



14 June 2019

Manager  
Banking and Capital Markets Unit  
Financial System Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Email: [supervisorylevies@treasury.gov.au](mailto:supervisorylevies@treasury.gov.au)

Dear Sir/Madam,

**Re: Proposed Financial Institutions Supervisory Levies for 2019-20**

**In brief:**

AIST believes that it is important that regulators are well resourced to conduct their supervisory duties however recommends that the raising of any levies on the industry to cover this should be on a risk-weighted basis.

In order to make an informed assessment of the proposed levies, it is imperative that in the future any discussion paper should be released simultaneously with a Cost Recovery Impact Statement and an updated Regulator Performance Assessment.

As a broader comment, AIST strongly believes that a review of APRA's mandate is needed to ensure that members' best interests are met: such a review may impact the need for further APRA resourcing and the Regulator Performance Assessment.

AIST welcomes the opportunity to provide a submission in respect of the Proposed Financial Institutions Supervisory Levies for 2019-20 discussion paper (the Discussion Paper).

AIST reiterates its appreciation for the strategy underpinning the suite of Government guidelines, including:

- Australian Government Cost Recovery Guidelines<sup>1</sup>.
- Australian Government Charging Framework ('Charging Framework')<sup>2</sup>.
- Regulator Performance Framework ('Performance Framework')

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<sup>1</sup> Australian Government, Department of Finance, (2014). *Australian Government Cost Recovery Guidelines, July 2014 - Third edition*. Resource Management Guide No.304. [online]. Available at: <http://tinyurl.com/lplwh2g> [Accessed 5 June 2019].

<sup>2</sup> Australian Government, Department of Finance, (2015). *Australian Government Charging Framework*, Resource Management Guide no. 302. [online]. Available at: <http://tinyurl.com/grrwr8q> [Accessed 5 June 2019].

**AIST recommendations:**

1. In order for stakeholders to make meaningful assessments of the levies – as well as enabling greater adherence to the Australian Cost Recovery Guidelines, any discussion paper must be released with:
  - a. A Cost Recovery Implementation Statement (CRIS) – even if in a draft form.
  - b. The most up-to-date regulator performance self-assessment – even if in draft form.
2. The risk-based approach to levy raising should take into account the volume of regulator activities spent on various entities and sectors.
3. APRA’s mandate should be reviewed. This would ultimately affect APRA’s resourcing.

These recommendations relate to either the need for the raising of any levies on the industry to be transparent, accountable and fair or relate to a bigger issue than the raising of levies – the matter of APRA’s mission. Further detail about these recommendations follows.

### **Transparency needs the simultaneous release of a Cost Recovery Implementation Statement (CRIS)**

The Discussion Paper notes that a CRIS will be released by 30 June. It is difficult for stakeholders such as the AIST to properly assess the Discussion Paper without a CRIS as it is the CRIS that provides key information on how cost recovery for a specific government activity is implemented and how the activity is performing on an ongoing basis. We propose that even a draft CRIS would provide greater transparency.

The lack of a CRIS and the subsequent difficulty in stakeholders assessing the proposed levies is contrary to the Government’s Cost Recovery Guidelines (CRGs) which states that *‘Each cost recovered activity, regardless of financial value, must be documented in a cost recovery implementation statement (CRIS) before charges commence’*<sup>3</sup>.

The CRGs further identify that the CRIS “circulation of the draft CRIS is a good basis for engagement with stakeholders”<sup>4</sup>, with the principles of transparency and accountability outlining that the draft CRIS should be circulated to stakeholders at the same time as the detailed cost recovery model.

Whilst we look forward to the release of the CRIS by the end of June, this is too late for us to consider in making this submission.

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<sup>3</sup> Entities should use the CRIS template, which is available on the Department of Finance website ([www.finance.gov.au](http://www.finance.gov.au)).

<sup>4</sup> Australian Government, Department of Finance (2014), cited in a previous footnote, para. 99.

## Accountability needs the simultaneous release of current outcomes of the Regulator Performance Framework with the Discussion Paper

The Discussion Paper refers to APRA taking a ‘risk-based approach to supervision that is designed to identify and assess those areas of greatest risk to an APRA-regulated institution (or the financial system as a whole) and then direct supervisory resources and attention to these risks.’

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AIST recommends that for there to be a direct connection between this risk-based approach and the raising of levies, the most up-to-date regulator performance self-assessment should also be released simultaneously with discussion papers and a CRIS. We appreciate that there is an APRA self-assessment for 2017-2018, but even a draft update would be of assistance in reviewing any levies.

## Fairness needs a risk-based approach to levy raising

AIST strongly recommends that any risk-based approach to levy raising should take into account the volume of regulator activities spent on various entities and sectors. We continue to maintain this position and believe that any CRIS and the outcomes of the regulator performance framework should contain this information. This would be in line with the equity principle underpinning The Charging Framework which states that *‘Where specific demand for a government activity is created by identifiable individuals or groups they should be charged for it, unless the Government has decided to fund that activity’*.

As highlighted by the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, we believe that there is a specific demand for additional attention of regulators in the ‘for-profit’ superannuation sector due to the inherent conflict between the commercial interests of ‘for-profit’ superannuation funds and a trustee’s obligation to give priority to duties to, and interests of, the beneficiaries. As evidenced by the Royal Commission, this conflict cannot be managed by disclosure alone and requires additional focus of regulators. The Royal Commission stated below in relation to this conflict;

*‘The number of retail trustees who have failed to manage conflicts effectively, despite having elaborate written frameworks in place, suggests that this is not an isolated issue. No doubt APRA can and should ‘get deeper’ in its supervision and take appropriate steps to remedy issues with particular trustees.’*

*‘Evidences showed that there are some recurring issues and difficulties to which trustees and the regulators need to give close and continuing attention<sup>5</sup>’.*

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<sup>5</sup> Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (2019), *Final Report, Volume 1*, 226-7. Available at: <https://tinyurl.com/y93raay5> [Accessed 6 June 2019].

Currently, there is no breakdown of which sectors within a superannuation system worth over \$2 trillion are causing greater regulatory focus. The collection of such data and the consequent raising of levies is important to both protecting members and ensuring regulator accountability and efficiency.

AIST recommends that such data could be collected and classified using the APRA categories (not-for-profit and retail, etc). For example, in our submission<sup>6</sup> to the proposed Australian Financial Complaints Authority (AFCA) arrangements, AIST has recommended that AFCA include in its public complaints data report the sector within which financial organisations operate.

### **APRA's mandate should be reviewed**

As a broader comment, AIST strongly believes that APRA's current mandate requires review. The Discussion Paper refers to APRA not pursuing a zero failure objective, but maintaining a low incidence of failure of APRA-regulated institutions. In our APRA Capability Review submission<sup>7</sup>, we called for a mandate which both recognises the nature of superannuation and one which includes addressing the best interest of members.

Any such review would ultimately impact how APRA assesses loss, as well as the resources it may need to undertake any new mandate. We realise these comments are not directly related to the current Discussion Paper, but wish to note them as an ongoing important matter.

### **Other matters**

#### *Funding increase for APRA*

Page 5 of the Discussion Paper refers to a sizeable funding increase for APRA of \$44.5 million (31.4%) which is to be recovered through the levy. This amount is primarily due to 'new and expanded functions' and 'Government response to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry'.

Given the expanded responsibilities of APRA and in light of the increased size and complexity of the superannuation sector, we are supportive of proposals to provide additional resources to APRA however reiterate that this should be on a risk weighted basis.

The issues raised by the Royal Commission regarding superannuation mainly relate to 'for-profit' superannuation funds and consequently should be reflected in levy raising. In terms of APRA's new and expanded functions in relation to dealing with underperforming funds, we highlight that according to the Productivity Commission, retail funds collectively account for 77% of member accounts in underperforming funds and that 82% of retail funds underperformed compared to

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<sup>6</sup> AIST (2019). *Consultation – Proposed AFCA arrangements for comparative reporting of complaint data*. [online] AIST, Available at: <https://tinyurl.com/y2psn8n4> [Accessed 7 June 2019].

<sup>7</sup> AIST (2019) *APRA Capability Review* [online] AIST. Available at <https://tinyurl.com/y2e5w9e5> [Accessed 7 June 2019].

37% of industry funds<sup>8</sup> and therefore retail funds may create specific additional demand for regulator activity.

ACCC

AIST notes that a component of the levy will be used for the ACCC in relation to The Financial Services Competition Branch (FSCB). As this work is going to concentrate on competition issues in relation to ADIs, we are supportive of the costs being recovered from that industry.

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*SuperStream*

We reiterate comments from earlier submissions that Self-Managed Superannuation Funds (SMSFs) stand to benefit from the SuperStream reforms in the same way as APRA-regulated funds, the SMSF sector should bear part of the cost.

For further information in relation to our submission, please contact Zach Tung, Policy & Regulatory Analyst on 03 8677 3851 or at [ztung@aist.asn.au](mailto:ztung@aist.asn.au).

Yours sincerely,



Eva Scheerlinck  
**Chief Executive Officer**

*The Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public-sector funds.*

*As the principal advocate and peak representative body for the \$1.3 trillion profit-to-members superannuation sector, AIST plays a key role in policy development and is a leading provider of research.*

*AIST provides professional training and support for trustees and fund staff to help them meet the challenges of managing superannuation funds and advancing the interests of their fund members. Each year, AIST hosts the Conference of Major Superannuation Funds (CMSF), in addition to numerous other industry conferences and events.*

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<sup>8</sup> Productivity Commission Inquiry Report, *Superannuation: Assessing Efficiency and Competitiveness (2018)*, 203-4. Available at: <https://tinyurl.com/y9ylxoll> [Accessed 6 June 2019]