ASIC Supervisory Cost Recovery Levy amendment Bill 2017

EXPOSURE DRAFT EXPLANATORY MATERIALS

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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

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| Abbreviation | Definition |
| ASIC | Australian Securities and Investments Commission |
| Bill | ASIC Supervisory Cost Recovery Levy Amendment Bill 2017 |
| Cost Recovery Act | *ASIC Supervisory Cost Recovery Levy Act 2017* |
| Financial Benchmarks Bill | Corporations Amendment (Financial Benchmarks) Bill 2017 |

1. Benchmark administrator licensees – ASIC cost recovery

## Outline of chapter

* 1. The amendments in the ASIC Supervisory Cost Recovery Levy Amendment Bill 2017 (the Bill) add benchmark administrator licensees to the list of entities from which the Australian Securities and Investments Commission (ASIC) may recover its regulatory costs.

## Context of amendments

* 1. The *ASIC Supervisory Cost Recovery Levy Act 2017* (the Cost Recovery Act) imposes a levy on persons regulated by ASIC to recover its regulatory costs.
  2. Under the Cost Recovery Act similar entity types that ASIC regulates are grouped together in different sub-sectors and different levy amounts may be payable for entities within each of these sub-sectors. The Cost Recovery Act also makes persons that are required to hold various licences, but do not hold those licences, a regulated entity. This is achieved by imposing a levy on persons that contravene certain licensing provisions.
  3. The amounts payable each year will be set through a combination of regulations and legislative instruments. The regulations will set out the methods or formulas that will be used to apportion ASIC’s regulatory costs. The annual legislative instrument, which will be drafted and made by ASIC, will set out certain information that will be input into the methods or formulas, for example the number of entities that are part of an industry sub-sector for each financial year.
  4. The first year that the Government will recover ASIC’s regulatory costs from its regulated population will be the 2017/18 financial year, which commences on 1 July 2017. Due to the ex-post nature of the industry funding model, these amounts will not be collected until the first quarter of 2019.
  5. Under the Corporations Amendment (Financial Benchmarks) Bill 2017 (Financial Benchmarks Bill) administrators of designated significant financial benchmarks will be required to obtain a new ‘benchmark administrator licence’ from ASIC. Administrators of other financial benchmarks may opt in to the new licensing regime on a voluntary basis. As benchmark administrator licensees will be regulated by ASIC it is appropriate that a levy should be imposed on them as part of the recovery of ASIC’s regulatory costs.

## Summary of new law

* 1. Benchmark administrator licensees, as well as entities that are required to hold a benchmark administrator licence because they operate a significant financial benchmark but fail to obtain such a licence, are included in the definition of a ‘market infrastructure entity’ in the Cost Recovery Act.

Comparison of key features of new law and current law

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| --- | --- |
| New law | Current law |
| Benchmark administrator licensees will be included in the Cost Recovery Act and will be liable to pay a levy as part of ASIC’s cost recovery arrangements. | No current law. |

## Detailed explanation of new law

### Schedule 1 – Financial benchmarks

#### ASIC Supervisory Cost Recovery Levy Act 2017

* 1. Benchmark administrator licensees are included in the definition of a ‘market infrastructure entity’ in section 7 of the Cost Recovery Act. Other entities in this category include market licensees, participants in a licensed market, clearing and settlement facility licensees and derivative trade repository licensees. [Schedule 1, item 1, section 7 paragraph (ga) after paragraph (g) of the definition of ‘market infrastructure entity’]
  2. A person who is required to obtain a benchmark administrator licence because they administer a significant financial benchmark, but fails to do so, making them in breach of the licensing requirement in subsection 908BA(1) of the Financial Benchmarks Bill, is also included in the definition of a ‘market infrastructure entity’. [Schedule 1, item 1, section 7 paragraph (ja) after paragraph (j) of the definition of ‘market infrastructure entity’]

## Commencement, application and transitional provisions

* 1. This Bill will commence at the same time as Part 1 of Schedule 1 to the Financial Benchmarks Bill, unless that Part does not commence, in which case this Bill will also not commence. Part 1 of Schedule 1 to the Financial Benchmarks Bill, which contains the main amendments made in that bill, will commence on the day after the *Corporations Amendment (Financial Benchmarks) Act 2017* receives the Royal Assent. There are no application or transitional provisions for this Bill.

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