

We refer to the provisions relating to penalties in the ASIC Supervisory Cost Recovery Levy (Consequential Amendments) Bill 2017 (“**Amendments Bill**”).

We note that the range of administrative sanctions available to ASIC include, inter alia, immediate suspension or cancellation of an Australian market license under Section 797B of the Corporations Act 2001, and company deregistration under Section 601AB of the Corporations Act 2001.

We further note that Section 4 of the Amendments Bill allows for ASIC to reinstate the registration of a company deregistered under subsection 601AB(1B) if:

- (a) ASIC receives an application in relation to the reinstatement of the company’s registration; and
- (b) the levy imposed on the company by the *ASIC Supervisory Cost Recovery Levy Act 2017* is paid in full; and
- (c) the amount of any late payment penalty and shortfall penalty payable in relation to the levy is paid in full.

However, Section 8 of the Amendments Bill only provides for a new sub-section (e) to the existing Section 797B, in that the Minister may, by giving written notice to a market licensee, suspend its licence for a specified period, or cancel it, if the following payments under the *ASIC Supervisory Cost Recovery Levy Act 2017* have not been paid in full at least 12 months after the due date for payment:

- (a) an amount of levy (if any) payable in respect of the licensee;
- (b) an amount of late payment penalty payable (if any) in relation to the levy;
- (c) an amount of shortfall penalty payable (if any) in relation to the levy.

There are no similar amendments to allow for the revocation of the cancellation or suspension under Section 797B(e) if the arrears in relation to the levy imposed is paid in full.

We submit that a provision of a similar nature to Section 4 should be introduced to Section 797B to permit reinstatement of a licence in similar circumstances.

It is reasonable to allow for the suspension or cancellation to be revoked once payment has been made in full. Not only will this be in line with the treatment of deregistered companies (as above), there may also be circumstances where payment was not made due to administrative errors on ASIC’s part. We cite a real example where our organisation did not receive fee invoices from ASIC for several months owing to administrative issues within ASIC. It would be unreasonable to suspend or cancel a licence in similar inadvertent circumstances without provision for reinstatement.