SUBMISSION

Submission to Treasury — Proposed Financial Institutions Supervisory Levies for 2024-25

12 June 2024

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A/g Director
Regulator Engagement and Powers Unit
The Treasury
Langton Crescent
PARKES ACT 2600
Via email: Supervisorylevies@treasury.gov.au

12 June 2024

Dear Sir/Madam

Proposed Financial Institutions Supervisory Levies for 2024-25

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to Treasury's consultation on the Proposed Financial Institutions Supervisory Levies for 2024-25.

About ASFA

ASFA has been operating since 1962 as the peak policy, research and advocacy body for Australia's superannuation industry. ASFA represents the APRA regulated superannuation industry with over 100 organisations as members from corporate, industry, retail and public sector funds, and service providers.

We develop policy positions through collaboration with our diverse membership base and use our deep technical expertise and research capabilities to assist in advancing outcomes for Australians.

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If you have any queries or comments in relation to the content of our submission, please contact Andrew Craston on 0401 016 587 or by email: acraston@superannuation.asn.au.

Yours sincerely

James Koval

Head of Policy and Advocacy

General comments

ASFA supports the adequate and appropriate funding of APRA, ASIC and other regulators for the superannuation industry. Further, ASFA considers that all regulated entities should contribute to that funding. That outcome is, in ASFA's view, far more equitable and appropriate than funding regulators solely from consolidated revenue. That said, it does not follow that it is equitable or appropriate for regulators to be funded only from industry levies.

A recent Productivity Commission paper[1] highlights the potentially distortive impact of industry levies (which have proliferated across a range of Australian industries over last three decades) on efficiency and productivity, and thus the need for the careful, considered design of regulator funding mechanisms.

The Commission finds that there can be a role for industry levies to recover the cost of regulation where the benefits of that regulation involve limiting negative externalities (for example, financial sector instability), or addressing a specific market failure (for example, poor-performing providers remaining in a market).

However, the Commission also highlights the negative impacts of an over-reliance on levies (to recover the cost of regulation). In particular, where cost-recovery is not linked to regulation that relates to a specific externality or market failure, the cost (to industry) is more likely to outweigh any broader economic/social benefits. Further, industry levies (if sufficiently high) can act as a barrier to entry into the sector – which may limit competitive dynamics and future productivity improvements.

In this regard, the Commission notes the importance for government to assess the impacts of industry levies, and whether levies are always the most effective funding instrument compared with funding from consolidated revenue. Particularly in the context of increases in levies, the Commission notes the importance of government processes/mechanisms to ensure that additional levies do not raise more than the cost of additional regulatory effort – since this, in effect, would act as a tax on regulated entities.

Transparency of levy amounts

Where industry does contribute to regulators' funding, it is incumbent upon those regulators to provide genuine transparency and accountability regarding the manner in which they determine their funding requirements and utilise their funding. Genuine transparency and accountability provides industry with greater insight into regulators' activities, and builds confidence within industry that regulators are functioning well.

With respect to the Financial Institutions Supervisory Levies (FISLs), ASFA considers that while the Treasury paper on the proposed FISLs for 2024-25 (the FISLs Paper) provides more information compared to previous years, it does not provide sufficient detail for industry to adequately understand how the proposed levies are determined.

With respect to APRA's regulation of the superannuation industry, the FISLs Paper proposes an increase in the relevant levy component from $70.1 million in 2023-24 to $73.7 million for 2024-25 – a rise of $3.6 million, or 5.1 per cent. As noted in the Paper, much of the increase relates to the 2024-25 Budget measure *Cyber Security of Regulators and Improving Registers* (where cost recovery is apportioned across all APRA-regulated sectors), which relates to improving the data capability and cyber security of APRA rather than an industry-related policy objective. More broadly, the FISLs Paper does not provide sufficient

[1] Productivity Commission 2023, *Towards Leviathan? Industry levies in Australia*, Research paper.

detail regarding the composition of APRA's broader regulatory costs (and associated cost recovery) in respect of the superannuation industry.

For the ATO, the FISLs Paper proposes an increase in the relevant levy component (in respect of the superannuation industry) from $38.9 million in 2023-24 to $45.6 million for 2024-25 – a rise of $6.7 million, or 17.2 per cent. The combined (proposed) cost of the Superannuation Lost Member Register and the Unclaimed Superannuation Money frameworks has decreased by $1.9 million, while the cost of the Early Compassionate Release of Super programme has risen by $8.6 million. The FISLs Paper does not provide sufficient detail regarding the drivers of these changes.

Transparency of levy rates/thresholds

To account for the increase in total proposed levies on the superannuation sector, the 2024-25 FISLs Paper proposes increases to the levy rates on individual funds – an increase of 35 per cent for the levy rate on the restricted component, and an increase of 7.1 per cent for the levy rate on the unrestricted component. The FISLs Paper proposes no changes to the minimum and maximum levy thresholds for the restricted component. Analysis provided in the FISLs Paper shows the impact of the proposed changes – in particular, levies on medium-sized funds would increase by around a factor of 5 compared with large funds (in proportionate terms).

As noted above, the Productivity Commission has highlighted potential negative impacts of industry cost-recovery levies. With respect to the proposed changes to the levy rates (and beyond the impact of the proposed rise in levies in the aggregate), consideration should be given to the *relative* impact within the superannuation sector. This includes not only the *relative* cost burden of any changes on existing funds, but also the degree to which any changes may raise barriers to entry (which would limit competitive dynamics and future productivity improvements).

Treasury has previously acknowledged industry's concerns that the annual consultation papers provide little explanation for the setting of minimum and maximum amounts/rates, and indicated that APRA would, via its annual Cost Recovery Implementation Statement (CRIS), provide more transparency regarding the calculation of the minimum and maximum amounts. As has been the case in previous years, an updated CRIS was not released with the FISLs Discussion Paper to inform industry's consideration of the proposed levies.

Impact of levies on fund members

In addition to FISLs, superannuation funds pay separate levies to ASIC (under the ASIC Industry Funding Model). For 2024-25, ASFA estimates that combined FISLs and ASIC levies are likely to be in the order of $155 million (official estimates for ASIC levies for 2024-25 are yet to be published). This would represent an increase of almost 160 per cent since 2013-14.[2]

For superannuation funds, levies are typically funded through administration fees charged to members' accounts. For an average MySuper member, ASFA estimates that the amount payable with respect to the combined levies would be around $7 for 2024-25, out of around $117 in administration fees (for an average MySuper member).[3]

The superannuation industry is facing increased scrutiny, including as a result of the *Your Future, Your Super* legislation. In particular, the performance benchmarking of products incorporates administration fees. Any increase in FISLs, or other similar industry levies, ultimately will be borne by members – as higher fees (or

[2] Excludes levies in respect of Super Stream.

[3] Based on *APRA Annual MySuper Statistics,* June 2023.

indirect costs) than otherwise would be the case. As such, ASFA considers it appropriate that a high level of scrutiny should apply with respect to the costs recovered from industry via the FISLs.

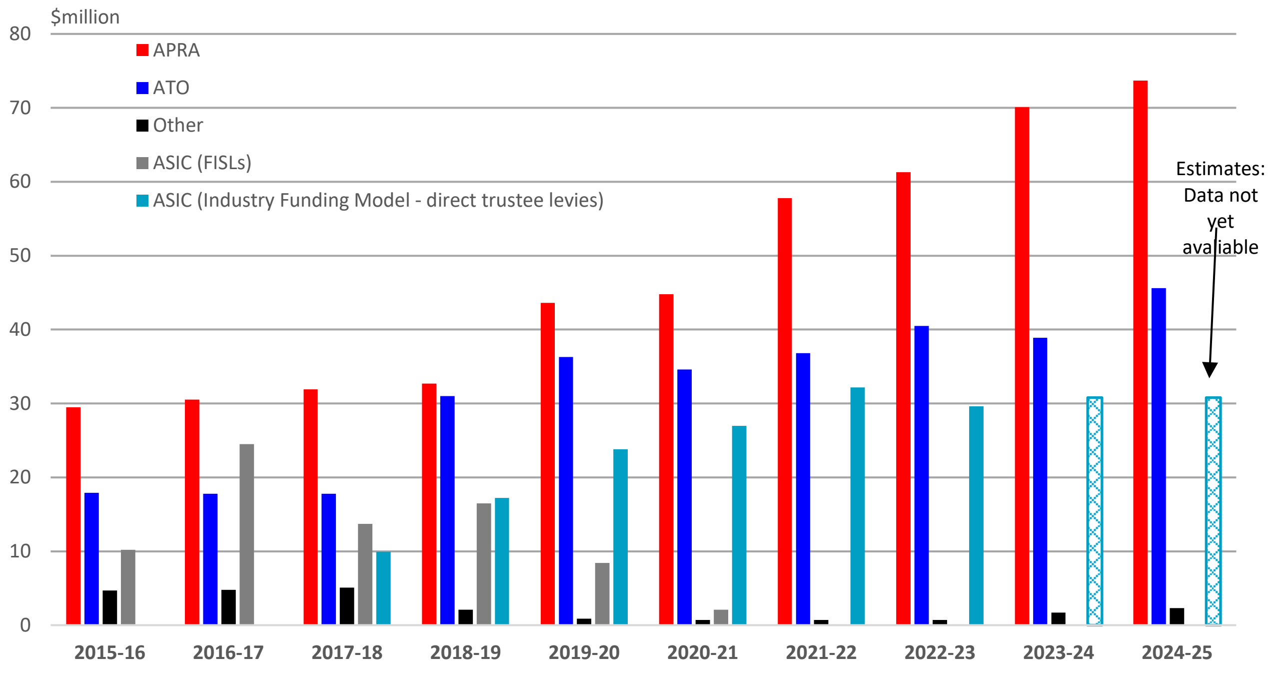
Detailed comments on levy components for the superannuation sector

The FISLs Paper proposes levy amounts for each relevant agency with respect to the regulation of financial institutions including superannuation funds. While the 2024-25 Paper provides more detail compared with previous years, generally speaking there is insufficient information on how the levy amounts for each agency relate to their regulatory activities – as has been the case in prior years' FISLs determinations.

With respect to the superannuation sector, total proposed FISLs for 2024-25 are up by $10.0 million, or 9.0 per cent, on the previous financial year. Total proposed FISLs for the superannuation sector for 2024-25 are $121.6 million. ASFA acknowledges that the total levy amount incorporates a $1.7 million refund of 'over-collected levies' from the previous financial year – the FISLs Paper implies that this does not reflect a lower-than-expected level of expenditure by APRA in 2023-24, but that collected levies were higher than expected.

As has been the case in recent years, the superannuation sector FISLs for 2024-25 largely relate to the estimated (recovered) cost of regulatory activities of APRA and the ATO (Chart 1). Minor components of the FISLs relate to ASIC, the Gateway Network Governance Body and Treasury (the latter two components are in the 'Other' component in Chart 1).

Chart 1: Superannuation sector levies: FISLs and ASIC Industry Funding Model



Source: APRA, Treasury and ASFA calculations.

With respect to ASIC, the recovery of costs from the regulation of the superannuation sector has shifted gradually over time from FISLs to levies paid under the ASIC Industry Funding Model (ASIC IFM). From 2023-24 onwards none of ASIC's costs are recovered via the FISLs.

Separately, ASIC has yet to publish its levy estimates (under the ASIC IFM) for 2023-24 or 2024-25. However provisional data suggest a figure in the order of $35 million for the superannuation sector.

- For 2022-23, ASIC's IFM levies associated with the direct regulation of superannuation trustees totalled $29.6 million.
- Additional IFM levies on superannuation funds include those related to the provision of advice, and the provision of life insurance products. Overall, total IFM levies with respect to superannuation trustees for 2022-23 were in the order of $35 million.

Thus, for superannuation funds, the combination of FISLs and ASIC levies (under the IFM) are likely to be in the order of $155 million for 2024-25. This would represent an increase of almost 160 per cent on the combined levies for 2013-14.[4]

For superannuation funds, levies are ultimately funded through administration fees charged to members' accounts. For the APRA-regulated superannuation industry, the latest annual data show that total administration fees were around $3.8 billion for 2022-23, or around 0.2 per cent of total assets (as of June 2023).[5]

An estimated impact on MySuper members can be calculated (assuming that the cost of levies for funds are distributed on a pro-rata basis, according to the number of member accounts, across superannuation fund members). Given that the 14.6 million MySuper accounts represent around two-thirds of all superannuation accounts, then the amount payable by each MySuper member with respect to the combined levies for 2024-25 would be around $7. For all MySuper products, the average administration fee is around $117 per annum.[6]

Any increase in FISLs, or other similar industry levies, ultimately will be borne by members – as higher fees (or indirect costs) than otherwise would be the case. As such, ASFA considers it appropriate that a high level of scrutiny should apply with respect to the costs recovered from industry via the FISLs.

APRA levy component

For the cost recovery of APRA's regulation of the superannuation industry, the FISLs Paper does not provide sufficient detail.

The proposed APRA component for the superannuation sector for 2024-25 is $73.7 million. ASFA acknowledges that the total levy amount incorporates a $1.7 million refund of 'over-collected levies' from the previous financial year – the FISLs Paper implies that this does not reflect a lower-than-expected level of expenditure by APRA in 2023-24, but that collected levies were higher than expected. Compared with 2018-19, the APRA component for the superannuation sector is now $41.0 million higher (or 125 per cent higher).

Much of the proposed increase for 2024-24 relates to the 2024-25 Budget measure *Cyber Security of Regulators and Improving Registers* (where cost recovery is apportioned across all APRA-regulated sectors). The Budget Paper states that this measure relates to improving the data capability and cyber security of APRA (and ASIC) and to continue the stabilisation of business registers and modernisation of legacy systems.[7] The Budget measure includes an increase in the FISLs to recover part of APRA's costs.

As noted earlier, the Productivity Commission has highlighted the potential negative impacts of industry (cost-recovery) levies where cost-recovery is not linked to regulatory activity aimed to address particular

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[4] Does not include levies for SuperStream.
[5] As at end of June 2023, total assets of the APRA-regulated sector (excluding small funds) were $2.466 trillion.
[6] Based on *APRA Annual MySuper Statistics,* June 2023.
[7] The Commonwealth of Australia, *Budget 2024-25: Budget Paper 2*, p. 179.

policy issues. In this regard, there is no detail in the Budget documents or the FISLs Paper on the determination of the levy amounts in respect of this Budget measure.

Beyond this, while the Paper provides more information about APRA's high-level regulatory activities compared with previous years, it does not provide sufficient detail for industry to adequately understand how levies are determined. As such, there is not sufficient information for industry to determine whether the additional increase in funding for 2023-24 (that is, $3.6 million) was justified (in whole or in part), or whether it would have been more appropriate for APRA to reprioritise other activities.

ASFA considers that future years' FISLs Papers should provide a more detailed disaggregation of APRA's regulatory activities in respect of the superannuation sector, and the corresponding levy amounts.

ATO levy component

As has been the case in previous years, the FISLs Paper proposes full recovery of costs related to the Superannuation Lost Member Register (LMR), and the Unclaimed Superannuation Money (USM) frameworks, as well as the early Compassionate Release of Super (CRS) programme.

For 2024-25, it is proposed that $15.3 million will be recovered in relation to the LMR and USM frameworks, and for the upkeep and enhancement of the required administrative systems (down from $1.9 million for the previous year).

ASFA supports enhanced ATO strategies and processes to reunite individuals with lost and unclaimed superannuation. However, more detailed information should be provided to help industry understand the drivers of expenditures – in particular, how expenditures relate to trends in related account numbers/values.

Regardless of the drivers of the decrease in funding, ASFA considers the ATO should assess the effectiveness of its programmes to reunite individuals with lost and unclaimed superannuation when the required data are available, and publish that assessment. In addition, the ATO should make available data on the inward and outward flows of lost/unclaimed monies (in addition to data on the stock of lost/unclaimed monies that the ATO publishes currently). The ATO should also provide data on a biannual basis, rather than annual (as is the case currently).

With respect to the CRS programme, the ATO assumed responsibility for administering the programme during 2018. The cost of administering the CRS programme has increased markedly over recent years. The FISLs Paper states that the estimated cost of administering the CRS programme is $30.3 million for 2024-25. The (recoverable) cost of the programme has been trending upward: $5.3 million in 2018-19, $12.9 million in 2019-20, $15.3 million in 2020-21 and $20.7 million in 2021-22.

The FISLs Paper does not provide any information on the drivers of the increase in costs – which likely reflects an increase in the number of CRS applications (noting that the FISLs Paper for 2021-22 stated that the cost of administering the *COVID-19 Early Release of Super* measure was not included in levy amounts).

ASFA considers that industry should be provided with more detailed information to help industry understand the nature of the ATO's expenditure.