

EXPOSURE DRAFT

2016-2017

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

ASIC Supervisory Cost Recovery Levy Bill 2017

No. , 2017

(Treasury)

**A Bill for an Act to impose a levy 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 impose a levy on persons**
3 **regulated by the Australian Securities and**
4 **Investments Commission, and for related purposes**

5 The Parliament of Australia enacts:

6 **1 Short title**

7 This Act is the *ASIC Supervisory Cost Recovery Levy Act 2017*.

8 **2 Commencement**

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

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	1 July 2017.	1 July 2017

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

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

20 **3 Act binds the Crown**

21 This Act binds the Crown in right of each of the States, of the
22 Australian Capital Territory, of the Northern Territory and of

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1 Norfolk Island. However, it does not bind the Crown in right of the
2 Commonwealth.

3 **4 External Territories**

4 This Act extends to every external Territory.

5 **5 Extraterritorial application**

6 This Act extends to acts, omissions, matters and things outside
7 Australia.

8 **6 Act does not impose levy on property of a State**

9 (1) This Act does not impose a tax on property of any kind belonging
10 to a State.

11 (2) In this section, *property of any kind belonging to a State* has the
12 same meaning as in section 114 of the Constitution.

13 **7 Definitions**

14 (1) In this Act:

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

17 *audit entity* means:

- 18 (a) a registered company auditor (within the meaning of the
19 *Corporations Act 2001*); or
20 (b) a partnership or unincorporated association that is an audit
21 firm (within the meaning of the *Corporations Act 2001*); or
22 (c) an audit company (within the meaning of the *Corporations*
23 *Act 2001*); or
24 (d) an authorised audit company (within the meaning of the
25 *Corporations Act 2001*); or
26 (e) an individual auditor (within the meaning of the
27 *Corporations Act 2001*); or

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- 1 (f) an approved SMSF auditor (within the meaning of the
2 *Superannuation Industry (Supervision) Act 1993*); or
3 (g) a person regulated by ASIC who is in a class of persons
4 prescribed by the regulations.

5 ***company-like entity*** means:

- 6 (a) a Part 5.1 body (within the meaning of the *Corporations Act*
7 *2001*); or
8 (b) a Part 5.7 body (within the meaning of the *Corporations Act*
9 *2001*); or
10 (c) a body (other than a company) that is a disclosing entity
11 under subsection 111AC(1) of the *Corporations Act 2001*; or
12 (d) a person regulated by ASIC who is in a class of persons
13 prescribed by the regulations.

14 ***credit services entity*** means:

- 15 (a) a licensee within the meaning of the *National Consumer*
16 *Credit Protection Act 2009*; or
17 (b) a person who is exempt under section 109 or 110 of the
18 *National Consumer Credit Protection Act 2009* from the
19 operation of section 29 of that Act (which is about the
20 requirement to hold a credit licence); or
21 (c) a person regulated by ASIC who is in a class of persons
22 prescribed by the regulations.

23 ***exempt entity***, for a financial year, means a regulated entity that is
24 in a class of persons prescribed by the regulations for the financial
25 year.

26 ***financial services entity*** means:

- 27 (a) a financial services licensee (within the meaning of the
28 *Corporations Act 2001*); or
29 (b) an RSE licensee; or
30 (c) a person who is exempt under subsection 911A(2) of the
31 *Corporations Act 2001* from the requirement to hold an
32 Australian financial services licence for a financial service;
33 or

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1 (d) a person who is exempt under section 926A or 926B of the
2 *Corporations Act 2001* from the operation of
3 subsection 911A(1) of that Act; or

4 (e) a person regulated by ASIC who is in a class of persons
5 prescribed by the regulations.

6 **leviable entity**, for a financial year, means a person who:

7 (a) is a regulated entity at any time in the financial year; and

8 (b) is not an exempt entity for the financial year.

9 **liquidator entity** means:

10 (a) a registered liquidator (within the meaning of the
11 *Corporations Act 2001*); or

12 (b) a person registered as a liquidator of a company under
13 subsection 1282(3) of the *Corporations Act 2001*; or

14 (c) a person regulated by ASIC who is in a class of persons
15 prescribed by the regulations.

16 **market infrastructure entity** means:

17 (a) a market licensee (within the meaning of Chapter 7 of the
18 *Corporations Act 2001*); or

19 (b) a person who operates a financial market that is exempt
20 under section 791C from the operation of Part 7.2 of the
21 *Corporations Act 2001*; or

22 (c) a person who is exempt under section 907D of the
23 *Corporations Act 2001* from the operation of section 905A of
24 that Act; or

25 (d) a person who:

26 (i) is a participant in a licensed market for the purposes of
27 Chapter 7 of the *Corporations Act 2001*; or

28 (ii) would be such a participant if the definition of
29 **participant** in section 761A of that Act covered a person
30 who is allowed to indirectly participate in the facility or
31 market concerned; or

32 (e) a CS facility licensee (within the meaning of Chapter 7 of the
33 *Corporations Act 2001*); or

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- 1 (f) a person who operates a clearing and settlement facility that
2 is exempt under section 820C from the operation of Part 7.3
3 of the *Corporations Act 2001*; or
4 (g) a derivative trade repository licensee (within the meaning of
5 Chapter 7 of the *Corporations Act 2001*); or
6 (h) a person regulated by ASIC who is in a class of persons
7 prescribed by the regulations.

8 **person** has a meaning affected by section 11.

9 **regulated entity** means:

- 10 (a) a company that is registered under the *Corporations Act*
11 *2001*; or
12 (b) a company that is a disclosing entity under
13 subsection 111AC(1) of the *Corporations Act 2001*; or
14 (c) a financial services entity; or
15 (d) a credit services entity; or
16 (e) a market infrastructure entity; or
17 (f) an audit entity; or
18 (g) a liquidator entity; or
19 (h) a company-like entity; or
20 (i) a person regulated by ASIC who is in a class of persons
21 prescribed by the regulations.

22 **regulatory costs**, for a financial year, has the meaning given by
23 section 10.

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

26 **sector** means:

- 27 (a) if the regulations specify sectors—a group of one or more
28 entities each of which meets the criteria specified in the
29 regulations for the sector; or
30 (b) otherwise—a group of one or more entities each of which
31 satisfies a particular paragraph of the definition of **regulated**
32 **entity**.

33 Note: An entity may form part of more than one sector.

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1 *sub-sector* has the meaning given by the regulations.

2 **8 Imposition of levy**

3 Levy payable in accordance with section 7 of the *ASIC Supervisory*
4 *Cost Recovery Levy (Collection) Act 2017* is imposed.

5 **9 Amount of levy**

6 (1) The amount of levy payable by a liable entity for a financial year
7 is the amount worked out in accordance with the regulations.

8 *Objectives*

9 (2) The objectives are:

10 (a) that the total amount of levy payable by all liable entities in
11 relation to a financial year equals the amount of ASIC's
12 regulatory costs for the financial year; and

13 (b) that the total amount of levy payable by all liable entities in
14 a particular class, sector, or sub-sector in a financial year
15 equals the amount of ASIC's regulatory costs relating to that
16 class, sector, or sub-sector for that financial year.

17 (3) For the purposes of subsection (2), disregard the effect of
18 section 14 of the *ASIC Supervisory Cost Recovery Levy*
19 *(Collection) Act 2017* (about waiver of levy payable).

20 *Regulations*

21 (4) Before the Governor-General makes regulations under
22 subsection (1), the Minister must be satisfied that the regulations
23 are consistent with the objectives stated in subsection (2).

24 (5) Without limiting subsection (1), the regulations may do one or
25 more of the following:

26 (a) specify an amount or a method for determining an amount;

27 (b) specify different amounts or methods for different classes of
28 liable entities, different sectors or different sub-sectors;

29 (c) specify a nil amount, or a method resulting in a nil amount;

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- 1 (d) specify methods that refer to acts done or circumstances
2 existing before either the commencement of the regulations
3 or the commencement of this Act, or both.

4 *Annual legislative instrument*

- 5 (6) Regulations made for the purposes of subsection (1) may provide
6 for ASIC to make, by legislative instrument, for each financial
7 year, a determination specifying one or more of the following:
8 (a) amounts to be used for that financial year in a method or
9 methods specified in the regulations;
10 (b) the number of leviable entities in a particular class, sector or
11 sub-sector in that financial year.
- 12 (7) Before ASIC makes a legislative instrument as mentioned in
13 subsection (6), for a financial year, ASIC must be satisfied, having
14 regard to information contained in returns relating to the financial
15 year lodged with ASIC under section 10 of the *ASIC Supervisory
16 Cost Recovery Levy (Collection) Act 2017*, that the legislative
17 instrument is consistent with the objectives stated in subsection (2).
- 18 (8) A legislative instrument made by ASIC as mentioned in
19 subsection (6) may only be made, for a financial year, after the last
20 day by which returns relating to the financial year must be lodged
21 with ASIC under section 10 of the *ASIC Supervisory Cost
22 Recovery Levy (Collection) Act 2017*.

23 *Retrospective application of instruments*

- 24 (9) Subsection 12(2) (retrospective application of legislative
25 instruments) of the *Legislation Act 2003* does not apply to the
26 following:
27 (a) regulations made under subsection (1);
28 (b) a legislative instrument made by ASIC as mentioned in
29 subsection (6).

30 **10 Meaning of *regulatory costs***

- 31 (1) ASIC's *regulatory costs* for a financial year means the lesser of:
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- 1 (a) the sum of all amounts appropriated by the Parliament for the
2 purposes of ASIC for the financial year; and
3 (b) the amount determined in an instrument under subsection (2)
4 for the financial year.
- 5 (2) ASIC must, by legislative instrument, determine the amount that is
6 the cost to ASIC of regulating leviable entities for a financial year.
- 7 (3) A legislative instrument under subsection (2) may only be made,
8 for a financial year, after the last day by which returns relating to
9 the financial year must be lodged with ASIC under section 10 of
10 the *ASIC Supervisory Cost Recovery Levy (Collection) Act 2017*.
- 11 (4) If the amount of levy collected in relation to a financial year falls
12 short of, or exceeds, the amount of ASIC's regulatory costs for the
13 financial year, ASIC must, in making an instrument under
14 subsection (2):
- 15 (a) for an excess of collected levy—reduce the amount of its
16 regulatory costs for the following financial year by the
17 amount of the excess; or
18 (b) for a shortfall of collected levy—increase the amount of its
19 regulatory costs for the following financial year by the
20 amount of the shortfall.
- 21 (5) The regulations may prescribe amounts that ASIC may not include
22 in the amount determined under subsection (2).

23 **11 Treatment of partnerships, unincorporated associations and** 24 **multiple trustees**

25 *Application to partnerships*

- 26 (1) This Act applies to a partnership as if the partnership were a
27 person. However, obligations that would be imposed on the
28 partnership are imposed instead on each partner, but may be
29 discharged by any of the partners.

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1 *Application to unincorporated association*

- 2 (2) This Act applies to an unincorporated association as if the
3 unincorporated association were a person. However, an obligation
4 that would otherwise be imposed on the association is imposed on
5 each member of the association's committee of management
6 instead, but may be discharged by any of the members.

7 *Application to RSE licensee that is a group of individual trustees*

- 8 (3) This Act applies to an RSE licensee that is a group of individual
9 trustees as if the group were a person. However, an obligation that
10 would otherwise be imposed on the group is imposed on each
11 individual, but may be discharged by any of the individuals.

12 *Application to multiple trustees treated as single entity*

- 13 (4) Subsections (5), (6) and (7) apply if a trustee or trustees of a trust
14 are treated during a period as constituting:
15 (a) a single legal entity (the *notional entity*) under
16 section 761FA of the *Corporations Act 2001*; or
17 (b) a single person (also the *notional entity*) under section 15 of
18 the *National Consumer Credit Protection Act 2009*.
- 19 (5) This Act applies to the notional entity during the period as if the
20 notional entity were a person, but with the changes set out in
21 subsections (6) and (7).
- 22 (6) During the period, or any part of the period, that the trust has 2 or
23 more trustees, an obligation that would otherwise be imposed on
24 the notional entity by this Act is imposed instead on each trustee,
25 but may be discharged by any of the trustees.
- 26 (7) During the period, or any part of the period, that the trust has only
27 one trustee, an obligation that would otherwise be imposed on the
28 notional entity by this Act is imposed instead on that single trustee.

29 **12 Regulations**

30 The Governor-General may make regulations prescribing matters:

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- 1 (a) required or permitted by this Act to be prescribed by the
- 2 regulations; or
- 3 (b) necessary or convenient to be prescribed for carrying out or
- 4 giving effect to this Act.