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The Parliament of the

Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

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| **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

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

The Parliament of Australia enacts:

1 Short title

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

2 Commencement

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

| 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. |  |
| 2. Schedules 1 and 2 | The day this Act receives the Royal Assent. |  |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

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

3 Schedules

 Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Non‑ADI lender rules

Banking Act 1959

1 Subsection 5(1)

Insert:

***lending*** ***finance*** means any of the following:

 (a) the lending of money, with or without security;

 (b) the carrying out of activities, whether directly or indirectly, that result in the funding or originating of loans or other financing.

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

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

2 After Part IIA

Insert:

Part IIB—Provisions relating to the non‑ADI lenders

Division 1—Non‑ADI lenders

38B Meaning of *non‑ADI lender*

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

Division 2—Non‑ADI lender rules

38C APRA may make non‑ADI lender rules for non‑ADI lenders

 (1) If APRA considers that an activity or activities engaged in by one or more non‑ADI lenders in relation to lending finance materially contribute to risks of instability in the Australian financial system, APRA may, in writing, determine rules in relation to matters relating to lending finance, to be complied with by:

 (a) all non‑ADI lenders; or

 (b) a specified class of non‑ADI lenders; or

 (c) one or more specified non‑ADI lenders.

 (2) A rule may impose different requirements to be complied with in different situations or in respect of different activities.

 (3) Without limiting the matters in relation to which APRA may determine a rule, a rule may require:

 (a) each non‑ADI lender; or

 (b) each non‑ADI lender included in a specified class of non‑ADI lenders; or

 (c) a specified non‑ADI lender; or

 (d) each of 2 or more specified non‑ADI lenders;

to ensure that its subsidiaries (or particular subsidiaries), or it and its subsidiaries (or particular subsidiaries), collectively satisfy particular requirements in relation to the matters mentioned in subsection (1).

 (4) A rule may provide for APRA to exercise powers and discretions under the rule, including (but not limited to) discretions to approve, impose, adjust or exclude specific requirements in relation to one or more specified non‑ADI lenders.

 (5) APRA may, in writing, vary or revoke a rule.

 (6) A rule referred to in paragraph (1)(c), or an instrument varying or revoking such a rule, has effect:

 (a) from the day on which the rule, variation or revocation is made; or

 (b) if the rule, variation or revocation specifies a later day—from that later day.

 (7) If APRA determines or varies a rule referred to in paragraph (1)(c) it must, as soon as practicable, give a copy of the rule, or of the variation, to the non‑ADI lender, or to each non‑ADI lender, to which the rule applies.

 (8) If APRA revokes a rule referred to in paragraph (1)(c) it must, as soon as practicable, give notice of the revocation to the non‑ADI lender, or to each non‑ADI lender, to which the rule applied.

 (9) Before making a rule, or varying or revoking a rule, APRA must consult with ASIC.

 (10) A failure to comply with subsection (7), (8) or (9) does not affect the validity of the action concerned.

 (11) The following instruments made under this section are not legislative instruments:

 (a) a rule referred to in paragraph (1)(c);

 (b) an instrument varying or revoking a rule referred to in paragraph (1)(c).

 (12) Otherwise, an instrument made under this section is a legislative instrument.

 (13) A rule may provide for a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time, despite:

 (a) section 46AA of the *Acts Interpretation Act 1901*; and

 (b) section 14 of the *Legislation Act 2003*.

 (14) Part VI applies to the following decisions under this section:

 (a) a decision to determine a rule referred to in paragraph (1)(c);

 (b) a decision to vary such a rule.

38D Division not to limit operation of other provisions

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

Division 3—APRA’s power to issue directions

38E APRA may give directions in certain circumstances

 (1) APRA may give a body corporate that is a non‑ADI lender a direction of a kind specified in subsection (2) if APRA has reason to believe that:

 (a) the body corporate has contravened a non‑ADI lender rule; or

 (b) the body corporate is likely to contravene a non‑ADI lender rule.

 (2) The direction must:

 (a) be given by notice in writing to the body corporate; and

 (b) specify the ground referred to in subsection (1) as a result of which the direction is given.

 (3) The kinds of direction that the body corporate may be given are directions to do any one or more of the following:

 (a) to comply with the whole or a part of a non‑ADI lender rule;

 (b) to refrain from the lending of money, with or without security;

 (c) to refrain from the carrying out of activities, whether directly or indirectly, that result in the funding or originating of loans or other financing.

 (4) Without limiting the generality of subsection (3), a direction referred to in a paragraph of that subsection may:

 (a) deal with some only of the matters referred to in that paragraph; or

 (b) deal with a particular class or particular classes of those matters; or

 (c) make different provision with respect to different matters or different classes of matters.

 (5) The direction may deal with the time by which, or period during which, it is to be complied with.

 (6) The body corporate has power to comply with the direction despite anything in its constitution or any contract or arrangement to which it is a party.

 (7) APRA may, by notice in writing to the body corporate, vary the direction if, at the time of the variation, it considers that the variation is necessary and appropriate.

 (8) The direction has effect until APRA revokes it by notice in writing to the body corporate. APRA may revoke the direction if, at the time of revocation, it considers that the direction is no longer necessary or appropriate.

 (9) Part VI applies to a decision to give a direction under subsection (1) as a result of the ground referred to in paragraph (1)(a) or (b).

38F Non‑compliance with a direction under section 38E

 (1) A non‑ADI lender commits an offence if:

 (a) it does, or fails to do, an act; and

 (b) doing, or failing to do, the act results in a contravention of a direction given to it under section 38E.

Penalty: 50 penalty units.

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

 (2) If a non‑ADI lender does or fails to do an act in circumstances that give rise to the non‑ADI lender committing an offence against subsection (1), the non‑ADI lender commits an offence against that subsection in respect of:

 (a) the first day on which the offence is committed; and

 (b) each subsequent day (if any) on which the circumstances that gave rise to the non‑ADI lender committing the offence continue (including the day of conviction for any such offence or any later day).

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

 (3) An officer of a non‑ADI lender commits an offence if:

 (a) the officer fails to take reasonable steps to ensure that the non‑ADI lender complies with a direction given to it under section 38E; and

 (b) the officer’s duties include ensuring that the non‑ADI lender complies with the direction, or with a class of directions that includes the direction.

Penalty: 50 penalty units.

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

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

 (a) the first day on which the offence is committed; and

 (b) each subsequent day (if any) on which the circumstances that gave rise to the officer committing the offence continue (including the day of conviction for any such offence or any later day).

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

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

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

Repeal the subparagraph, substitute:

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

4 Paragraph 65A(4)(a)

Repeal the paragraph, substitute:

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

Schedule 2—Registrable corporations

Financial Sector (Collection of Data) Act 2001

1 Subsection 7(1)

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

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

Repeal the paragraphs, substitute:

 (a) the business activities in Australia of the corporation include the provision of finance;

 (b) the corporation is specified in a determination under subsection (1A), or is in a class of corporations specified in a determination under subsection (1A).

3 After subsection 7(1)

Insert:

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

 (a) make a determination in writing specifying a particular corporation or corporations;

 (b) make a determination in writing specifying a class of corporations or classes of corporations.

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

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

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

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

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

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

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

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

4 Paragraph 7(2)(h)

Repeal the paragraph.

5 Paragraph 7(2)(i)

Repeal the paragraph, substitute:

 (i) the corporation is covered under subsection (2A); or

 (ia) the corporation is specified in a determination under subsection (2B), or is in a class of corporations specified in a determination under subsection (2B); or

6 After subsection 7(2)

Insert:

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

 (a) the sum of the values of the corporation’s assets in Australia that consist of debts due to the corporation resulting from transactions entered into in the course of the provision of finance by the corporation does not exceed:

 (i) $50,000,000; or

 (ii) if a greater or lesser amount is prescribed by the regulations—the amount so prescribed; and

 (b) the sum of the values of the principal amounts outstanding on loans or other financing covered by subsection (2AB) does not exceed:

 (i) $50,000,000; or

 (ii) if a greater or lesser amount is prescribed by the regulations—the amount so prescribed.

 (2AA) For the purposes of paragraph (2A)(b), determine the value of a loan or other financing at the time the loan or other financing arose.

 (2AB) For the purposes of paragraph (2A)(b), a loan or other financing is covered by this subsection if:

 (a) the loan or other financing arose in the relevant financial year mentioned in subsection (2AC); and

 (b) the funding or originating of the loan or other financing resulted from the carrying out, whether directly or indirectly, of activities by the corporation.

 (2AC) In determining whether the corporation is a registrable corporation at a time, for the purposes of paragraph (2AB)(a), the relevant financial year is the most recent financial year ending before that time.

 (2AD) For the purposes of working out whether a corporation (the ***test corporation***) is covered under subsection (2A):

 (a) identify each other corporation (if any) that is related to the test corporation; and

 (b) treat those other corporations as not being a separate entity, but rather as being a part of the test corporation.

 (2B) For the purposes of paragraph (2)(ia), APRA may:

 (a) make a determination in writing specifying a particular corporation or corporations;

 (b) make a determination in writing specifying a class of corporations or classes of corporations.

 (2C) A determination made under paragraph (2B)(a) is not a legislative instrument.

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

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

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

7 Subsection 7(3)

Repeal the subsection.

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

Insert:

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

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

9 After paragraph 32(1)(a)

Insert:

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

10 After subsection 32(1)

Insert:

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

 (a) the provision of financial advice;

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