

EXPOSURE DRAFT

2016-2017

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

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| EXPOSURE DRAFT |
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ASIC Supervisory Cost Recovery Levy (Collection) Bill 2017

No. , 2017

(Treasury)

**A Bill for an Act to provide for the collection of
levies imposed on persons regulated by the
Australian Securities and Investments Commission,
and for related purposes**

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1
2 **A Bill for an Act to provide for the collection of**
3 **levies imposed on persons regulated by the**
4 **Australian Securities and Investments Commission,**
5 **and for related purposes**

6 The Parliament of Australia enacts:

7 **1 Short title**

8 This Act is the *ASIC Supervisory Cost Recovery Levy (Collection)*
9 *Act 2017*.

10 **2 Commencement**

- 11 (1) Each provision of this Act specified in column 1 of the table
12 commences, or is taken to have commenced, in accordance with
13 column 2 of the table. Any other statement in column 2 has effect
14 according to its terms.
15

Commencement information

| Column 1 | Column 2 | Column 3 |
|--------------------------|---|---------------------|
| Provisions | Commencement | Date/Details |
| 1. The whole of this Act | At the same time as the <i>ASIC Supervisory Cost Recovery Levy Act 2017</i> commences. However, the provisions do not commence at all if that Act does not commence. | |

16 Note: This table relates only to the provisions of this Act as originally
17 enacted. It will not be amended to deal with any later amendments of
18 this Act.

- 19 (2) Any information in column 3 of the table is not part of this Act.
20 Information may be inserted in this column, or information in it
21 may be edited, in any published version of this Act.

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Section 3

1 **3 Act binds the Crown**

2 (1) This Act binds the Crown in right of each of the States, of the
3 Australian Capital Territory, of the Northern Territory and of
4 Norfolk Island. However, it does not bind the Crown in right of the
5 Commonwealth.

6 (2) This Act does not make the Crown liable to a pecuniary penalty or
7 to be prosecuted for an offence.

8 **4 External Territories**

9 This Act extends to every external Territory.

10 **5 Extraterritorial application**

11 This Act extends to acts, omissions, matters and things outside
12 Australia.

13 **6 Definitions**

14 In this Act:

15 *ASIC* means the Australian Securities and Investments
16 Commission.

17 *late payment penalty* means penalty payable under section 9.

18 *leviable entity*, for a financial year, has the same meaning as in the
19 *ASIC Supervisory Cost Recovery Levy Act 2017*.

20 *levy* means levy imposed by the *ASIC Supervisory Cost Recovery*
21 *Levy Act 2017*.

22 *levy month* means one of the 12 months of the calendar year.

23 *offence against this Act* includes an offence against Chapter 7 of
24 the *Criminal Code* that relates to this Act.

25 *person* has a meaning affected by sections 19, 20, 21 and 22.

1 *RSE licensee* has the same meaning as in the *Superannuation*
2 *Industry (Supervision) Act 1993*.

3 *shortfall penalty* means penalty payable under section 12.

4 **7 Liability to levy**

5 A person who is a leviable entity for a financial year that ends after
6 the commencement of the *ASIC Supervisory Cost Recovery Levy*
7 *Act 2017* is liable to pay levy for that financial year.

8 **8 When levy due for payment**

- 9 (1) Levy payable by a person for a financial year is due and payable on
10 a business day that is:
- 11 (a) specified in a notice that ASIC gives to the person in relation
12 to the financial year; and
- 13 (b) not earlier than 30 days after the day on which the notice is
14 given.
- 15 (2) If the person nominates another person by written notice given to
16 ASIC:
- 17 (a) the notice under paragraph (1)(a) may be given to the
18 nominated person; and
- 19 (b) the obligation imposed on the person by subsection (1) may
20 be discharged by the nominated person.
- 21 (3) To avoid doubt, subsection (2) does not otherwise affect the
22 person's liability under section 7.

23 **9 Late payment penalty**

- 24 (1) If any levy payable by a person remains unpaid at the start of a
25 levy month after the levy became due for payment, the person is
26 liable to pay the Commonwealth, for that levy month, a penalty
27 worked out using the following formula:

28
$$\text{Amount of the levy remaining} \times \frac{0.2}{12}$$

 unpaid at the start of the levy month

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Section 10

- 1 (2) Late payment penalty for a levy month is due and payable at the
2 end of the levy month.
- 3 (3) However, ASIC may, by written notice given to the person before,
4 on or after the day on which late payment penalty would be due
5 and payable apart from this subsection, specify a later day as the
6 day on which the late payment penalty is due and payable. The
7 notice has effect, and is taken always to have had effect, according
8 to its terms.

9 **10 Returns**

- 10 (1) A person who is a leviable entity in relation to a financial year
11 must, for the purposes of the levy:
12 (a) lodge with ASIC a return, in the approved form; and
13 (b) do so by:
14 (i) unless subparagraph (ii) applies—31 October of the
15 following financial year; or
16 (ii) if ASIC has determined a different day under
17 subsection (4)—that day.
- 18 (2) For the purposes of subsection (1), a return is in the *approved form*
19 if:
20 (a) it is in the form prescribed in the regulations, or, if the
21 regulations do not prescribe a form, it is in a form approved,
22 in writing, by ASIC; and
23 (b) it is lodged in the manner prescribed in the regulations, or, if
24 the regulations do not prescribe a manner, in the manner
25 determined by ASIC under subsection (4) (which may
26 include electronically).
- 27 (3) An approved form may require the return to contain:
28 (a) information relating to the leviable entity; and
29 (b) information relating to one or more other leviable entities.
- 30 (4) ASIC may, by notice published on ASIC's website, determine:
31 (a) the day on which a return must be lodged with ASIC; and
32 (b) the manner in which ASIC requires the return to be lodged.

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- 1 (5) A day determined by ASIC under paragraph (4)(a):
2 (a) must be on or after 31 August of the following financial year;
3 and
4 (b) must be 2 months or more after the day on which the notice is
5 first published on ASIC's website; and
6 (c) may be a different day for different classes of liable entity.

7 *Offence*

- 8 (6) A person commits an offence if:
9 (a) the person is subject to a requirement under subsection (1);
10 and
11 (b) the person omits to do an act; and
12 (c) the omission breaches the requirement.

13 Penalty: 5 penalty units.

- 14 (7) An offence against subsection (6) is an offence of strict liability.

15 Note: For strict liability, see section 6.1 of the *Criminal Code*.

- 16 (8) Subsection (6) does not apply to the extent that the person has a
17 reasonable excuse.

18 Note: A defendant bears an evidential burden in relation to the matters in
19 this subsection (see subsection 13.3(3) of the *Criminal Code*).

- 20 (9) A return under this section that is in the approved form is taken, for
21 the purposes of the *Corporations Act 2001*, not to be a document
22 lodged with ASIC.

23 **11 Default notice**

- 24 (1) ASIC may give a liable entity a notice stating the amount that, in
25 ASIC's opinion, is the levy payable by the liable entity for a
26 financial year if:
27 (a) a person was required under section 10 to lodge a return
28 containing information relating to the liable entity; and
29 (b) either:

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Section 12

- 1 (i) the person fails to give the return as required by
2 section 10; or
3 (ii) ASIC is not satisfied with the return given by the person
4 to the extent that it relates to the leviable entity.
- 5 (2) The amount stated in the notice is taken to be the levy payable by
6 the person for the financial year, unless the contrary is proved.

12 Shortfall penalty

- 7 (1) Subsection (3) applies if:
8 (a) a person makes a statement to ASIC in a return under
9 section 10; and
10 (b) the statement is false or misleading in a material particular,
11 whether because of things in it or omitted from it; and
12 (c) the amount of levy the person paid (the *paid amount*) was
13 worked out on the basis of the statement; and
14 (d) the paid amount fell short of the levy payable by the person
15 for the financial year (worked out on the basis of the
16 statement not being false or misleading).
17
- 18 (2) However, subsection (3) does not apply if the person reasonably
19 believed the statement was correct.
- 20 (3) The person is liable to pay, by way of penalty, an amount equal to
21 twice the amount of the shortfall worked out under
22 paragraph (1)(d).
- 23 (4) Shortfall penalty is due and payable on a business day that is:
24 (a) specified in a notice that ASIC gives to the person in relation
25 to the financial year; and
26 (b) not earlier than 30 days after the day on which the notice is
27 given.
- 28 (5) However, ASIC may, by written notice given to the person before,
29 on or after the day on which shortfall penalty would be due and
30 payable apart from this subsection, specify a later day as the day on
31 which the shortfall penalty is due and payable. The notice has

1 effect, and is taken always to have had effect, according to its
2 terms.

3 **13 Payment of levy, late payment penalty and shortfall penalty**

4 Each of the following are payable to ASIC on behalf of the
5 Commonwealth:

- 6 (a) levy;
- 7 (b) late payment penalty;
- 8 (c) shortfall penalty.

9 **14 Waiver of levy, late payment penalty and shortfall penalty**

10 (1) ASIC may, on behalf of the Commonwealth, waive the payment of
11 the whole or a part of one or more of the following amounts
12 payable by a person, if ASIC is satisfied that there are exceptional
13 circumstances justifying the waiver:

- 14 (a) levy;
- 15 (b) late payment penalty;
- 16 (c) shortfall penalty.

17 (2) ASIC may do so on its own initiative or on written application by a
18 person.

19 **15 Recovery of levy, late payment penalty and shortfall penalty**

20 (1) The following amounts may be recovered by the Commonwealth
21 from a person as debts due to the Commonwealth:

- 22 (a) levy that is due and payable by the person;
- 23 (b) late payment penalty that is due and payable by the person;
- 24 (c) shortfall penalty that is due and payable by the person.

25 (2) ASIC is authorised, as agent of the Commonwealth, to bring
26 proceedings in the name of the Commonwealth for the recovery of
27 a debt due to the Commonwealth of a kind mentioned in
28 subsection (1).

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Section 16

1 **16 Exempting laws ineffective**

- 2 (1) Nothing in a law passed before the commencement of this section
3 exempts a person from liability to pay levy.
- 4 (2) If a law (including a provision of a law) passed after the
5 commencement of this section purports to exempt a person from:
6 (a) liability to pay taxes under laws of the Commonwealth; or
7 (b) liability to pay certain taxes under laws of the
8 Commonwealth that would otherwise include levy;
9 the law does not operate to exempt the person from liability to pay
10 levy unless the exemption expressly refers to levy under this Act.
- 11 (3) To avoid doubt, this section does not apply in relation to an
12 exemption under this Act or the *ASIC Supervisory Cost Recovery*
13 *Levy Act 2017*.

14 **17 Internal review of certain decisions**

- 15 (1) A person who is affected by a decision of ASIC under section 14
16 may, if dissatisfied with the decision, request ASIC to reconsider
17 the decision.
- 18 (2) The request must:
19 (a) be made by notice given to ASIC within:
20 (i) the period of 21 days after the day on which the person
21 first receives notice of the decision; or
22 (ii) any further period that ASIC allows; and
23 (b) set out the reasons for making the request.
- 24 (3) After receiving the request, ASIC must review the decision or
25 cause the decision to be reviewed by a person:
26 (a) to whom ASIC's power under this section is delegated; and
27 (b) who was not involved in the making of the decision; and
28 (c) who occupies a position in ASIC that is senior to that
29 occupied by a person involved in the making of the decision.
- 30 (4) Within 42 days after receiving the request, the person reviewing
31 the decision must:

- 1 (a) reconsider the decision; and
2 (b) confirm, revoke or vary the decision, as the person thinks fit.
- 3 (5) If the person reviewing the decision does not confirm, revoke or
4 vary the decision within the period of 42 days after receiving the
5 request, he or she is taken to have confirmed the decision under
6 subsection (4) immediately after the end of that period.
- 7 (6) The person reviewing the decision must give a notice in writing to
8 the person that made the request that sets out the result of the
9 reconsideration of the decision and gives the reasons for his or her
10 decision.

11 **18 Administrative Appeals Tribunal review of certain decisions**

12 Applications may be made to the Administrative Appeals Tribunal
13 for review of:

- 14 (a) a decision of ASIC that has been confirmed or varied under
15 subsection 17(4) or a decision that has been taken to have
16 been confirmed under subsection 17(5); or
17 (b) a decision of ASIC under subsection 17(4) to revoke a
18 decision.

19 **19 Treatment of partnerships**

- 20 (1) This Act applies to a partnership as if it were a person, but with the
21 changes set out in this section.
- 22 (2) An obligation that would otherwise be imposed on the partnership
23 by this Act is imposed on each partner instead, but may be
24 discharged by any of the partners.
- 25 (3) An offence against this Act that is committed by a partnership is
26 taken to have been committed by each partner in the partnership, at
27 the time the offence was committed, who:
28 (a) did the relevant act or made the relevant omission; or
29 (b) aided, abetted, counselled or procured the relevant act or
30 omission; or

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- 1 (c) was in any way knowingly concerned in, or party to, the
2 relevant act or omission (whether directly or indirectly and
3 whether by any act or omission of the partner).

4 **20 Treatment of unincorporated associations**

- 5 (1) This Act applies to an unincorporated association as if it were a
6 person, but with the changes set out in this section.
- 7 (2) An obligation that would otherwise be imposed on the association
8 by this Act is imposed on each member of the association's
9 committee of management instead, but may be discharged by any
10 of the members.
- 11 (3) An offence against this Act that would otherwise have been
12 committed by the unincorporated association is taken to have been
13 committed by each member of the association's committee of
14 management, at the time the offence was committed, who:
15 (a) did the relevant act or made the relevant omission; or
16 (b) aided, abetted, counselled or procured the relevant act or
17 omission; or
18 (c) was in any way knowingly concerned in, or party to, the
19 relevant act or omission (whether directly or indirectly and
20 whether by any act or omission of the member).

21 **21 Treatment of RSE licensees**

- 22 (1) This Act applies to an RSE licensee that is a group of individual
23 trustees as if the group were a person, but with the changes set out
24 in this section.
- 25 (2) An obligation that would otherwise be imposed on the group by
26 this Act is imposed on each individual, but may be discharged by
27 any of the individuals.
- 28 (3) An offence against this Act that would otherwise have been
29 committed by the group is taken to have been committed by each
30 individual trustee, at the time the offence was committed, who:
31 (a) did the relevant act or made the relevant omission; or

- 1 (b) aided, abetted, counselled or procured the relevant act or
2 omission; or
3 (c) was in any way knowingly concerned in, or party to, the
4 relevant act or omission (whether directly or indirectly and
5 whether by any act or omission of the individual).

6 **22 Treatment of multiple trustees**

- 7 (1) This section applies if the trustee or trustees of a trust are treated
8 during a period as constituting:
9 (a) a single legal entity (the *notional entity*) under
10 section 761FA of the *Corporations Act 2001*; or
11 (b) a single person (also the *notional entity*) under section 15 of
12 the *National Consumer Credit Protection Act 2009*.
- 13 (2) This Act applies to the notional entity during the period as if the
14 notional entity were a person, but with the changes set out in this
15 section.
- 16 (3) During the period, or any part of the period, that the trust has 2 or
17 more trustees:
18 (a) an obligation that would otherwise be imposed on the
19 notional entity by this Act is imposed instead on each trustee,
20 but may be discharged by any of the trustees; and
21 (b) an offence against this Act that would otherwise have been
22 committed by the notional entity is taken to have been
23 committed by each trustee, at the time the offence was
24 committed, who:
25 (i) did the relevant act or made the relevant omission; or
26 (ii) aided, abetted, counselled or procured the relevant act or
27 omission; or
28 (iii) was in any way knowingly concerned in, or party to, the
29 relevant act or omission (whether directly or indirectly
30 and whether by any act or omission of the trustee).
- 31 (4) During the period, or any part of the period, that the trust has only
32 one trustee:

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- 1 (a) an obligation that would otherwise be imposed on the
2 notional entity by this Act is imposed instead on that single
3 trustee; and
4 (b) an offence against this Act that would otherwise have been
5 committed by the notional entity is taken to have been
6 committed by that single trustee.

7 **23 Rules and regulations**

8 *Rules*

- 9 (1) The Minister may, by legislative instrument, make rules
10 prescribing matters:
11 (a) required or permitted by this Act to be prescribed by the
12 rules; or
13 (b) necessary or convenient to be prescribed for carrying out or
14 giving effect to this Act.
- 15 (2) To avoid doubt, the rules may not do the following:
16 (a) create an offence or civil penalty;
17 (b) provide powers of:
18 (i) arrest or detention; or
19 (ii) entry, search or seizure;
20 (c) impose a tax;
21 (d) set an amount to be appropriated from the Consolidated
22 Revenue Fund under an appropriation in this Act;
23 (e) directly amend the text of this Act.

24 *Regulations*

- 25 (3) The Governor-General may make regulations prescribing matters:
26 (a) required or permitted by this Act to be prescribed by the
27 regulations; or
28 (b) necessary or convenient to be prescribed for carrying out or
29 giving effect to this Act.

30