

# EXPOSURE DRAFT

2019-2020-2021

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT
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## **Financial Services Compensation Scheme of Last Resort Levy (AFCA Fees) Bill 2021**

**No.     , 2021**

*(Treasury)*

**A Bill for an Act to impose levy on persons relating  
to unpaid AFCA fees, and for related purposes**

EXPOSURE DRAFT



# EXPOSURE DRAFT

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## Contents

<b>Part 1—Preliminary</b>	<b>1</b>
1 Short title .....	1
2 Commencement .....	2
3 Act to bind Crown .....	2
4 Extension to external Territories .....	2
5 Extra-territorial application .....	3
6 Act does not impose levy on property of a State .....	3
7 Definitions .....	3
<b>Part 2—Levy</b>	<b>5</b>
8 Imposition of levy—AFCA’s accumulated unpaid fees .....	5
9 Imposition of levy—AFCA’s unpaid fees .....	5
10 By whom levy payable .....	6
11 Amount of levy—AFCA’s accumulated unpaid fees .....	6
12 Amount of levy—AFCA’s unpaid fees .....	7
<b>Part 3—Other matters</b>	<b>9</b>
13 Treatment of partnerships, unincorporated associations and multiple trustees .....	9
14 Regulations .....	10



1 **A Bill for an Act to impose levy on persons relating**  
2 **to unpaid AFCA fees, and for related purposes**

3 The Parliament of Australia enacts:

4 **Part 1—Preliminary**  
5

6 **1 Short title**

7 This Act is the *Financial Services Compensation Scheme of Last*  
8 *Resort Levy (AFCA Fees) Act 2021*.

# EXPOSURE DRAFT

## 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.

6

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Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	At the same time as the <i>Financial Services Compensation Scheme of Last Resort Levy Act 2021</i> commences.  However, the provisions do not commence at all if that Act does not commence.	

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- 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 Act to bind Crown**

14 This Act binds the Crown in right of each of the States, of the  
15 Australian Capital Territory and of the Northern Territory.  
16 However, it does not bind the Crown in right of the  
17 Commonwealth.

18 **4 Extension to external Territories**

19 This Act extends to the external Territories.

1 **5 Extra-territorial application**

2 This Act extends to acts, omissions, matters and things outside  
3 Australia.

4 **6 Act does not impose levy on property of a State**

5 (1) This Act does not impose a tax on property of any kind belonging  
6 to a State.

7 (2) In this section:

8 *property of any kind belonging to a State* has the same meaning as  
9 in section 114 of the Constitution.

10 **7 Definitions**

11 In this Act:

12 *AFCA* (short for the Australian Financial Complaints Authority)  
13 has the same meaning as in Chapter 7 of the *Corporations Act*  
14 *2001*.

15 *AFCA's accumulated unpaid fees* has the same meaning as in  
16 Chapter 7 of the *Corporations Act 2001*.

17 *AFCA's unpaid fees* has the same meaning as in Chapter 7 of the  
18 *Corporations Act 2001*.

19 *amount* includes a nil amount.

20 *initial levy period* has the same meaning as in subsection 12(1) of  
21 the *Levy Collection Act*.

22 *Levy Collection Act* means the *Financial Services Compensation*  
23 *Scheme of Last Resort Levy (Collection) Act 2021*.

24 *levy period* has the same meaning as in the *Financial Services*  
25 *Compensation Scheme of Last Resort Levy Act 2021*.

26 *person* has a meaning affected by section 13.

# EXPOSURE DRAFT

## Part 1 Preliminary

### Section 7

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1 *scheme levy cap* has the same meaning as in the *Financial Services*  
2 *Compensation Scheme of Last Resort Levy Act 2021*.

3 *sub-sector* has the same meaning as in the *Financial Services*  
4 *Compensation Scheme of Last Resort Levy Act 2021*.

5 Note: A person may form part of more than one sub-sector.

6 *sub-sector levy cap* has the same meaning as in the *Financial*  
7 *Services Compensation Scheme of Last Resort Levy Act 2021*.



1 **Part 2—Levy**  
2

3 **8 Imposition of levy—AFCA’s accumulated unpaid fees**

4 Levy is imposed on a person for the initial levy period if, at any  
5 time during the 12 months before the start of the initial levy period:

- 6 (a) the person is a member of a sub-sector of a kind prescribed  
7 by the regulations for the purposes of this paragraph; and  
8 (b) the general conditions (if any) prescribed by the regulations  
9 for the purposes of this paragraph are met for the person and  
10 the initial levy period; and  
11 (c) the person is not in a class of persons prescribed by the  
12 regulations for the purposes of this paragraph.

13 **9 Imposition of levy—AFCA’s unpaid fees**

14 *Initial levy*

15 (1) Levy is imposed on a person for a levy period if, at any time during  
16 the 12 months before the start of the levy period:

- 17 (a) the person is a member of a sub-sector of a kind prescribed  
18 by the regulations for the purposes of this paragraph; and  
19 (b) the general conditions (if any) prescribed by the regulations  
20 for the purposes of this paragraph are met for the person and  
21 the levy period; and  
22 (c) the person is not in a class of persons prescribed by the  
23 regulations for the purposes of this paragraph.

24 *Further levy*

25 (2) Further levy is imposed on the person for the levy period and the  
26 sub-sector if:

- 27 (a) immediately before a revised estimate under subsection 12(5)  
28 of the Levy Collection Act comes into force for the levy  
29 period and the sub-sector, the sub-sector levy cap for the levy  
30 period and the sub-sector has not been exceeded; and

# EXPOSURE DRAFT

## Part 2 Levy

### Section 10

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- 1 (b) the revised estimate specifies that further levy needs to be  
2 imposed by this subsection for the levy period and the  
3 sub-sector.

#### 4 **10 By whom levy payable**

- 5 Levy imposed on a person for a levy period is payable by the  
6 person.

#### 7 **11 Amount of levy—AFCA’s accumulated unpaid fees**

- 8 (1) The amount of levy imposed by section 8 on a person for the initial  
9 levy period and a sub-sector is the amount worked out in  
10 accordance with a method prescribed by the regulations for the  
11 purposes of this subsection.

##### 12 *Objectives for working out amounts of levy*

- 13 (2) The objectives are that the total amount of levy imposed by section  
14 8 on all persons for the initial levy period and a sub-sector:  
15 (a) does not exceed the amount determined under  
16 paragraph 12(1)(b) of the Levy Collection Act for the initial  
17 levy period and the sub-sector; and  
18 (b) does not cause the scheme levy cap to be exceeded.

##### 19 *Regulations*

- 20 (3) Before the Governor-General makes regulations for the purposes of  
21 subsection (1), the Minister must be satisfied that the regulations  
22 are consistent with the objectives stated in this section.
- 23 (4) Without limiting subsection (1), the method determined by the  
24 regulations for a levy period and a sub-sector may have regard to  
25 determinations under paragraph 12(1)(b) of the Levy Collection  
26 Act for the levy period and the sub-sector.

1 **12 Amount of levy—AFCA’s unpaid fees**

2 (1) The amount of levy imposed by subsection 9(1) on a person for a  
3 levy period and a sub-sector is the amount worked out in  
4 accordance with a method prescribed by the regulations for the  
5 purposes of this subsection.

6 (2) The amount of levy imposed by subsection 9(2) on a person for:  
7 (a) a levy period and a sub-sector; and  
8 (b) because a revised estimate under subsection 12(5) of the  
9 Levy Collection Act comes into force for the levy period and  
10 the sub-sector;  
11 is the amount worked out in accordance with a method prescribed  
12 by the regulations for the purposes of this subsection.

13 *Objectives for working out amounts of initial levy*

14 (3) The objectives are that the total amount of levy imposed by  
15 subsection 9(1) on all persons for a levy period and a sub-sector:  
16 (a) does not exceed the estimate determined under  
17 subsection 12(2) of the Levy Collection Act for the levy  
18 period and the sub-sector; and  
19 (b) does not cause the sub-sector levy cap for the levy period and  
20 the sub-sector to be exceeded; and  
21 (c) does not cause the scheme levy cap to be exceeded.

22 *Objectives for working out further amounts of levy*

23 (4) The objectives are that the total amount of levy imposed by  
24 subsection 9(2) on all persons for a levy period, a sub-sector and a  
25 revised estimate under subsection 12(5) of the Levy Collection  
26 Act:  
27 (a) does not exceed the difference between:  
28 (i) the revised estimate; and  
29 (ii) the total amount of levy paid that was earlier imposed  
30 by section 9 of this Act on all persons for the levy  
31 period and the sub-sector; and

# EXPOSURE DRAFT

## Part 2 Levy

### Section 12

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1 (b) does not cause the sub-sector levy cap for the levy period and  
2 the sub-sector to be exceeded; and

3 (c) does not cause the scheme levy cap to be exceeded.

#### 4 *Regulations*

5 (5) Before the Governor-General makes regulations for the purposes of  
6 subsection (1) or (2), the Minister must be satisfied that the  
7 regulations are consistent with the applicable objectives stated in  
8 this section.

9 (6) Without limiting subsection (1) or (2), the method determined by  
10 the regulations for a levy period and a sub-sector may have regard  
11 to determinations under section 12 of the Levy Collection Act for  
12 the levy period and the sub-sector.

1 **Part 3—Other matters**  
2

3 **13 Treatment of partnerships, unincorporated associations and**  
4 **multiple trustees**

5 *Application to partnerships*

- 6 (1) This Act applies to a partnership as if the partnership were a  
7 person. However, obligations that would be imposed on the  
8 partnership are imposed instead on each partner, but may be  
9 discharged by any of the partners.

10 *Application to unincorporated associations*

- 11 (2) This Act applies to an unincorporated association as if the  
12 unincorporated association were a person. However, an obligation  
13 that would otherwise be imposed on the association:  
14 (a) is imposed on each member of the association's committee of  
15 management instead; but  
16 (b) may be discharged by any of the members.

17 *Application to RSE licensee that is a group of individual trustees*

- 18 (3) This Act applies to an RSE licensee that is a group of individual  
19 trustees as if the group were a person. However, an obligation that  
20 would otherwise be imposed on the group is imposed on each  
21 individual, but may be discharged by any of the individuals.

22 *Application to multiple trustees treated as single entity*

- 23 (4) Subsections (5), (6) and (7) apply if a trustee or trustees of a trust  
24 are treated during a period as constituting:  
25 (a) a single legal entity (the *notional entity*) under  
26 section 761FA of the *Corporations Act 2001*; or  
27 (b) a single person (also the *notional entity*) under section 15 of  
28 the *National Consumer Credit Protection Act 2009*.

# EXPOSURE DRAFT

## Part 3 Other matters

### Section 14

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- 1 (5) This Act applies to the notional entity during the period as if the  
2 notional entity were a person, but with the changes set out in  
3 subsections (6) and (7).
- 4 (6) During the period, or any part of the period, that the trust has 2 or  
5 more trustees, an obligation that would otherwise be imposed on  
6 the notional entity by this Act is imposed instead on each trustee,  
7 but may be discharged by any of the trustees.
- 8 (7) During the period, or any part of the period, that the trust has only  
9 one trustee, an obligation that would otherwise be imposed on the  
10 notional entity by this Act is imposed instead on that single trustee.

### 11 **14 Regulations**

- 12 The Governor-General may make regulations prescribing matters:  
13 (a) required or permitted by this Act to be prescribed by the  
14 regulations; or  
15 (b) necessary or convenient to be prescribed for carrying out or  
16 giving effect to this Act.  
17