



Proposed Financial Institutions Supervisory Levies for 2016-17

2 June 2016

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.

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1 Executive summary

In brief:

While AIST welcomes consultation on proposed financial levies for 2016-2017, AIST is once again concerned that insufficient detail renders the proposal as non-compliant with the Government's Cost Recovery Guidelines and Charging Framework. AIST calls for proposed levies papers to attach Cost Recovery Impact Statements and the outcomes of the Regulator Performance Framework from all regulators (even if in draft). While not raised in the proposal, AIST firmly believes implementation of an ASIC user-pays model should not occur without further consultation. We seek information as to how the additional approx. \$120million funding to ASIC will be raised.

AIST welcomes the opportunity to respond to the paper *Proposed Financial Institutions Supervisory Levies for 2016-17* ('Proposed Levies Paper'). As highlighted in previous submissions, the proposed levies are difficult to assess given that firstly, a Cost Recovery Impact Statement (CRIS) has not yet been released and secondly, the Regulator Performance Framework¹ came into effect only on 1 July 2015. This makes it difficult to assess the quantum or application of the levies.

AIST strongly supports focussed and properly resourced regulators. Understanding resourcing sufficiency needs transparency regarding alignment of resources and meeting the objectives set by government. To this end, AIST appreciates the strategy underpinning the suite of Government guidelines, including:

- Australian Government Cost Recovery Guidelines ('the CRG')².
- Australian Government Charging Framework ('Charging Framework')³.
- Regulator Performance Framework ('Performance Framework').

This suite reinforces the need to have a CRIS from APRA, ASIC and the ATO released simultaneously with the issue of any proposed levies papers. The application of resources to government objectives under the Performance Framework should also be simultaneously released. These items could either be in draft form. AIST would greatly appreciate gaining an understanding as to whether this will occur going forward. Levies ultimately come from members' retirement savings, which underpins the need for greater

¹ Australian Government, (2014). *Regulator Performance Framework*. [online] Australian Government. Available at: <http://tinyurl.com/ht72fsy> [Accessed 31 May 2016].

² Australian Government, Department of Finance, (2014). *Australian Government Cost Recovery Guidelines, July 2014 - Third edition*. Resource Management Guide No.304. [online] Australian Government. Available at: <http://tinyurl.com/lplwh2g> [Accessed 31 May 2016].

³ Australian Government, Department of Finance, (2015). *Australian Government Charging Framework*, Resource Management Guide no. 302. [online] Australian Government. Available at: <http://tinyurl.com/grrwr8q> [Accessed 31 May 2016].

transparency. We reiterate our concerns that currently, such transparency is lacking. While AIST understands that implementation of the Performance Framework is in train, the lack of detail such as might be found in a CRIS from each of the regulators which benefit from the levies is more difficult to understand.

AIST has the following additional concerns:

- Little detail regarding the allocation of cost-recoverable items to both the restricted (supervisory) and unrestricted (systemic) component of the levy. It is difficult to assess whether the allocations come within the CRG.
- How sufficient monies for significant costs associated with large-scale court cases will be met. AIST notes a recent comment in the media that ASIC's Enforcement Special Account would be subject to cost recovery (previously excluded)⁴. This underpins AIST's previous comments that greater transparency around what is being recovered and how it is being applied is needed.
- While we are pleased to see the Proposed Levies Paper noting that from 2017-18, ASIC's regulatory costs will be recovered from all industry sectors regulated by ASIC, we need greater transparency as to how this will be done.
- For the second year in a row, the Early Release of Superannuation Benefits program, the Unclaimed Superannuation Moneys program and the Lost Member Register have been included in the levies. The inclusion is not accompanied by detail about costing methodologies, or whether the programs involve expenditures which may not be cost recovered.

In order to address these issues, AIST strongly contends that any proposed levies papers should be accompanied by CRISs and outcomes of the Regulator Performance Framework (even if in draft). Sufficient detail should be included so that both the Government and stakeholders can see how activities, resources and funding are aligned.

⁴ Gluyas, R. (2016). ASIC to adopt time recording. *The Australian*. [online] Available at: <http://tinyurl.com/hvjasfb> [Accessed 31 May 2016].

2 Consultation issues

2.1 Introduction

AIST recognises that the raising of financial sector levies is needed to assist Government agencies provide oversight or certain services. AIST strongly endorses the policy objectives contained in the CRG, namely consistency, transparency, and accountability, and the promotion of the proper use of resources. These policy objectives are increasingly relevant, given both the size of the Australian financial sector as well as the quantum of levies.

Paragraph 52 of the CRG outlines what types of detail should be provided in order to meet the requirements of 'transparency' and 'accountability':

In developing a high-level cost recovery model, entity staff should:

- *Provide estimates of expenses and revenue for the activity*
- *Discuss how changes in the underlying assumptions will affect financial estimates*
- *Demonstrate the potential to align expenses and revenue*
- *Propose how the activity could be broken down into distinct outputs (e.g. assessments of permit applications, registrations of goods or compliance audits) that facilitate the achievement of the government policy outcomes*
- *Identify high-level business processes for the outputs of the activity*
- *Identify appropriate types of cost recovery charges (fees, levies or both)*
- *Produce estimates of the cost recovery charges.*

We are disappointed that, once again, the Proposed Levies Paper does not fully address the requirements of the CRG. There is insufficient information for groups being levied (e.g. superannuation funds) to analyse the activity. Indeed, the Proposed Levies Paper covers much the same ground as the Proposed Levies Paper for 2015-2016, with the addition of a few additional levies.

2.2 Requirement for a CRIS

The Proposed Levies Paper notes that the APRA CRIS will not be made available until June 2016. We also need a CRIS (even if in draft form) from the other regulators which receive levy monies.

Paragraph 39 of the CRG notes that:

Each cost recovered activity, regardless of financial value, must be documented in a cost recovery implementation statement (CRIS) before charges commence.

Paragraph 39 of the CRG goes on to make it clear that the CRIS is prepared to provide the basis for engagement with stakeholders. It should be clear that without the CRIS, the basis is not there.

We continue to lack information to assess whether resources and outputs are aligned, and whether programs stated in the Proposed Levies Paper are indeed recoupable. We note also that the APRA CRIS that was circulated in arrears last year was considerably low on detail.

Here is a summary of some changes regarding the levies being raised – changes about which we have little or no information:

- Increased funding for modernising APRA data capabilities.
- Increased funding for enhancing ASIC's data analytics.
- Increased funding to ASIC for a range of matters, including financial literacy (which AIST queries whether this is a 'tax' or a 'levy').
- Increased funding to the SCT. While AIST strongly supports additional funding to the SCT, we lack detail as to how these additional monies will be provided in the form of a CRIS.

This lack of transparency makes it difficult for the industry to assess the impact of what is currently happening – let alone consider new issues such as that raised in the media regarding cost recovery for the ASIC Enforcement Special Account.

2.3 ASIC User Pays funding model – and what steps need to be taken before implementation

While not specifically raised within the Proposed Levies Paper, AIST notes recent comments that ASIC will be moving to a user-pays model: As recommended by the FSI, the Government will introduce an industry funding, or 'user-pays' model for ASIC, to commence in the second half of 2017. From 2017-18, ASIC's costs will be recovered from all industry sectors regulated by ASIC.⁵

In our 2015 submission⁶, we provided general support for this concept, but further transparency around how levies are raised and applied is needed before any new model is introduced. We emphasize recommendations made in that submission as to what steps need to be taken before the implementation of a new funding model:

- Implementation and public reporting of the Performance Framework.
- A CRIS has been drafted.
- The other consultation processes in Chapter 5 of the Proposed Funding model for the Australian Securities and Investments Commission Paper 28 August 2015.

⁵ Treasurer of the Commonwealth of Australia and the Minister for Small Business, Assistant Treasurer, (2016). *Turnbull Government bolsters ASIC to protect Australian consumers*. [online] Available at: <http://tinyurl.com/jg5luld> [Accessed 1 Jun. 2016].

⁶ AIST, (2015), Proposed Industry Funding Model for the Australian Securities and Investments Commission 9 October 2015. [online] Available at: <http://tinyurl.com/psesn8r> [Accessed 31 May 2016].

2.4 Additional ASIC funding – approx. \$120million

The issue of the additional \$120 million (approx.) funding to ASIC is also not specifically raised within the Proposed Levies Paper. AIST understands from various public statements that these monies are to be applied to the following (some of these categories are discussed in the Proposed Levies Paper):

- \$61.1m to enhance data analytics and surveillance.
- \$9.2m to ASIC and Treasury to ensure they can implement appropriate law.
- \$57m to surveillance of advice, lending, life insurance, and breach reporting.
- The appointment of an additional commissioner –someone who has had experience in prosecuting financial services crimes.

While we are pleased to see the Proposed Levies Paper noting that from 2017-18, ASIC's regulatory costs will be recovered from all industry sectors regulated by ASIC, we need greater transparency as to how this will be done.

Various media commentaries have discussed that this money will deliver a stronger focus on the banking sector, and that the funding for a new commissioner will come from a 'user pays' system

The Proposed Levies Paper does not provide certainty regarding how these matters will be handled either now or in the future. This further underpins AIST's call for a CRIS from all regulators which receive levy money and implementation of the consultation processes we have outlined in point 2.3 above.

2.5 Querying inclusion of certain programs

AIST questions the inclusion of other programs such as the Early Release of Superannuation Benefits, the Unclaimed Superannuation Moneys programme, and the Lost Member Register without transparency of a CRIS which has been prepared in line with the CRG.

2.6 Adoption of option 2 – shifting some components from 'restricted' to 'unrestricted' – needs clarity

AIST notes that option 2 has again been applied within the Proposed Levies Paper. The lack of transparency makes it difficult for stakeholders such as AIST to assess the methodology. This applies not only to APRA but also levies raised on behalf of the other regulators.

2.7 SCT funding should remain separate

While AIST is pleased that additional funding will be provided to the SCT, we are strongly reinforce previous comments that the SCT funding should remain separate from ASIC.

2.8 Those who gain benefits from system should contribute to levies

Cost recovery of SuperStream costs is large at an estimated \$35.5million for 2016-2017. Information about the raising of SuperStream levies is insufficient. AIST notes that Attachment A to the Proposed Levies Paper provides sparse information, and also does not include a significant block of the superannuation sector which gains use from SuperStream – Self Managed Superannuation Funds.

2.8.1 SMSFs

AIST notes – once again- that Attachment A to the Proposed Levies Paper provides sparse information, and does not provide sufficient information regarding whether all who gain benefits from the system should contribute to the levies, e.g. Self Managed Superannuation Funds.

2.8.2 Impact

We note from the Proposed Levies Paper that forecast costs for the 2015-16 financial year appear to be broadly comparable with previous figures. The following comparison considers three different funds and the effect of the changes to the levies recoupment:

2016-17 (forecast)	Large fund	Small fund	ERF
FUM (000s)	\$80,014,466.00	\$216,187.00	\$516,593.00
Number of members	2,120,160	2,065	1,013,184
Components (forecast)			
Restricted (000s)	\$260.00	\$7.26	\$17.36
Unrestricted (000s)	\$6,835.64	\$18.47	\$44.13
Total (000s)	\$7,095.64	\$25.73	\$61.49
(2015-16 equivalent) (000s)	\$7,095.64	\$25.49	\$60.92
Cost per member	\$3.35	\$12.46	\$0.06
(2015-16 equivalent)	\$3.35	\$12.35	\$0.06

As can be seen, for small funds and ERFs, this appears to represent a small increase in fees.

Although AIST would prefer a reduction in fees in the interests of superannuation fund members, we re-iterate that the methodology needs to reflect a consistent and proper process of evaluation. We are not yet convinced that this has taken place.

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