

EXPOSURE DRAFT

2016-2017

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT

Treasury Laws Amendment (Non-ADI Lender Rules) Bill 2017

No. , 2017

(Treasury)

**A Bill for an Act to amend the law in relation to
non-ADI lenders and registrable corporations, and
for related purposes**

EXPOSURE DRAFT

EXPOSURE DRAFT

Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedules.....	2
Schedule 1—Non-ADI lender rules		3
	<i>Banking Act 1959</i>	3
Schedule 2—Registrable corporations		9
	<i>Financial Sector (Collection of Data) Act 2001</i>	9

EXPOSURE DRAFT

1
2 **A Bill for an Act to amend the law in relation to**
3 **non-ADI lenders and registrable corporations, and**
4 **for related purposes**

5 The Parliament of Australia enacts:

6 **1 Short title**

7 This Act is the *Treasury Laws Amendment (Non-ADI Lender*
8 *Rules) Act 2017*.

9 **2 Commencement**

- 10 (1) Each provision of this Act specified in column 1 of the table
11 commences, or is taken to have commenced, in accordance with
12 column 2 of the table. Any other statement in column 2 has effect
13 according to its terms.
14

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details

1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
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2. Schedules 1 and 2	The day this Act receives the Royal Assent.	
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15 Note: This table relates only to the provisions of this Act as originally
16 enacted. It will not be amended to deal with any later amendments of
17 this Act.

- 18 (2) Any information in column 3 of the table is not part of this Act.
19 Information may be inserted in this column, or information in it
20 may be edited, in any published version of this Act.

EXPOSURE DRAFT

1 **3 Schedules**

2 Legislation that is specified in a Schedule to this Act is amended or
3 repealed as set out in the applicable items in the Schedule
4 concerned, and any other item in a Schedule to this Act has effect
5 according to its terms.

1 **Schedule 1—Non-ADI lender rules**
2

3 ***Banking Act 1959***

4 **1 Subsection 5(1)**

5 Insert:

6 *lending finance* means any of the following:

- 7 (a) the lending of money, with or without security;
8 (b) the carrying out of activities, whether directly or indirectly,
9 that result in the funding or originating of loans or other
10 financing.

11 *non-ADI lender* has the meaning given by section 38B.

12 *non-ADI lender rule* means a rule under section 38C.

13 **2 After Part IIA**

14 Insert:

15 **Part IIB—Provisions relating to the non-ADI**
16 **lenders**

17 **Division 1—Non-ADI lenders**

18 **38B Meaning of *non-ADI lender***

19 A *non-ADI lender* is a registrable corporation (within the meaning
20 of the *Financial Sector (Collection of Data) Act 2001*).

21 **Division 2—Non-ADI lender rules**

22 **38C APRA may make non-ADI lender rules for non-ADI lenders**

- 23 (1) If APRA considers that an activity or activities engaged in by one
24 or more non-ADI lenders in relation to lending finance materially
25 contribute to risks of instability in the Australian financial system,

EXPOSURE DRAFT

Schedule 1 Non-ADI lender rules

- 1 APRA may, in writing, determine rules in relation to matters
2 relating to lending finance, to be complied with by:
- 3 (a) all non-ADI lenders; or
4 (b) a specified class of non-ADI lenders; or
5 (c) one or more specified non-ADI lenders.
- 6 (2) A rule may impose different requirements to be complied with in
7 different situations or in respect of different activities.
- 8 (3) Without limiting the matters in relation to which APRA may
9 determine a rule, a rule may require:
- 10 (a) each non-ADI lender; or
11 (b) each non-ADI lender included in a specified class of
12 non-ADI lenders; or
13 (c) a specified non-ADI lender; or
14 (d) each of 2 or more specified non-ADI lenders;
15 to ensure that its subsidiaries (or particular subsidiaries), or it and
16 its subsidiaries (or particular subsidiaries), collectively satisfy
17 particular requirements in relation to the matters mentioned in
18 subsection (1).
- 19 (4) A rule may provide for APRA to exercise powers and discretions
20 under the rule, including (but not limited to) discretions to approve,
21 impose, adjust or exclude specific requirements in relation to one
22 or more specified non-ADI lenders.
- 23 (5) APRA may, in writing, vary or revoke a rule.
- 24 (6) A rule referred to in paragraph (1)(c), or an instrument varying or
25 revoking such a rule, has effect:
- 26 (a) from the day on which the rule, variation or revocation is
27 made; or
28 (b) if the rule, variation or revocation specifies a later day—from
29 that later day.
- 30 (7) If APRA determines or varies a rule referred to in paragraph (1)(c)
31 it must, as soon as practicable, give a copy of the rule, or of the
32 variation, to the non-ADI lender, or to each non-ADI lender, to
33 which the rule applies.
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EXPOSURE DRAFT

Non-ADI lender rules **Schedule 1**

- 1 (8) If APRA revokes a rule referred to in paragraph (1)(c) it must, as
2 soon as practicable, give notice of the revocation to the non-ADI
3 lender, or to each non-ADI lender, to which the rule applied.
- 4 (9) Before making a rule, or varying or revoking a rule, APRA must
5 consult with ASIC.
- 6 (10) A failure to comply with subsection (7), (8) or (9) does not affect
7 the validity of the action concerned.
- 8 (11) The following instruments made under this section are not
9 legislative instruments:
10 (a) a rule referred to in paragraph (1)(c);
11 (b) an instrument varying or revoking a rule referred to in
12 paragraph (1)(c).
- 13 (12) Otherwise, an instrument made under this section is a legislative
14 instrument.
- 15 (13) A rule may provide for a matter by applying, adopting or
16 incorporating, with or without modification, any matter contained
17 in an instrument or other writing as in force or existing from time
18 to time, despite:
19 (a) section 46AA of the *Acts Interpretation Act 1901*; and
20 (b) section 14 of the *Legislation Act 2003*.
- 21 (14) Part VI applies to the following decisions under this section:
22 (a) a decision to determine a rule referred to in paragraph (1)(c);
23 (b) a decision to vary such a rule.

24 **38D Division not to limit operation of other provisions**

25 Nothing in this Division is intended to limit the operation of any
26 other provision of this Act or of the *Reserve Bank Act 1959*.

EXPOSURE DRAFT

Schedule 1 Non-ADI lender rules

1 **Division 3—APRA’s power to issue directions**

2 **38E APRA may give directions in certain circumstances**

- 3 (1) APRA may give a body corporate that is a non-ADI lender a
4 direction of a kind specified in subsection (2) if APRA has reason
5 to believe that:
6 (a) the body corporate has contravened a non-ADI lender rule; or
7 (b) the body corporate is likely to contravene a non-ADI lender
8 rule.
- 9 (2) The direction must:
10 (a) be given by notice in writing to the body corporate; and
11 (b) specify the ground referred to in subsection (1) as a result of
12 which the direction is given.
- 13 (3) The kinds of direction that the body corporate may be given are
14 directions to do any one or more of the following:
15 (a) to comply with the whole or a part of a non-ADI lender rule;
16 (b) to refrain from the lending of money, with or without
17 security;
18 (c) to refrain from the carrying out of activities, whether directly
19 or indirectly, that result in the funding or originating of loans
20 or other financing.
- 21 (4) Without limiting the generality of subsection (3), a direction
22 referred to in a paragraph of that subsection may:
23 (a) deal with some only of the matters referred to in that
24 paragraph; or
25 (b) deal with a particular class or particular classes of those
26 matters; or
27 (c) make different provision with respect to different matters or
28 different classes of matters.
- 29 (5) The direction may deal with the time by which, or period during
30 which, it is to be complied with.
- 31 (6) The body corporate has power to comply with the direction despite
32 anything in its constitution or any contract or arrangement to which
33 it is a party.
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EXPOSURE DRAFT

Non-ADI lender rules **Schedule 1**

- 1 (7) APRA may, by notice in writing to the body corporate, vary the
2 direction if, at the time of the variation, it considers that the
3 variation is necessary and appropriate.
- 4 (8) The direction has effect until APRA revokes it by notice in writing
5 to the body corporate. APRA may revoke the direction if, at the
6 time of revocation, it considers that the direction is no longer
7 necessary or appropriate.
- 8 (9) Part VI applies to a decision to give a direction under
9 subsection (1) as a result of the ground referred to in
10 paragraph (1)(a) or (b).

11 **38F Non-compliance with a direction under section 38E**

- 12 (1) A non-ADI lender commits an offence if:
13 (a) it does, or fails to do, an act; and
14 (b) doing, or failing to do, the act results in a contravention of a
15 direction given to it under section 38E.
- 16 Penalty: 50 penalty units.
- 17 Note: If a body corporate is convicted of an offence against this subsection,
18 subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a
19 fine of up to 5 times the penalty stated above.
- 20 (2) If a non-ADI lender does or fails to do an act in circumstances that
21 give rise to the non-ADI lender committing an offence against
22 subsection (1), the non-ADI lender commits an offence against that
23 subsection in respect of:
24 (a) the first day on which the offence is committed; and
25 (b) each subsequent day (if any) on which the circumstances that
26 gave rise to the non-ADI lender committing the offence
27 continue (including the day of conviction for any such
28 offence or any later day).
- 29 Note: This subsection is not intended to imply that section 4K of the *Crimes*
30 *Act 1914* does not apply to offences against this Act or the regulations.
- 31 (3) An officer of a non-ADI lender commits an offence if:
32 (a) the officer fails to take reasonable steps to ensure that the
33 non-ADI lender complies with a direction given to it under
34 section 38E; and

EXPOSURE DRAFT

Schedule 1 Non-ADI lender rules

1 (b) the officer's duties include ensuring that the non-ADI lender
2 complies with the direction, or with a class of directions that
3 includes the direction.

4 Penalty: 50 penalty units.

5 Note: If a body corporate is convicted of an offence against this subsection,
6 subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a
7 fine of up to 5 times the penalty stated above.

8 (4) If an officer of a non-ADI lender fails to take reasonable steps to
9 ensure that the non-ADI lender complies with a direction given to
10 it under section 38E in circumstances that give rise to the officer
11 committing an offence against subsection (3), the officer commits
12 an offence against that subsection in respect of:

- 13 (a) the first day on which the offence is committed; and
14 (b) each subsequent day (if any) on which the circumstances that
15 gave rise to the officer committing the offence continue
16 (including the day of conviction for any such offence or any
17 later day).

18 Note: This subsection is not intended to imply that section 4K of the *Crimes*
19 *Act 1914* does not apply to offences against this Act or the regulations.

20 (5) In this section, *officer* has the meaning given by section 9 of the
21 *Corporations Act 2001*.

22 **3 Subparagraph 65A(1)(a)(i)**

23 Repeal the subparagraph, substitute:

- 24 (i) a provision of this Act, the regulations, the prudential
25 standards or the non-ADI lender rules; or

26 **4 Paragraph 65A(4)(a)**

27 Repeal the paragraph, substitute:

- 28 (a) by a provision of this Act, the regulations, the prudential
29 standards or the non-ADI lender rules to do; or

1 **Schedule 2—Registrable corporations**
2

3 *Financial Sector (Collection of Data) Act 2001*

4 **1 Subsection 7(1)**

5 After “so formed and”, insert “any of the following requirements are
6 satisfied”.

7 **2 Paragraphs 7(1)(a), (b) and (c)**

8 Repeal the paragraphs, substitute:

- 9 (a) the business activities in Australia of the corporation include
10 the provision of finance;
11 (b) the corporation is specified in a determination under
12 subsection (1A), or is in a class of corporations specified in a
13 determination under subsection (1A).

14 **3 After subsection 7(1)**

15 Insert:

16 (1A) For the purposes of paragraph (1)(b), APRA may:

- 17 (a) make a determination in writing specifying a particular
18 corporation or corporations;
19 (b) make a determination in writing specifying a class of
20 corporations or classes of corporations.

21 (1B) A determination made under paragraph (1A)(a) is not a legislative
22 instrument.

23 (1C) A determination made under paragraph (1A)(b) is a legislative
24 instrument.

25 (1D) Before making a determination under paragraph (1A)(a) or (b),
26 APRA must consider:

- 27 (a) in the case of a determination under paragraph (1A)(a)—
28 whether the corporation or each of the corporations specified
29 in the determination has business activities in Australia that
30 include the provision of finance; or
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EXPOSURE DRAFT

Schedule 2 Registrable corporations

1 (b) in the case of a determination under paragraph (1A)(b)—
2 whether each corporation in the class of corporations or
3 classes of corporations specified in the determination has
4 business activities in Australia that include the provision of
5 finance.

6 (1E) A failure to comply with subsection (1D) does not affect the
7 validity of the determination.

8 (1F) As soon as practicable after making a determination under
9 subsection (1A)(a), APRA must give a copy of the determination
10 to each corporation specified in the determination.

11 (1G) A failure to comply with subsection (1F) does not affect the
12 validity of the determination.

13 **4 Paragraph 7(2)(h)**

14 Repeal the paragraph.

15 **5 Paragraph 7(2)(i)**

16 Repeal the paragraph, substitute:

- 17 (i) the corporation is covered under subsection (2A); or
18 (ia) the corporation is specified in a determination under
19 subsection (2B), or is in a class of corporations specified in a
20 determination under subsection (2B); or

21 **6 After subsection 7(2)**

22 Insert:

23 (2A) For the purposes of paragraph (2)(i), a corporation is covered under
24 this subsection if:

- 25 (a) the sum of the values of the corporation's assets in Australia
26 that consist of debts due to the corporation resulting from
27 transactions entered into in the course of the provision of
28 finance by the corporation does not exceed:
29 (i) \$50,000,000; or
30 (ii) if a greater or lesser amount is prescribed by the
31 regulations—the amount so prescribed; and

EXPOSURE DRAFT

Registrable corporations **Schedule 2**

- 1 (b) the sum of the values of the principal amounts outstanding on
2 loans or other financing covered by subsection (2AB) does
3 not exceed:
4 (i) \$50,000,000; or
5 (ii) if a greater or lesser amount is prescribed by the
6 regulations—the amount so prescribed.
- 7 (2AA) For the purposes of paragraph (2A)(b), determine the value of a
8 loan or other financing at the time the loan or other financing
9 arose.
- 10 (2AB) For the purposes of paragraph (2A)(b), a loan or other financing is
11 covered by this subsection if:
12 (a) the loan or other financing arose in the relevant financial year
13 mentioned in subsection (2AC); and
14 (b) the funding or originating of the loan or other financing
15 resulted from the carrying out, whether directly or indirectly,
16 of activities by the corporation.
- 17 (2AC) In determining whether the corporation is a registrable corporation
18 at a time, for the purposes of paragraph (2AB)(a), the relevant
19 financial year is the most recent financial year ending before that
20 time.
- 21 (2AD) For the purposes of working out whether a corporation (the *test*
22 *corporation*) is covered under subsection (2A):
23 (a) identify each other corporation (if any) that is related to the
24 test corporation; and
25 (b) treat those other corporations as not being a separate entity,
26 but rather as being a part of the test corporation.
- 27 (2B) For the purposes of paragraph (2)(ia), APRA may:
28 (a) make a determination in writing specifying a particular
29 corporation or corporations;
30 (b) make a determination in writing specifying a class of
31 corporations or classes of corporations.
- 32 (2C) A determination made under paragraph (2B)(a) is not a legislative
33 instrument.
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EXPOSURE DRAFT

Schedule 2 Registrable corporations

1 (2D) A determination made under paragraph (2B)(b) is a legislative
2 instrument.

3 (2E) As soon as practicable after making a determination under
4 subsection (2B)(a), APRA must give a copy of the determination to
5 each corporation specified in the determination.

6 (2F) A failure to comply with subsection (2E) does not affect the
7 validity of the determination.

8 **7 Subsection 7(3)**

9 Repeal the subsection.

10 **8 Section 31 (after paragraph (a) of the definition of** 11 ***reviewable decision*)**

12 Insert:

13 (aa) a decision to make a determination under
14 paragraph 7(1A)(a);

15 (ab) a decision not to make a determination under
16 paragraph 7(2B)(a);

17 **9 After paragraph 32(1)(a)**

18 Insert:

19 (aa) the carrying out of activities, whether directly or indirectly,
20 that result in the funding or originating of loans or other
21 financing;

22 **10 After subsection 32(1)**

23 Insert:

24 (1A) A reference in this Act to the provision of finance does not include
25 a reference to the following:

26 (a) the provision of financial advice;

27 (b) intra-group financing activity between corporations that are
28 related to one another.

29