

# EXPOSURE DRAFT

2016-2017-2018

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT
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## **Australian Business Securitisation Fund Bill 2018**

**No.     , 2018**

*(Treasury)*

**A Bill for an Act to establish the Australian  
Business Securitisation Fund, and for related  
purposes**

**EXPOSURE DRAFT**



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1     **A Bill for an Act to establish the Australian**  
2     **Business Securitisation Fund, and for related**  
3     **purposes**

4     The Parliament of Australia enacts:

5     **Part 1—Preliminary**  
6

7     **1 Short title**

8                     This Act is the *Australian Business Securitisation Fund Act 2018*.

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## Part 1 Preliminary

### Section 2

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1 **2 Commencement**

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

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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Act	The day after this Act receives the Royal Assent.	

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

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

13 **3 Objects of this Act**

14 The objects of this Act are to increase the availability, and reduce  
15 the cost, of credit provided to small and medium enterprises by the  
16 Commonwealth investing in debt securities in accordance with this  
17 Act.

18 **4 Simplified outline of this Act**

19 This Act sets up the Australian Business Securitisation Fund.

20 The Fund consists of the Australian Business Securitisation Fund  
21 Special Account and the investments of the Fund.

22 The investments of the Fund must be debt securities that meet  
23 certain requirements.

1 The Minister is responsible for making investment decisions for  
2 the Fund, however, the Minister may delegate the power to make  
3 these decisions.

4 Investment decisions must be made in accordance with any  
5 directions given by the Minister.

## 6 5 Definitions

7 In this Act:

8 **Account** means the Australian Business Securitisation Fund  
9 Special Account established by section 11.

10 **amount of credit** has the same meaning as in the National Credit  
11 Code.

12 **authorised debt security**: see subsection 12(4).

13 **credit** has the same meaning as in the National Credit Code.

14 **debtor** has the same meaning as in the National Credit Code.

15 **eligible delegate**: see subsection 19(2).

16 **Finance Minister** means the Minister who administers the *Public*  
17 *Governance, Performance and Accountability Act 2013*.

18 **Fund** means the Australian Business Securitisation Fund  
19 established by section 10.

20 **investment** means any mode of application of money or financial  
21 assets for the purpose of gaining a return (whether by way of  
22 income, capital gain or any other form of return).

23 **investment of the Fund** means an investment that, under  
24 section 12, is taken to be an investment of the Fund.

25 **listed entity** has the same meaning as in the *Public Governance,*  
26 *Performance and Accountability Act 2013*.

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## Part 1 Preliminary

### Section 6

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1                    *National Credit Code* has the same meaning as in the *National*  
2                    *Consumer Credit Protection Act 2009*.

3                    *non-corporate Commonwealth entity* has the same meaning as in  
4                    the *Public Governance, Performance and Accountability Act 2013*.

5                    *official* has the same meaning as in the *Public Governance,*  
6                    *Performance and Accountability Act 2013*.

7                    *rules* means rules made under section 22.

#### 8                    **6 Crown to be bound**

9                    (1) This Act binds the Crown in each of its capacities.

10                  (2) This Act does not make the Crown liable to be prosecuted for an  
11                  offence.

#### 12                  **7 Extension to external Territories**

13                  This Act extends to every external Territory.

#### 14                  **8 Extra-territorial application**

15                  This Act extends to acts, omissions, matters and things outside  
16                  Australia.



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1 **Part 2—The Australian Business Securitisation**  
2 **Fund**  
3

4 **9 Simplified outline of this Part**

5 This Part sets up the Australian Business Securitisation Fund.

6 The Fund consists of the Australian Business Securitisation Fund  
7 Special Account and the investments of the Fund.

8 The investments of the Fund must be debt securities that meet  
9 certain requirements and the investments must be made in  
10 accordance with any directions given by the Minister.

11 A total of \$2 billion must be credited to the Account, with an initial  
12 amount of \$250 million credited on 1 July 2019 and additional  
13 amounts credited on each 1 July for the following 4 years. The  
14 Minister may also, with the agreement of the Finance Minister,  
15 determine that additional amounts be credited to the Fund.

16 Amounts may be debited from the Account for the purposes of the  
17 Account, which include paying the costs of making investments.  
18 The Minister may also determine that the balance of the Account  
19 be reduced.

20 **10 Establishment of the Australian Business Securitisation Fund**

21 (1) The Australian Business Securitisation Fund is established by this  
22 section.

23 (2) The Australian Business Securitisation Fund consists of:

24 (a) the Australian Business Securitisation Fund Special Account;  
25 and

26 (b) the investments of the Fund.

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## Part 2 The Australian Business Securitisation Fund

### Section 11

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#### 11 Establishment of the Australian Business Securitisation Fund Special Account

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2
- 3 (1) The Australian Business Securitisation Fund Special Account is  
4 established by this section.
- 5 (2) The Account is a special account for the purposes of the *Public*  
6 *Governance, Performance and Accountability Act 2013*.

7 Note: An Appropriation Act may contain a provision to the effect that, if any  
8 of the purposes of a special account is a purpose that is covered by an  
9 item in the Appropriation Act (whether or not the item expressly refers  
10 to the special account), then amounts may be debited against the  
11 appropriation for that item and credited to that special account.

#### 12 Investments of the Fund

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- 13 (1) The Minister may, on behalf of the Commonwealth, invest  
14 amounts standing to the credit of the Account in any authorised  
15 debt security.
- 16 (2) Investments under subsection (1) are taken to be investments of the  
17 Fund.
- 18 (3) At any time before an investment of the Fund matures, the Minister  
19 may, on behalf of the Commonwealth, authorise the re-investment  
20 of the proceeds upon maturity in an authorised debt security with  
21 the same entity. The new investment is taken to be an investment  
22 of the Fund.
- 23 (4) An *authorised debt security* is a debt security that:  
24 (a) is issued by a trustee of a trust; and  
25 (b) is expressed in Australian dollars; and  
26 (c) relates to one or more amounts of credit provided (whether  
27 secured or unsecured) to one or more debtors wholly or  
28 predominantly for business purposes where each such  
29 amount of credit provided is less than:  
30 (i) \$10 million; or  
31 (ii) if the rules prescribe another amount of money—that  
32 amount; and

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1 (d) meets any other requirements prescribed by the rules.

2 (5) Section 58 of the *Public Governance, Performance and*  
3 *Accountability Act 2013* (which deals with investment by the  
4 Commonwealth) does not apply to an investment of the Fund.

## 5 **13 Directions about investments of the Fund**

6 (1) The Minister may, by legislative instrument, give directions about  
7 the exercise of the Minister's powers under section 12.

8 Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the  
9 *Legislation Act 2003* do not apply to the directions (see regulations  
10 made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that  
11 Act).

12 (2) The Minister must comply with any directions given under  
13 subsection (1).

14 (3) Without limiting subsection (1), the directions may relate to any of  
15 the following:

16 (a) strategies and policies to be followed for making  
17 investments;

18 (b) decision-making criteria for making investments;

19 (c) limits on making investments;

20 (d) risk and return relating to investments;

21 (e) any other matters that the Minister thinks appropriate.

22 (4) The Minister must not give a direction under subsection (1):

23 (a) that has the purpose, or is likely to have the effect, of directly  
24 or indirectly requiring the Minister to make, or not to make, a  
25 particular investment; or

26 (b) that is inconsistent with this Act (including the objects of this  
27 Act).

## 28 **14 Credits to the Account**

29 (1) There must be credited to the Account amounts equal to the  
30 following:

31 (a) \$250 million, to be credited on 1 July 2019;

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## Part 2 The Australian Business Securitisation Fund

### Section 15

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- 1 (b) \$250 million, to be credited on 1 July 2020;  
2 (c) \$500 million, to be credited on 1 July 2021;  
3 (d) \$500 million, to be credited on 1 July 2022;  
4 (e) \$500 million, to be credited on 1 July 2023;  
5 (f) income derived from an investment of the Fund;  
6 (g) a return of capital, or any other financial distribution, relating  
7 to an investment of the Fund;  
8 (h) the proceeds of the realisation of an investment of the Fund.
- 9 (2) The Minister may, by notifiable instrument, determine that an  
10 amount equal to a specified amount is to be credited to the Account  
11 at a time specified in, or ascertained in accordance with, the  
12 determination.
- 13 (3) The time specified in, or ascertained in accordance with, the  
14 determination must be on or after the time the determination is  
15 made.
- 16 (4) The determination must be expressed to be for a specified budget  
17 year.
- 18 (5) Before making a determination under subsection (2), the Minister  
19 must obtain the agreement of the Finance Minister to the  
20 determination.

### 21 **15 Purposes of the Account**

- 22 The purposes of the Account are as follows:  
23 (a) paying the costs of the making of an investment under  
24 section 12;  
25 (b) paying or discharging any other costs, expenses and other  
26 obligations incurred by the Commonwealth exclusively in  
27 connection with the Fund;  
28 (c) reducing the balance of the Account under section 16 (and  
29 therefore the available appropriation for the Account) without  
30 making a real or notional payment.

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1 **16 Reducing the balance of the Account**

- 2 (1) The Minister may, by writing, direct that a specified amount is to  
3 be debited from the Account on a specified day (which must be on  
4 or after the day the direction is made).
- 5 (2) A direction under subsection (1) is not a legislative instrument.
- 6 (3) The Minister must give a copy of a direction under subsection (1)  
7 to the Finance Minister.

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## Part 3 Miscellaneous

### Section 17

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## 1 Part 3—Miscellaneous

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### 3 17 Simplified outline of this Part

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This Part contains miscellaneous provisions, including provisions about constitutional limits, delegation of the Minister's powers and functions under this Act, reporting on the operation of this Act and conducting a review of the operation of this Act.

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This Part also contains the general rule-making power.

### 9 18 Constitutional limits

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The Minister may exercise a power or perform a function conferred on the Minister by section 12 only:

(a) with respect to trade or commerce:

(i) between Australia and places outside Australia; or

(ii) among the States; or

(iii) within a Territory, between a State and a Territory or between 2 Territories; or

(b) with respect to a Territory; or

(c) with respect to the implied power of the Parliament to make laws with respect to nationhood; or

(d) with respect to the executive power of the Commonwealth.

### 21 19 Delegations by the Minister

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(1) The Minister may, by written instrument, delegate to an eligible delegate (see subsection (2)) any of the Minister's powers or functions under this Act or the rules (other than the Minister's powers under section 13, 14 or 22).

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(2) An *eligible delegate* is an official of the Department of the Treasury, or a listed entity that is prescribed by the rules, who:

- 1 (a) is an SES employee; or  
2 (b) is an APS employee who holds or performs the duties of an  
3 Executive Level 2, or equivalent, position; or  
4 (c) occupies an office or position at an equivalent level to that of  
5 an SES employee, or an Executive Level 2 position.
- 6 (3) Before delegating a power or function under subsection (1), the  
7 Minister must have regard to:
- 8 (a) if the power or function is to be delegated to a person  
9 holding, occupying, or performing the duties of, a specified  
10 office or position—whether the office or position is  
11 sufficiently senior for the person to exercise the power or  
12 perform the function or duty; or  
13 (b) otherwise—whether the person has appropriate qualifications  
14 or expertise to exercise the power or perform the function.
- 15 (4) A person exercising powers or performing functions under a  
16 delegation under subsection (1) must comply with any written  
17 directions of the Minister.
- 18 (5) A direction under subsection (4) must not be inconsistent with this  
19 Act (including the objects of this Act) or a legislative instrument  
20 made under this Act.

## 21 **20 Annual report**

22 The annual report prepared by the Secretary of the Department and  
23 given to the Minister under section 46 of the *Public Governance,*  
24 *Performance and Accountability Act 2013* for a period must  
25 include a report on the operation of this Act during the period.

## 26 **21 Review of operation of this Act**

- 27 (1) The Minister must cause a review of the operation of this Act to be  
28 undertaken as soon as possible after the period of 2 years  
29 beginning when this Act commences.
- 30 (2) The review must include a review of the effectiveness of this Act  
31 in meeting the objectives of this Act.

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## Part 3 Miscellaneous

### Section 22

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- 1 (3) The persons undertaking the review must give the Minister a  
2 written report of the review.
- 3 (4) The Minister must cause a copy of the report of the review to be  
4 tabled in each House of the Parliament within 15 sitting days of  
5 that House after the report is given to the Minister.

### 6 **22 Rules**

- 7 (1) The Minister may, by legislative instrument, make rules  
8 prescribing matters:  
9 (a) required or permitted by this Act to be prescribed by the  
10 rules; or  
11 (b) necessary or convenient to be prescribed for carrying out or  
12 giving effect to this Act.
- 13 (2) To avoid doubt, the rules may not do the following:  
14 (a) create an offence or civil penalty;  
15 (b) provide powers of:  
16 (i) arrest or detention; or  
17 (ii) entry, search or seizure;  
18 (c) impose a tax;  
19 (d) set an amount to be appropriated from the Consolidated  
20 Revenue Fund under an appropriation in this Act;  
21 (e) directly amend the text of this Act.