate? If not, why not?**

AIST believes that the model proposed in this paper is a good start. However, we note that it is possible that, for example, two otherwise identical funds (in terms of size) may have different risk profiles and therefore require different supervisory attention. In particular, we note that this model does not differentiate between two funds that are greater than \$10 billion in funds under management, whether greater than this by a small margin (e.g. \$11 billion) to a very large fund (e.g. \$70 billion).

We note that this may also be the case for financial advice providers. For example, where a provider operates financial advice via their private banking operations as well as their financial planning operations, a greater risk will be presented if private bankers are dealing with amounts involving hundreds of thousands of dollars at a

time, compared to if financial planners are dealing with amounts involving tens of thousands of dollars. If these operations have the same number of advisers, this will result in the same incremental cost in levies.

For these reasons, we believe that a risk-weighting overlay such as that present in a graduated approach to levy calculation should be considered to ensure that operations pay an amount that appropriately reflects the risk to stakeholders as individuals as well as the financial system in its entirety.

## 3.5 Chapter 4 – Proposed fee arrangements

### 3.5.1 Question 10: Are there any activities proposed to be recovered through fees that you believe should be collected through annual levies? If so, which activity or activities and why?

AIST supports the activities proposed for funding via fees.

### 3.5.2 Question 11: Is the proposed approach for calculating fees-for-service appropriate? If not, why not?

AIST supports this proposed approach.

### 3.5.3 Question 12: Do you have any suggestions for how the proposed methodology for calculating fees-for-service could be modified? If so, please provide details.

We are comfortable with the process as it has been proposed in this Consultation Paper.

## 3.6 Chapter 5 – Other review processes

### 3.6.1 Question 13: Do you support the proposed process for determining funding for ASIC's regulatory activities under an industry funding model for ASIC? If not, why not?

AIST supports this proposed process, however this is contingent on the production of an appropriate CRIS and any other steps required under the CRGs.

### 3.6.2 Question 14: Do you think this process will provide industry with certainty as to the fees and levies to be charged? If not, why not?

We believe that this process will provide certainty to the industry as to fees and levies, however the industry has a right to know through a CRIS as to how the conclusions are formed with respect to these figures.

### 3.6.3 Question 15: Are the proposed consultation arrangements on the levy mechanisms and funding appropriate?

We support the proposed consultation arrangements and believe that these arrangements are appropriate, provided that the steps as outlined in the CRGs are followed.

## **3.6.4 Question 16: Do you support ASIC's fees-for-service being revised every three years? Alternatively, would you prefer that ASIC's fees-for-service be revised more regularly?**

We believe that this approach provides a degree of certainty to the industry, particularly where the work required for various fees for service are known.

We note that item 37 of the CRGs says that ideally, the expenses and revenue should be aligned on a yearly basis. However, where justified, they can be aligned over a longer period and Government entities should develop mechanisms, e.g. internal control systems to manage any under or over recovery.

Although this should go without saying, there must not be systemic over- or under- recovery of costs.

## **3.7 Chapter 5 – Future enhancements to ASIC's funding model and accountability structure**

### **3.7.1 Question 17: Do you have any further suggestions for enhancements to be made to ASIC's accountability structure or industry funding model? If so, please provide details.**

We have no suggestions.

### **3.7.2 Question 18: How should the Cost Recovery Stakeholder Panel operate? How should the membership be determined?**

AIST believes that given the Regulatory Performance Framework has not yet been implemented or reported upon, it is difficult to comment on either the composition or objectives of a Cost Recovery Stakeholder Panel. AIST believes that this should be assessed following 1 July 2016, when regulators will be reporting on performance under the Regulatory Performance Framework requirements.

AIST recommends that the involvement from industry should be via industry groups.

## **3.8 Chapter 6 – Phase-in arrangements**

### **3.8.1 Question 19: Are the proposed arrangements for phasing in cost recovery levies appropriate? If not, what alternative approach would you suggest and why?**

AIST is uncertain whether appropriate consideration of the accountability model as discussed on page 6 of the Consultation Paper has been undertaken in regards to this question. More specifically, we are uncertain whether this structure can be set up and be in place for the start of the 2016-2017 financial year.

We consider that this must be resolved before the transition can begin, even in part.

### **3.8.2 Question 20: Is it appropriate to set fees to recover ASIC's costs from 1 July 2016? Why or why not?**

For the same reasons as above, the commencement of a new fee charging regime must operate on the principle that as ASIC is the accountable body, the accountability structure should be able to reflect this from the first day.

## 3.9 Chapter 6 – Levy administration arrangements

### 3.9.1 Question 21: Are the proposed administration arrangements suitable? If not, why not?

AIST considers that these are suitable, however we note again that the accountability structure as outlined on page 26 of the Consultation Paper must be in place.

### 3.9.2 Question 22: Is it appropriate not to levy entities entering the market part way through the year? If not, how do you propose that these entities be treated?

AIST believes that entities entering the industry later can and do present risks. It would therefore be appropriate to collect levies on a *pro-rata* basis.

### 3.9.3 Question 23: Is it appropriate for the Government handle the over or under collection of levies through a reduction or increase in the levies payable for the next year? If not, why not?

We note once again item 37 of the CRGs, which says that ideally, the expenses and revenue should be aligned on a yearly basis. We are uncertain that in the case of the levies, a longer period could be justified and offer cautious support for this, subject to the accountability structure outlined on page 26 of the Consultation Paper being in place.

Once again, we point out that there must not be systemic over- or under- recovery of costs.

### 3.9.4 Question 24: Are additional arrangements necessary to ensure appropriate administration by ASIC of its industry funding model? If so, please provide details.

AIST has no position on this question.

## 3.10 Attachment C – Funding model for AFS licensees

Unfortunately, the examples contained at Attachment C of the paper do not address the example of a superannuation fund. We felt that this may not be helpful for the purposes of evaluating this.

For the purposes of this question, we examined a number of funds:

- A large fund of more than \$10 billion in funds under management. This fund is authorised to provide a personal financial product advice service, and has a team of 40 advisers who provide this service. The fund is also authorised to provide a general financial product advice service.
- A medium sized fund with under \$10 billion in funds under management. This fund is authorised to provide a personal financial product advice service and has a team of 4 advisers who provide this service. The fund is also authorised to provide a general financial product advice service.
- A small fund with under \$1 billion in funds under management. This fund is not presently authorised to provide any financial product advice service.
- An Eligible Rollover Fund (ERF) with under \$1 billion in funds under management. This fund is presently authorised to provide a general advice service.

# Proposed Industry Funding Model for the Australian Securities and Investments Commission



The funds are liable for a tiered pricing structure for the levy, based upon funds under administration. For the purposes of this calculation, we have calculated their levies as follows:

Fund	Funds under management	Tier 3 (funds up to \$1 billion)	Tier 2 (funds up to \$10 billion)	Tier 1 (funds greater than \$10 billion)	Total
Large fund	\$50 billion			\$137,000	<b>\$137,000</b>
Medium fund	\$4 billion		\$29,000		<b>\$29,000</b>
Small fund	\$750 million	\$19,000			<b>\$19,000</b>
ERF	\$500 million	\$19,000			<b>\$19,000</b>

In addition, the funds have a varying degree of authorisation with respect to what advice services they may offer to their members. Note that superannuation is a Tier 1 financial products:

Fund	Nature of authorisation to provide financial product advice services	Licensed to provide personal financial product advice	Number of advisers on financial advice register	Total cost of financial advisers	Licensed to provide general financial products advice	Total
Large fund	Personal and general	\$1,350	40	\$18,800	\$520	<b>\$20,670</b>
Medium fund	Personal and general	\$1,350	4	\$1,880	\$520	<b>\$3,750</b>
Small fund	No authorisation					<b>\$0</b>
ERF	General only			\$0	\$520	<b>\$520</b>

Totals:

Fund	Total amount based on advice services	Total amount for a superannuation fund based on funds under administration	Total levy payable
Large fund	\$20,670	\$137,000	<b>\$157,670</b>
Medium fund	\$3,750	\$29,000	<b>\$32,750</b>
Small fund	\$0	\$19,000	<b>\$19,000</b>
ERF	\$520	\$19,000	<b>\$19,520</b>

### 3.10.1 Question 36: Do you support the proposed arrangements for AFS Licensees' levies? Why or why not?

Although a relatively small amount (\$520), the amount payable for general advice providers does not reflect the exemption provided in regulation 7.1.33H of the *Corporations Regulations 2001* which allows product issuers to be exempt from the requirement to be licensed to provide general advice with an appropriately worded warning.

We recommend that this requirement be removed for all product issuers to reflect the similar risks posed by providers, whether or not these providers are licensed to provide a general advice service.

In addition, where general advice services are provided by an entity which is controlled by a superannuation fund, we believe that this represents an extension of the above scenario and therefore should have the exemption extended.

Finally, we believe that entities which provide a personal advice service should also be exempted from paying for the provision of a general advice service if licensed to do so. Such entities commonly provide such services in the process of providing a personal advice service. Personal advice services requirements obviate those required for the provision of general advice services in most circumstances.

### 3.10.2 Question 37: Will the proposed levy arrangements for AFS licensees be competitively neutral? If not, why not?

### 3.10.3 Question 38: Will the proposed tiering arrangements support the growth of AFS licensees? Why or why not?

It is difficult to address either of these questions without a CRIS. The question of whether resources can be effectively allocated and the scale required for those resources would be best addressed through this process.

**3.10.4 Question 39: Will the proposed levy arrangements for AFS Licensees support innovation? If not, why not?**

**3.10.5 Question 40: Will the proposed levy arrangements for AFS Licensees support small business? If not, why not?**

**3.10.6 Question 41: Will the proposed levy arrangements for AFS Licensees support access to financial services in regional Australia? If not, why not?**

AIST has no response to these questions.

**3.10.7 Question 42: Do you believe that a graduated approach to determining the levy payable by AFS licensees, such as responsible entities and superannuation trustees, would be preferable to the proposed levy arrangements? Why or why not?**

AIST supports a graduated approach to determining the levy payable for superannuation trustees, noting that certain licensees require a greater level of regulatory supervision to others. Whilst we understand that this would be administratively more complex, it would also better reflect the degree of risk that certain licensees offer compared to others.

AIST also notes that other activities such as financial advice, would also be more appropriately charged on a graduated basis. We explained in question 9 that even two separate operations in the one financial services entity may present different risks and this would reflect the relative effort required by ASIC in regulating these.