SUBMISSION

Submission to ASIC — Cost Recovery Implementation Statement: ASIC industry funding 2021–22

28 June 2022

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Australian Securities and Investments Commission

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Via email: policy.submissions@asic.gov.au

28 June 2022

Dear Sir/Madam

Cost Recovery Implementation Statement: ASIC industry funding 2021-22

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the consultation on ASIC's Cost Recovery Implementation Statement for 2021-22.

About ASFA

ASFA is a non-profit, non-partisan national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its $3.4 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing over 90 per cent of the 17 million Australians with superannuation.

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If you have any queries or comments in relation to the content of our submission, please contact [redacted] on [redacted] or by email [redacted].

Yours sincerely

[redacted]

[redacted]

Deputy CEO and Chief Policy Officer

Executive summary

ASFA supports the adequate and appropriate funding of ASIC, APRA 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, 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.

The ASIC Cost Recovery Implementation Statement (CRIS) for 2021-22 shows that levies under the ASIC Industry Funding Model (IFM) with respect to superannuation trustees for 2021-22 are expected to increase by 41 per cent (compared with 2020-21).

For a medium-sized fund (with FUM of $20 billion), ASFA estimates that levies for 2021-22 will be around $370,000. An equivalent fund would have paid around $260,000 in 2020-21. For a large fund (with FUM of $100 billion), ASFA estimates that levies for 2021-22 will be around $1.80 million. An equivalent fund would have paid around $1.25 million in 2020-21. These levy amounts relate to ASIC's regulatory activities regarding trustee obligations to consumers.

Under the ASIC IFM, many superannuation funds pay additional levies – in particular, levies related to the provision of advice services and insurance, and the operation of investment platforms. ASIC only publishes aggregate estimates for levies related to such products/services – an estimate for the additional levies on the superannuation industry is not reported.

Overall, using the available data, ASFA estimates total superannuation-related levies for 2021-22 will be around $40 million.

In addition to the ASIC IFM levies, superannuation funds pay levies to APRA and other regulators via the Financial Institutions Supervisory Levies (FISLs). For 2022-23, ASFA estimates that combined levies are likely to be in the order of $150 million. This would represent an increase of around 150 per cent since 2013-14.

For superannuation funds, levies are typically funded through administration fees charged to members' accounts. For a representative member (balance of $50,000), ASFA estimates that the amount payable with respect to combined levies would be around $6. Given that combined levies have increased by around 150 per cent since 2013-14, the equivalent amount payable for a representative member would have been less than $3 (in today's dollars) in 2013-14.

The superannuation industry is facing increased scrutiny, including as a result of the *Your Future, Your Super* legislation. In particular, the performance benchmarking of MySuper products (and in time, other products) incorporates administration fees. 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 ASIC IFM levies.

General comments

1. ASIC levies on the superannuation industry have increased substantially

The ASIC Cost Recovery Implementation Statement (CRIS) for 2021-22 shows that levies under the ASIC Industry Funding Model (IFM) with respect to the superannuation industry for 2021-22 are expected to be substantially higher than for 2020-21.

ASIC estimates that levies with respect to the regulation of superannuation trustees will total $37.9 million for 2021-22, up from $26.9 million for 2020-21. The estimated levy amount for 2021-22 represents an increase of 41 per cent. This is a far larger increase than for the broader ASIC-regulated financial services industry – total levies to be collected for cost recovery are expected to increase by around 6 per cent ($314 million to $332 million).[1]

For a medium-sized fund (with FUM of $20 billion), ASFA estimates that levies for 2021-22 will be around $370,000. An equivalent fund would have paid around $260,000 in 2020-21. For a large fund (with FUM of $100 billion), ASFA estimates that levies for 2021-22 will be around $1.80 million. An equivalent fund would have paid around $1.25 million in 2020-21. These levy amounts relate to ASIC's regulatory activities regarding trustee obligations to consumers, including disclosure and advice to members and ensuring members have access to complaints processes.

Under the ASIC IFM, many superannuation funds pay additional levies – in particular, levies related to the provision of advice services and insurance, and the operation of investment platforms. ASIC publishes aggregate estimates for levies related to such products/services, rather than disaggregated estimates by the type of entity that provides the products/services. Thus, an estimate for the additional levies on the superannuation industry is not available. Using the available data, ASFA estimates that additional levies will increase overall superannuation-related levies to around $40 million for 2021-22.

2. The CRIS does not provide sufficient information to determine the key drivers of cost increases

For the regulation of superannuation trustees, ASIC estimates that IFM levies for 2021-22 will be $37.9 million, up from $26.9 million for 2020-21. For 2020-21, actual levies charged were less than ASIC had anticipated in the preceding year's CRIS. Total levies for 2020-21 were expected to be $29.2 million, while actual levies were $26.9 million (or $2.3 million lower).

For 2021-22, the increase in ASIC IFM levies with respect to superannuation trustees largely reflects cost recovery of enforcement activities, but also ASIC's non-regulatory (or indirect) costs (Table 1).

- Total levies also include adjustments for excess levies collected in respect of the preceding year, adjustments for ASIC's own-source revenues, and allowance for capital expenditure.
- These are not shown in Table 1.

Comparing disaggregated costs across years (as depicted in Table 1) is not straight forward. Although ASIC provides revised headline costs for superannuation trustees (for 2020-21), it does not provide revised disaggregated costs for superannuation trustees. This is because the variation between total actual and expected costs was less than the 10 per cent threshold that ASIC has set for reporting revised disaggregated costs.

[1] Figure for 2020-21 from *ASIC Annual Report 2020–21*.

Although revised disaggregated costs are not published, available data suggests that lower-than-expected costs for 2020-21 were driven by ASIC's supervision and surveillance functions.

Table 1 contains ASFA's estimates for revised 2020-21 costs (based on the available data).

- Note that the sum of the cost revisions for 2020-21 shown in Table 1 is less than the official headline figure stated above (-\$0.9 million compared with -\$2.3 million).
- Total revised costs would also include adjustments for excess levies collected in respect of the preceding year (that is, for 2019-20), adjustments for ASIC's own-source revenues, and allowance for capital expenditure.
- Disaggregated data for revisions to these cost components are not published.

Table 1: Recovery of ASIC's cost: Superannuation trustees

	2020-21			2021-22
	ASIC's initial estimate (\$m)	ASFA's estimate for revised amount (\$m)	difference (\$m)	ASIC's estimate (\$m)
Regulatory activity	**17.9**	**17.3**	**-0.5**	**22.4**
Supervision and surveillance	4.9	4.0	-0 9	4.3
Enforcement	10.5	10.3	-0 2	13.2
Industry engagement	0.4	0.6	0.2	0.8
Education	0.1	0.1	0.0	1.4
Guidance	0.7	1.5	0.7	2.0
Policy advice	1.3	0.9	-0 3	0.8
Indirect costs	**9.9**	**9.5**	**-0.4**	**15.2**

Source: ASIC and ASFA calculations.

The revised costs for 2020-21 (calculated by ASFA) provide a basis for comparing proposed costs for 2021-22 for superannuation trustees.

With respect to enforcement costs, for 2021-22 ASIC estimates that costs in respect of superannuation trustees will be \$13.2 million. This represents an increase of almost 30 per cent relative to the (ASFA) revised figure for 2020-21 of \$10.3 million. The 2021-22 CRIS suggests that the large rise reflects, in part, enforcement regarding Design and Distribution Obligations – but does not provide specific details of the basis for the increase in enforcement costs.

For the broader ASIC-regulated financial services industry, the absence of comprehensive data on revised costs for 2020-21 makes it difficult to determine the broader change in enforcement costs – the ASIC-regulated sectors for which there is such data represent around 40 per cent of total levies (superannuation trustees are not within this group). However, using the available data, a comparison of proposed costs for 2021-22 and revised costs for 2020-21 shows an average increase in enforcement costs of 6 per cent (for the sub-group for which data is available).

With respect to indirect costs, ASIC estimates costs in respect of superannuation trustees will be \$15.2 million. This represents an increase of almost 60 per cent relative to the (ASFA) revised figure for 2020-21 of \$9.5 million. Indirect costs comprise expenses that are not directly attributable to a specific subsector or regulatory activity, but provide support to regulatory functions – such as ICT, legal and property expenses – and so could be expected in increase broadly in line with regulatory activity (notwithstanding realised scale economies).

For superannuation trustees, whereas the cost of all regulatory activities combined have increased by almost 30 per cent ($17.3 million to $22.4 million), total indirect costs have increased by around double that rate (almost 60 per cent). The 2021-22 CRIS does not provide details for the basis of the out-sized increase in indirect costs.

Again, for the broader ASIC-regulated financial services industry, the absence of comprehensive data on revised costs for 2020-21 makes it difficult to determine the broader change in indirect costs (as above, the ASIC-regulated sectors for which there is such data represent around 40 per cent of total levies). Using this data, a comparison of proposed costs for 2021-22 and revised costs for 2020-21 shows that indirect costs, on average, outpaced the cost of total regulatory activities (a 9.6 per cent rise, compared with a 4 per cent fall). That said, there is considerable variation across ASIC-regulated sectors.

3. Superannuation industry consolidation and regulatory effort

As noted above, ASIC expects ASIC IFM levies with respect to the regulation of superannuation trustees will be $37.9 million for 2021-22, up from $26.9 million for 2020-21 – an increase of 41 per cent.

In terms of the levy calculation, the key driver of the increase in levies on superannuation trustees is the levy rate – that is, the dollar amount per assets under management – from $12.33 to $17.85 for each $1 million above the threshold of $250 million (which is unchanged).

The implication of the rise in the levy rate is a considerable increase in the intensity of required regulatory effort in respect of superannuation trustees (and enforcement in particular given the data in Table 1).

This is occurring during a period where merger activity within the superannuation industry has ramped up – intensifying a longer-term consolidation trend.

- From June 2014 to June 2022, a total of 115 funds exited the market – largely the result of merger activity. For remainder of 2022, there are at least 10 fund mergers in train, which would bring the number of exits to 125 since 2014.
- Conversely, only six new funds entered the market during this period – two of which subsequently closed.

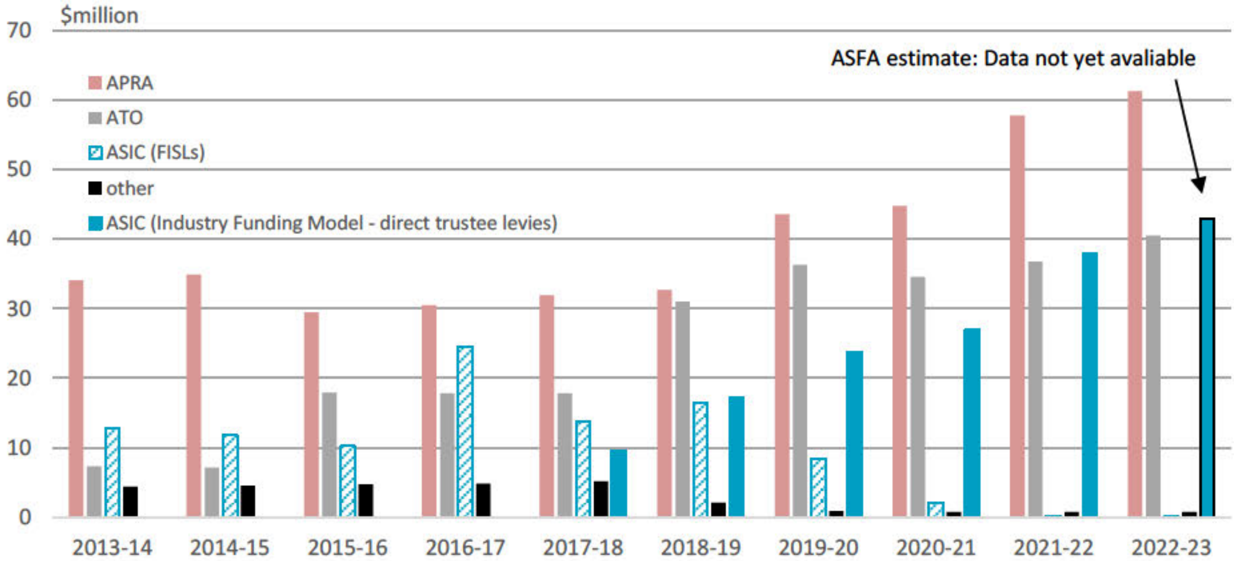
Industry consolidation (all else being equal) would tend to reduce the intensity of required regulatory effort in respect of superannuation trustees. It is not clear to what extent that industry consolidation has been reflected in the levies for 2021-22, and indeed for the preceding eight years.

4. The superannuation industry pays other levies – which have also increased

In addition to levies in accordance with the ASIC IFM, superannuation trustees pay Financial Institutions Supervisory Levies (FISLs) – which are administered by APRA.

With respect to FISLs, total levies on superannuation trustees are estimated to be $95.5 million for 2021-22 and $102.5 million for 2022-23. For both years, FISLs on superannuation trustees largely relate to the estimated cost (recovery) of regulatory activities of APRA and the ATO (the red and grey bars respectively in Chart 1). Minor components of the FISLs with respect to superannuation trustees relate to ASIC (see below), the Gateway Network Governance Body and Treasury (the latter two are combined in the *other* component in Chart 1 – the black bars).

Chart 1: Superannuation industry levies



Source: ASIC, APRA, Treasury and ASFA calculations.

With respect to ASIC's regulatory activities, the recovery of costs from superannuation trustees has shifted gradually over time from FISLs (blue patterned bar in Chart 1) to ASIC IFM levies (blue solid bar). For 2021-22 and 2022-23, ASIC-related FISLs on superannuation trustees relate only to the remaining costs of the Superannuation Complaints Tribunal, which is being wound up. Indeed, 2018-19 was the last year for which any of ASIC's regulatory costs were recovered via FISLs. Cost recovery of ASIC's regulatory activities is now solely via the ASIC IFM levies.

- ASIC FISLs with respect to superannuation trustees are estimated to be $0.1 million for both 2021-22 and 2022-23.

As noted above, ASFA estimates that ASIC IFM levies with respect to the superannuation industry will total around $40 million for 2021-22 ($37.9 million of which related to the regulation of superannuation trustees).

Thus, for the superannuation industry, the combination of FISLs and ASIC IFM levies is expected to be $135 million for 2021-22.

With respect to 2022-23, while APRA has published proposed FISLs for the superannuation, ASIC's expected cost are not available. There were no major announcements in either the 2021-22 or 2022-23 Budgets for ASIC's regulatory activities in respect of the superannuation sector. However, given recent increases, it is not unreasonable to assume that total IFM levies with respect to superannuation for 2022-23 may be in the order of $45 million.

Thus, for the superannuation industry, the combination of FISLs and ASIC IFM levies is expected to be in the order of $150 million for 2022-23. For 2022-23, this would represent an increase of around 150 per cent on the combined levies for 2013-14.[2]

In this context, the increase in the ASIC IFM levies for 2021-22 represents a substantial increase of an already-high cost burden on superannuation entities. Ultimately, increased levies will be borne by fund members and will be reflected in members' future retirement incomes.

[2] Does not include levies for Super Stream.

For superannuation funds, levies are typically 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 $4.0 billion for 2020-21, or around 0.2 per cent of total assets (as at June 2020).[3] Based on this figure, the total levy amount payable by industry in 2022-23 would represent around 4 per cent of total administration fees.

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 assets, across superannuation fund members). For all MySuper products, the average administration fee (weighted by total assets) is around $150 per annum for a representative member (with a balance of $50,000).[4] For the representative member, the amount payable with respect to the combined levies is around $6. Given that combined levies have increased by around 150 per cent since 2013-14, the equivalent amount payable for a representative member would have been under $3 (in today's dollars) in 2013-14. In addition to the direct impact of levies, administration fees also reflect the cost to funds of complying with ongoing regulatory change. Indeed, these costs are likely to have a greater impact on administration fees for the representative member.

The superannuation industry is facing increased scrutiny, including as a result of the *Your Future, Your Super* legislation. In particular, the performance benchmarking of MySuper products (and in time, other products) incorporates administration fees. Any increase in ASIC IFM levies, or other similar industry levies, will ultimately 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 to the costs recovered from industry via the ASIC IFM levies. In this regard, it is incumbent on ASIC to demonstrate transparency and accountability regarding its regulation of the superannuation industry (and the broader financial system).

5. Greater transparency of ASIC's regulatory costs is required

ASFA acknowledges that ASIC has improved its transparency around its allocation of costs since the inception of the ASIC IFM. Since the start of the IFM, the ASIC CRISs provides a break-down of ASIC's required resources for regulating various sub-sectors of its regulated population, including for the *Superannuation trustees* sub-sector (which is reflected in Table 1 above) in the *Investment management, superannuation and related services* sector.

However, in this regard, ASFA considers that the disaggregated cost data in the CRIS should be accompanied by more details of the major cost centres, particularly where there is a material change in the quantum and/or allocation of costs from year to year.

With respect to the *Superannuation trustees* sub-sector, the large increases in both the cost of enforcement activities (up almost 30 per cent) and indirect costs (up almost 60 per cent) are cases in point. The increase in enforcement costs suggests a shift in ASIC's regulatory focus, however there is little information in the CRIS in this regard.

In the future, ASIC should incorporate more details of major changes in regulatory costs in the CRIS (and other documentation that deals with prospective costs for a particular financial year), as well as in documentation related to cost outcomes.

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[3] As at end of June 2020, total assets of the APRA-regulated sector were $1.93 trillion. As at March 2022, total assets of the APRA-regulated sector were $2.34 trillion.

[4] Based on *APRA MySuper Product Heatmap*.

6. Recognise synergies in regulation

In the context of ASIC's broader industry funding model, it is not clear whether allocations of regulatory cost fully take into account the extent to which some sectors or sub-sectors are also subject to regulation by another regulator(s), and the resultant regulatory synergies. A regulator's supervisory efforts would be expected to change an entities' behaviour beyond the direct area of supervision – which would reduce the required regulatory effort by other regulators.

The *Superannuation trustees* sub-sector of the *Investment management, superannuation and related services* sector is subject to prudential supervision by APRA – the levies for which are estimated to be around $60 million for both 2021-22 and 2022-23.

APRA's supervision of superannuation trustees includes enforcement of prudential standards that govern trustees' conduct across a wide range of areas. ASIC's direct regulatory and supervisory responsibilities in respect of the APRA-regulated superannuation sector relates to matters and conduct with respect to the 'issue' of interests in superannuation funds and to disclosure.

Compliance with APRA's prudential standards has required superannuation trustees to implement robust compliance and risk frameworks. Although ASIC applies a conduct-focussed lens, as opposed to APRA's prudential approach, it cannot be denied that synergies exist and that regulatory efficiencies arise due to the prudential supervision applied to superannuation trustees. Indeed, with respect to enforcement activity, ASFA members have indicated that they observe overlap between ASIC and APRA.

The ASIC Capability Review noted that ASIC should consider whether regulatory outcomes could be achieved by using existing regulation administered by another regulator, or other collaborative arrangements, to ensure an integrated regulatory framework and to reduce costs for regulated entities.[5] Ultimately, greater recognition of synergies would allow Australian regulators to allocate their resources to where they are most needed, and would lead to a more efficient regulatory environment.

[5] Australian Government 2015*, Fit for Future: A Capability Review of the Australian Securities and Investments Commission*, December, page 160.