# DRAFT EXPLANATORY STATEMENT

## Issued by authority of the Acting Minister for Revenue and Financial Services

*ASIC Supervisory Cost Recovery Levy Act 2017*

*ASIC Supervisory Cost Recovery Levy Regulations 2017*

Section 13 of the *ASIC Supervisory Cost Recovery Levy Act 2017* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Actimposes a levy on entities regulated by the Australian Securities and Investments Commission (ASIC) to recover its regulatory costs. Section 9 of the Act provides that the amount of levy payable for a leviable entity in a financial year is the amount worked out in accordance with the regulations.

The *ASIC Supervisory Cost Recovery Regulations 2017 (*the Regulations*)* apply either a flat or a graduated levy to entities in each industry subsector regulated by ASIC. The type of levy and the formula for calculating the amount of levy payable is different for each industry subsector. This approach is appropriate and equitable because of the range of industry subsectors regulated by ASIC, variations in ASIC’s regulatory costs for each industry subsector and the differences in size and levels of activity undertaken by each entity in each industry subsector.

The Regulations prescribe flat levies to apportion ASIC’s regulatory costs in subsectors where these costs are approximately the same for each entity and the administrative and regulatory burden associated with calculating more tailored levies outweighs the benefits of having additional granularity.

Graduated (variable) levies have been prescribed for subsectors where ASIC’s regulatory costs vary significantly across its regulated population. Some of the graduated levies will include a fixed minimum component and a variable component to apportion ASIC’s regulatory costs. Others are based only a variable component depending on an entity’s share of the total activity in an industry subsector. The levy prescribed for publicly listed companies also includes a maximum cap.

For entities in subsectors that have a graduated levy with a minimum amount, the minimum amount imposed for all entities in the subsector will recover ASIC’s actual direct and indirect costs of undertaking stakeholder engagement, policy advice, guidance, education and a portion of ASIC’s capital allowance. These costs are generally more stable over time. As all industry participants have similar access to the output of these activities, these costs are shared across all participants in the subsector through the minimum levy.

The graduated (variable) component of the levy for subsectors will recover ASIC’s remaining costs (that is, the costs of ASIC’s surveillance and enforcement (including enforcement funded by the Enforcement Special Account) activities) to regulate the subsector. These costs will be apportioned using the total reported industry metric above the minimum threshold for the subsector, for example, total industry funds under management for Responsible Entities of Managed Investment Funds above the subsector’s minimum threshold.

The Regulations also prescribe a maximum levy cap for publicly listed companies. This is because ASIC’s regulatory costs in this subsector do not continue to increase as a function of entity size. This is not the case for other regulated subsectors subject to a graduated levy.

In addition, the Regulations:

* establish the criteria for determining the subsectors an entity is a part of;
* set out the formulas and metrics to be used for calculating the amount of levy payable for entities in each subsector;
* provide for ASIC to make an annual legislative instrument specifying information about each of the regulated industry subsectors that must be used in the formulas for calculating the amount of levy payable by entities in each subsector; and
* prescribe certain amounts that should not be included as part of ASIC’s regulatory costs.

The Act requires the Minister to be satisfied that the regulations are consistent with the objectives of the cost recovery regime in subsection 9(2) of the Act.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence at the same time as the ASIC Supervisory Cost Recovery Levy Act 2017.

**Attachment A**

**Details of the *ASIC Supervisory Cost Recovery Levy Regulations 2017***

This Attachment sets out further details of the *ASIC Supervisory Cost Recovery Levy Regulations 2017* (Regulations). All references are to the Regulations unless otherwise stated.

**Part 1 – Preliminary**

*Section 1 – Name of Regulations*

This section provides that the title of the instrument is the *ASIC Supervisory Cost Recovery Levy Regulations 2017*.

*Section 2 – Commencement*

This section provides that the Regulations commence at the same time as the *ASIC Supervisory Cost Recovery Levy Act 2017*.

*Section 3 - Authority*

This section provides that the Regulations are made under the *ASIC Supervisory Cost Recovery levy Act 2017*.

*Section 4 – Definitions*

This section sets out the meaning of some of the key words or terms that are used in the Regulations. Many of the expressions used in the instrument have the same meaning as in sections 9 and 761A of the *Corporations Act 2001*.

**Part 2 – General provisions**

*Section 5 – Amounts not included in regulatory costs*

This section prescribes that certain amounts are not to be considered part of ASIC’s regulatory costs and therefore will not be recovered as part of the industry funding regime. These amounts not included as part of ASIC’s regulatory costs include:

* the cost of operating the Superannuation Complaints Tribunal;
* the costs of operating the Companies Auditors Disciplinary Board;
* the cost of maintaining and operating the ASIC Registry;
* the cost of supervising approved SMSF auditors recovered by the Australian Taxation Office; and
* the cost of providing service that forms part of chargeable matter.

*Section 6 – Amount of levy*

The section provides that the amount of the levy an entity has to pay will be equal to the sum of each levy component applicable to the entity for the financial year. This amount will be rounded down to the nearest cent.

*Section 7 – Levy component*

Under this section, an entity’s levy component for a financial year includes its share of flat levies and graduated levies for each subsector the entity is a part of in the financial year.

*Section 8 – Pro-rata levy component*

A provision to pro-rata the rate of levy for some subsectors will be drafted after consultation is completed.

Under the Government’s Charging Framework, entities must only be charged an amount equal to their costs of regulation.

To support competition and provide regulated entities with confidence that their levies are set appropriately, levies will be pro-rated on a daily basis for entities that have not been licensed or registered for the whole financial year, with the following exceptions.

1. Flat levies for subsectors where the ever-changing nature of the regulated population and the low annual levy rate means that pro-rating levies would be administratively burdensome, disproportionately increasing costs to be passed through to these subsectors. See Table 1 for a list of relevant subsectors.
2. Graduated levies for subsectors where the variable component is effectively a function of time (for example, revenue or value of credit provided) should also not be pro-rated. This is because these levies will already scale for actual business activity, ensuring that each entity is charged appropriately, regardless of the length of time it has operated. See Table 2 for a list of relevant subsectors.

* To reduce the administrative complexity and regulatory burden of pro-rating, it is proposed that levies will be pro-rated on the basis of the number of days that a regulated entity has been licensed or registered, not the number of days that an entity has actually completed a regulated activity.
  + This is consistent with the calculation of levies for entities that have been licensed for a full-year.

**Table 1: Subsectors with flat levies to be excluded from pro-rating**

By default all flat levies will be pro-rated

|  |  |  |
| --- | --- | --- |
| **Subsectors to be excluded due to low flat levy rates and variable populations** | | |
| Unlisted public companies | Large Proprietary Limited Companies | Registered Company Auditors |
| Custodians | Wholesale Electricity Dealers | Insurance Product Distributors |
| Licensees that are authorised to provide personal advice to wholesale clients only | Licensees that are authorised to provide general advice only |  |

**Table 2: Subsectors with graduated levies to be pro-rated**

By default all graduated levies will not be pro-rated

|  |  |  |
| --- | --- | --- |
| **Subsectors to be included because the graduated levy mechanism does not effectively pro‑rata** | | |
| Credit intermediaries | Responsible Entities | Licensees that provide personal advice on relevant financial products to retail clients |
| Over-the-Counter Traders | Public (Listed Disclosing) Companies |  |
| Superannuation Trustees | Wholesale Trustees |  |

*Section 9 – Levy component for sub-sectors to which a flat rate applies*

This section prescribes that for subsectors that have a flat levy, the formula for working out the amount of levy payable by an entity is to divide ASIC’s regulatory costs for that subsector for the financial year, by the number of entities that are part of that subsector for that financial year. Details on ASIC’s regulatory costs for each subsector and the number of entities that are part of each subsector will be prescribed in an annual legislative instrument that is made by ASIC each financial year.

*Section 10 – Levy component for leviable entities that are deregistered*

This section prescribes that there is no levy payable for an entity for a financial year where the entity has been deregistered and has not been reregistered prior to the levy for that financial year becoming payable.

**Part 3 – Sectors, sub-sectors and levy components**

*Section 11 – Corporate sector*

This section provides that Division 1 of Part 3 of the Regulations relates to entities that are part of the corporate sector. Entities may fall within multiple subsectors within the sector depending on the activities they undertake during a financial year.

*Sections 12 to 15 – corporate sub-sectors with a flat rate of levy*

These sections define and prescribe the corporate sub-sectors that are subject to a flat levy to be calculated in accordance with section 9. These subsectors are:

* large proprietary companies;
* unlisted public companies; and
* registered company auditors;

The *Corporations (Fees) Regulations 2001* will be amended to increase the annual fee for proprietary companies to cover their regulatory costs. This will minimise the regulatory burden of the Industry Funding Model for small proprietary companies by ensuring that they will only have to pay one fee each year.

*Sections 16- 18 – corporate sub-sectors with a graduated rate of levy*

These sections define and prescribe graduated levies for the following corporate subsectors:

* auditors;
* authorised audit companies;
* registered liquidators; and
* listed public companies.

Auditors are subject to graduated levies based on each entity’s audit fee revenue from entities subject to disclosure for the financial year. The total amount of audit fee revenue for each of the subsectors and ASIC’s regulatory cost for the subsector will be prescribed in an annual legislative instrument that is made by ASIC each financial year.

Registered liquidators will have to pay a minimum levy of $2,500 and then a variable amount depending on each entity’s share of the total number of notifiable events for the subsector. The Regulations define what constitutes a notifiable event and ASIC will prescribe its regulatory costs and the total number of these notifiable events for the subsector as part of its annual legislative instrument.

Listed public companies will pay a minimum levy of $4,000 if they have a market capitalisation under $5 million and $664,000 if they have a market capitalisation above $20 billion. Listed public companies that have a market capitalisation between these two thresholds will pay the $4,000 minimum levy plus a variable component depending on that company’s share of the total market capitalisation of listed public companies between the two thresholds. ASIC will prescribe its regulatory costs and the total market capitalisation for listed companies between the two thresholds as part of its annual legislative instrument.

*Section 19 – Deposit-taking and credit sector*

This section provides that Division 2 of Part 3 of the Regulations relates to entities that are part of the deposit-taking and credit sector. Entities may fall within multiple subsectors within the sector depending on the activities they undertake during a financial year.

*Sections 20 and 21 – Flat rate of levy for margin lenders*

These sections define and prescribe margin lenders to be part of the deposit-taking and credit sector. Section 25 also provides that margin lenders are subject to a flat levy to be calculated in accordance with section 9.

*Sections 22 to 26 – Graduated rate of levy for deposit-taking and credit subsector*

These sections define and prescribe graduated levies for entities in the following deposit-taking and credit subsectors:

* credit intermediaries;
* credit providers;
* deposit product providers;
* payment product providers; and
* small amount credit providers.

Credit intermediaries will have to pay a minimum levy of $1,000 and then a variable amount depending on the number of credit representatives each entity has. ASIC will prescribe its regulatory costs for the subsector and the total number of credit representatives in the subsector for a financial year as part of its annual legislative instrument.

Credit providers will pay a minimum levy of $2,000. Credit providers that provide more than $100 million in credit contracts will also pay a variable component depending on their share of the total value of credit contracts above the $100 million threshold provided in a financial year. ASIC will prescribe its regulatory costs and the total value of credit provided in a financial year as part of its annual legislative instrument. All credit providers will have to pay this levy amount. Credit providers that also provide credit under small amount credit contracts will also have to pay a levy in relation to the provision of that credit as outlined below.

Deposit providers will pay a minimum levy of $2,000. Deposit providers that provide more than $100 million in deposits in a financial year will also a variable component depending on their share of the total value of deposit products above the $100 million threshold provided in the financial year. ASIC will prescribe its regulatory costs and the total value of deposit products issued in a financial year as part of its annual legislative instrument.

Payment product providers will pay a minimum levy of $2,000. Payment product providers will also pay a variable component depending on each entity’s share of the subsector’s total revenue from payment product activity. ASIC will prescribe its regulatory costs and the subsector’s total revenue from payment product activity for each financial year as part of its annual legislative instrument.

Small amount credit providers would fall within the credit providers subsector and would pay the $2,000 minimum levy and variable component for that subsector. Small amount credit providers will also pay a variable component depending on each entity’s share of the total amount of credit provided under small amount credit contracts issued by the subsector in the financial year. ASIC will prescribe its regulatory costs and the total amount of credit provided under small amount credit contracts issued by the subsector for each financial year as part of its annual legislative instrument.

*Section 27 – Investment management, superannuation and related services sector*

This section provides that Division 3 of Part 3 of the Regulations relates to entities that are part of the investment management, superannuation and related services sector. Entities may fall within multiple subsectors within the sector depending on their license authorisations and activities during the year.

*Sections 28 to 31 – Investment management, superannuation and related services subsectors with a flat rate of levy*

These sections define and prescribe the investment management, superannuation and related services subsectors that are subject to a flat levy to be calculated in accordance with section 9. These subsectors are:

* custodians;
* managed discretionary account providers; and
* traditional trustee company service providers.

*Sections 32 to 35 – Investment management, superannuation and related services subsectors with a graduated rate of levy*

Operators of investor directed portfolio services will pay a minimum levy of $10,000 plus a variable component depending on their share of the total revenue from investor directed portfolio services activity for the financial year. ASIC will prescribe its regulatory costs and the total amount of revenue from all investor directed portfolio services activity for the subsector for each financial year as part of its annual legislative instrument.

Responsible entities will pay a minimum levy of $7,000. Responsible entities that have more than $10 million in funds under management will also pay a variable component depending on their share of the total funds under management in the subsector for the financial year above the $10 million threshold. ASIC will prescribe its regulatory costs and the total amount of funds under management above the threshold as part of its annual legislative instrument.

Superannuation trustees will pay a minimum levy of $18,000. Superannuation trustees that have more than $250 million in funds under management will also pay a variable component depending on their share of the total funds under management above the threshold for the financial year. ASIC will prescribe its regulatory costs and the total amount of funds under management above the threshold as part of its annual legislative instrument.

Wholesale trustees will pay a flat levy for the 2017-18 financial year in accordance with section 9. For all subsequent years, they will pay a minimum levy of $1,000 and a graduated amount based on their share of the gross assets under management in the subsector for the financial year. ASIC will prescribe its regulatory costs and the amount of gross assets managed in the subsector as part of its annual legislative instrument.

For responsible entities, superannuation trustees and wholesale trustees, the amount of funds they have under management for the purposes of the levy calculation will not include any investments made between each entity to other unregistered managed schemes issued by the entity.

*Section 36 – Financial advice sector*

This section provides that Division 4 of Part 3 of the Regulations relates to entities that are part of the financial advice sector. Entities may fall within multiple subsectors within the sector depending on their license authorisations and the activities they undertake during a financial year.

*Sections 37 to 40 – Flat rate for levy for financial advice subsectors*

These sections define and prescribe the financial advice subsectors that are subject to a flat levy to be calculated in accordance with section 9. These subsectors are:

* licensees that provide only general advice to retail or wholesale clients;
* licensees that provide personal advice to retail clients on products that are not relevant financial products; and
* licensees that only provide personal advice to wholesale clients.

*Section 41 – Graduated rate of levy for financial advice subsectors*

Licensees that provide personal advice on relevant financial products to retail clients will pay a minimum levy of $1,500 and an additional variable component depending on their share of the total number of registered financial planners authorised to provide advice on the licensee’s behalf. ASIC will prescribe its regulatory costs and the total number of registered financial planners in the subsector in a financial year as part of its annual legislative instrument.

*Section 42 – Market infrastructure and intermediaries sector*

This section provides that Division 5 of Part 3 of the Regulations relates to entities that are part of the market infrastructure and intermediaries sector. Entities may fall within multiple subsectors within the sector depending on their license authorisations and the activities they undertake during a financial year (unless a provision provides otherwise).

*Sections 43 to 59 – Market infrastructure and intermediaries subsectors with a flat levy*

These sections define and prescribe the market infrastructure and intermediaries subsectors that are subject to a flat levy to be calculated in accordance with section 9. These subsectors are:

* Australian derivative trade repository licensees;
* credit rating agencies;
* exempt CS facilities;
* exempt markets;
* foreign market operators;
* large futures market operators;
* retail over-the-counter derivatives issuers;
* small derivatives market operators;
* small equity market operators;
* small equity market operators with self-listing function only;
* small futures market operators;
* tier 1 clearing and settlement facilities;
* tier 2 clearing and settlement facilities;
* tier 3 clearing and settlement facilities;
* tier 4 clearing and settlement facilities; and
* wholesale electricity dealers.

Entities that fall within the foreign market operators subsector will not fall within any of the under subsectors in the market infrastructure and intermediaries sector.

*Sections 60 – 65 – Market infrastructure and intermediaries subsectors with a graduated levy*

Cash equities participants will pay a minimum levy of $9,000 and an additional variable component depending on their share of the total number of messages and transactions reported on a large equity market and recognised by ASIC’s Market Surveillance System. ASIC will prescribe its regulatory costs and the total number of reported messages and transactions recognised by the Market Surveillance System for the financial year as part of its annual legislative instrument.

Consistent with the previous Market Surveillance System cost recovery arrangements, 90 per cent of ASIC’s non-information technology costs will be recovered based on the number of recognised transactions reported to large equity markets. The remaining 10 per cent non-information technology costs as well as 100 per cent of ASIC’s information technology costs will be recovered based on the number of recognised messages reported to large equity markets. ASIC’s annual legislative instrument will also specify the total amount of information technology costs and non-information technology costs applicable for the subsector each year.   
  
Corporate advisors will pay a minimum levy of $1,000. Corporate advisors that have more than $100,000 in revenue from the prescribed financial services will also pay a variable component depending on their share of the total revenue from corporate advisory activities above the $100,000 threshold for the subsector. ASIC will prescribe its regulatory costs and the total amount of corporate advisory activity above the threshold in a financial year as part of its annual legislative instrument.

Futures participants will pay a minimum levy of $9,000 and an additional variable component depending on their share of the total number of messages and transactions reported on a large futures market and recognised by ASIC’s Market Surveillance System. ASIC will prescribe its regulatory costs and the total number of reported messages and transactions recognised by the Market Surveillance System for the financial year as part of its annual legislative instrument.

Consistent with the previous Market Surveillance System cost recovery arrangements, 90 per cent of ASIC’s non-information technology costs will be recovered based on the number of recognised transactions reported to large futures markets. The remaining 10 per cent non-information technology costs as well as 100 per cent of ASIC’s information technology costs will be recovered based on the number of recognised messages reported to large futures markets. ASIC’s annual legislative instrument will also specify the total amount of information technology costs and non-information technology costs applicable for the subsector each year.

Large equity market operators will pay a variable levy based on their share of the total value of transactions entered into on markets in the subsector. ASIC will prescribe its regulatory costs and the total amount of all transactions on markets in the subsector in a financial year as part of its annual legislative instrument.

Over-the-counter traders will pay a minimum levy of $1,000 and an additional variable component depending on their share of the total number of persons undertaking over-the-counter derivative trading who are engaged by the entity. ASIC will prescribe its regulatory costs and the total number of persons undertaking over‑the‑counter derivative trading in the subsector as part of its annual legislative instrument.

Securities dealers will pay a minimum levy of $1,000 and an additional variable component depending on its share of the total value of transactions in the subsector in a financial year. ASIC will prescribe its regulatory costs and the total value of transactions in the subsector as part of its annual legislative instrument.

*Section 66– Insurance sector*

This section provides that Division 6 of Part 3 of the Regulations relates to entities that are part of the insurance sector. Entities may fall within multiple subsectors within the sector depending on their licence authorisations and activities during a financial year (unless a provision provides otherwise).

*Sections 67 to 69 – Insurance subsectors which have a flat levy*

These sections define and prescribe the insurance subsectors that are subject to a flat levy to be calculated in accordance with section 9. These subsectors are:

* insurance product distributors; and
* risk management product providers.

*Section 70 – Graduated levy for insurance product providers*

Insurance product providers will pay a minimum levy of $20,000. Insurance product providers that have more $5 million in insurance product revenue will also pay a variable amount depending on their share of the total insurance product revenue above the $5 million threshold for the financial year. ASIC will prescribe its regulatory costs and the total amount of insurance product revenue in the subsector as part of its annual legislative instrument.

**Part 4 – Miscellaneous**

*Section 71 – Annual determination*

This section provides for ASIC to make annual legislative instruments specifying information as required under these Regulations. The information to be prescribed includes ASIC’s regulatory costs for each subsector and the amount of activity for each subsector for the year.

**Schedule 1 – List of subsectors**

The schedule provides a list of all subsectors subject to a levy amount and indicates the relevant section in the Regulations.