2019‑2020‑2021

The Parliament of the

Commonwealth of Australia

HOUSE OF REPRESENTATIVES

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| **EXPOSURE DRAFT** |

Financial Services Compensation Scheme of Last Resort Levy Bill 2021

No. , 2021

(Treasury)

A Bill for an Act to impose levy on members of the AFCA scheme and related persons, and for related purposes

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A Bill for an Act to impose levy on members of the AFCA scheme and related persons, and for related purposes

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

 This Act is the *Financial Services* *Compensation Scheme of Last Resort Levy* *Act 2021*.

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. The whole of this Act | The later of:(a) 1 January 2022; and(b) the day after 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Note: This table relates only to the provisions of this Act as originally enacted.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 Act to bind Crown

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

4 Extension to external Territories

 This Act extends to the external Territories.

5 Extra‑territorial application

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

6 Act does not impose levy on property of a State

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

 (2) In this section:

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

7 Definitions

 In this Act:

***accumulation recovery day*** has the same meaning as ***fee recovery day*** has in Chapter 7 of the *Corporations Act 2001*.

***AFCA scheme*** has the same meaning as in Chapter 7 of the *Corporations Act 2001*.

***amount*** includes a nil amount.

***ASIC*** means the Australian Securities and Investments Commission.

***initial claims and costs estimate***, for a levy period and a sub‑sector, means an estimate determined under subsection 9(1) of the Levy Collection Act for the levy period and the sub‑sector.

***initial levy period*** has the meaning given by section 10.

***levy*** means:

 (a) levy imposed by this Act (see Division 1 of Part 2); or

 (b) levy imposed by the *Financial Services Compensation Scheme of Last Resort Levy (AFCA Fees)* *Act 2021*.

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

***levy period*** means:

 (a) unless paragraph (b) applies—a financial year starting on or after the day this Act commences; or

 (b) a period that:

 (i) starts on or after the day this Act commences; and

 (ii) is prescribed by (or worked out in accordance with a method prescribed by) the regulations for the purposes of this subparagraph.

***person*** has a meaning affected by section 18.

***revised claims and costs estimate***, for a levy period and a sub‑sector, means a revised estimate determined under subsection 10(1) of the Levy Collection Act for the levy period and the sub‑sector.

***scheme levy cap*** means the cap specified in subsection 17(1).

***sub‑sector*** means a group of one or more persons each of whom meets the criteria prescribed for the group by the regulations for the purposes of this definition.

Note 1: A person may form part of more than one sub‑sector.

Note 2: Different criteria may be prescribed for different groups.

***sub‑sector levy cap***, for a levy period and a sub‑sector, means the cap worked out under subsection 17(2) for the levy period and the sub‑sector.

Part 2—Levy

Division 1—Imposition of levy

8 Imposition of levy—main cases

Annual levy

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

 (a) the person is a member of a sub‑sector of a kind prescribed by the regulations for the purposes of this paragraph; and

 (b) the general conditions (if any) prescribed by the regulations for the purposes of this paragraph are met for the person and the levy period; and

 (c) the person is not in a class of persons prescribed by the regulations for the purposes of this paragraph.

Further levy for a sub‑sector—total levy does not exceed the sub‑sector levy cap

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

 (a) immediately before a revised claims and costs estimate comes into force for the levy period and the sub‑sector, the sub‑sector levy cap for the levy period and the sub‑sector has not been exceeded; and

 (b) the revised claims and costs estimate specifies that further levy needs to be imposed by this subsection for the levy period and the sub‑sector.

Note 1: The total amount of further levy imposed under this subsection cannot cause the sub‑sector levy cap to be exceeded, but can be imposed up to that cap (see subsection 13(2)).

Note 2: Alternatively, further levy may be imposed by subsection (3) or section 9 if the Minister acts under section 1069D of the *Corporations Act 2001*. This alternative levy can be based on the full revised claims and costs estimate and cause the sub‑sector levy cap to be exceeded.

Further levy for a sub‑sector—total levy exceeds the sub‑sector levy cap

 (3) Further levy is imposed on the person for the levy period if both of the following have come into force for the levy period and the sub‑sector:

 (a) a revised claims and costs estimate;

 (b) a determination under section 1069D of the *Corporations Act 2001* that, under subsection 1069D(4) of that Act, specifies that further levy needs to be imposed by this subsection for the levy period and the sub‑sector.

Note: Such a determination will only come into force if the Minister decides that further levy needs to be imposed across just this sub‑sector when the revised claims and costs estimate causes the sub‑sector levy cap to be exceeded.

9 Imposition of further levy—revised estimate of claims and costs exceeds the sub‑sector levy cap and is to be spread across several sub‑sectors etc.

 Levy is imposed on a person for a levy period if:

 (a) the person is a member of one or more of the following groups (the ***first group***):

 (i) a sub‑sector, resulting in levy being imposed by subsection 8(1) on the person for the levy period;

 (ii) a sub‑sector of a kind prescribed by the regulations for the purposes of this subparagraph;

 (iii) a sub‑sector within the meaning of the *ASIC Supervisory Cost Recovery Levy Act 2017*; and

 (b) a revised claims and costs estimate comes into force for the levy period and a sub‑sector (which need not be the sub‑sector referred to in subparagraph (a)(i) or (ii)); and

 (c) a determination comes into force under section 1069D of the *Corporations Act 2001* that, under subsection 1069D(5) of that Act, specifies that further levy needs to be imposed by this subsection for the levy period and the first group; and

 (d) the general conditions (if any) prescribed by the regulations for the purposes of this paragraph are met for the person and the levy period; and

 (e) the person is not in a class of persons prescribed by the regulations for the purposes of this paragraph.

Note 1: Such a determination will only come into force if the Minister decides that further levy needs to be imposed across several sub‑sectors to deal with a revised claims and costs estimate for a particular sub‑sector that causes the sub‑sector levy cap for that sub‑sector to be exceeded.

Note 2: Such a determination could be made instead of a determination that, under subsection 1069D(4) of the *Corporations Act 2001*, specifies that further levy needs only to be imposed by subsection 8(3) of this Act for the levy period and the sub‑sector to which the revised claims and costs estimate relates.

10 Imposition of levy—unpaid claims for which reasonable recovery steps have been taken before the accumulation recovery day

 Levy is imposed on a person for the first levy period that starts on or after the accumulation recovery day (the ***initial levy period***) if, at any time during the 12 months before the start of the initial levy period:

 (a) the person is a member of a sub‑sector of a kind prescribed by the regulations for the purposes of this paragraph; and

 (b) the general conditions (if any) prescribed by the regulations for the purposes of this paragraph are met for the person and the initial levy period; and

 (c) the person is not in a class of persons prescribed by the regulations for the purposes of this paragraph.

11 By whom levy payable

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

Division 2—Amount of levy

12 Amount of annual levy

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

Objectives for working out amounts of annual levy

 (2) The objectives are that the total amount of levy imposed by subsection 8(1) on all persons for a levy period and a sub‑sector:

 (a) does not exceed the initial claims and costs estimate for the levy period and the sub‑sector; and

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

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

Regulations

 (3) Before the Governor‑General makes regulations for the purposes of subsection (1), the Minister must be satisfied that the regulations are consistent with the objectives stated in subsection (2).

 (4) Without limiting subsection (1), the method determined by the regulations for a levy period and a sub‑sector may have regard to the initial claims and costs estimate for the levy period and the sub‑sector.

13 Amount of further levy—total levy does not exceed the sub‑sector levy cap

 (1) The amount of levy imposed by subsection 8(2) on a person:

 (a) for a levy period and a sub‑sector; and

 (b) because a revised claims and costs estimate comes into force for the levy period and the sub‑sector;

is the amount worked out in accordance with a method prescribed by the regulations for the purposes of this subsection.

Objectives for working out further amounts of levy

 (2) The objectives are that the total amount of levy imposed by subsection 8(2) on all persons for a levy period, a sub‑sector and a revised claims and costs estimate:

 (a) does not exceed the difference between:

 (i) the revised claims and costs estimate; and

 (ii) the total amount of levy paid that was earlier imposed by subsection 8(1) on all persons for the levy period and the sub‑sector; and

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

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

Regulations

 (3) Before the Governor‑General makes regulations for the purposes of subsection (1), the Minister must be satisfied that the regulations are consistent with the objectives stated in subsection (2).

 (4) Without limiting subsection (1), the method determined by the regulations for a levy period and a sub‑sector may have regard to the revised claims and costs estimate for the levy period and the sub‑sector.

14 Amount of further levy—total levy exceeds the sub‑sector levy cap

 (1) The amount of levy imposed by subsection 8(3) on a person:

 (a) for a levy period and a sub‑sector; and

 (b) because the following have come into force for the levy period and the sub‑sector:

 (i) a revised claims and costs estimate;

 (ii) a determination under section 1069D of the *Corporations Act 2001* (the ***Minister’s determination***);

is the amount worked out in accordance with a method prescribed by the regulations for the purposes of this subsection.

Objectives for working out further amounts of levy

 (2) The objectives are that the total amount of further levy imposed by subsection 8(3) on all persons for the levy period and sub‑sector:

 (a) does not exceed the total amount specified, under paragraph 1069D(4)(b) of the *Corporations Act 2001*, in the Minister’s determination; and

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

Regulations

 (3) Before the Governor‑General makes regulations for the purposes of subsection (1), the Minister must be satisfied that the regulations are consistent with the objectives stated in subsection (2).

 (4) Without limiting subsection (1), the method determined by the regulations for a levy period and a sub‑sector may have regard to:

 (a) the revised claims and costs estimate for the levy period and the sub‑sector; and

 (b) the Minister’s determination.

15 Amount of further levy—total levy exceeds the sub‑sector levy cap and is to be spread across several sub‑sectors etc.

 (1) The amount of levy imposed by section 9 on a person:

 (a) for a levy period; and

 (b) because the following have come into force for the levy period:

 (i) a revised claims and costs estimate;

 (ii) a determination under section 1069D of the *Corporations Act 2001* (the ***Minister’s determination***);

is the amount worked out in accordance with a method prescribed by the regulations for the purposes of this subsection.

Objectives for working out further amounts of levy

 (2) The objectives are that the total amount of further levy imposed by section 9:

 (a) for the levy period; and

 (b) on all members of the sub‑sectors (within the meaning of this Act or the *ASIC Supervisory Cost Recovery Levy Act 2017*) specified, under paragraph 1069D(5)(a) of the *Corporations Act 2001*, in the Minister’s determination;

both:

 (c) does not exceed the total amount specified, under paragraph 1069D(5)(b) of that Act, in the Minister’s determination; and

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

Regulations

 (3) Before the Governor‑General makes regulations for the purposes of subsection (1), the Minister must be satisfied that the regulations are consistent with the objectives stated in subsection (2).

 (4) Without limiting subsection (1), the method determined by the regulations for a levy period and a sub‑sector may have regard to:

 (a) the revised claims and costs estimate; and

 (b) the Minister’s determination.

16 Amount of levy for unpaid claims for which reasonable recovery steps have been taken before the accumulation recovery day

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

Objectives for working out amounts of levy

 (2) The objectives are that the total amount of levy imposed by section 10 on all persons for the initial levy period and a sub‑sector:

 (a) does not exceed the amount determined under paragraph 11(b) of the Levy Collection Act for the initial levy period and the sub‑sector; and

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

Regulations

 (3) Before the Governor‑General makes regulations for the purposes of subsection (1), the Minister must be satisfied that the regulations are consistent with the objectives stated in subsection (2).

 (4) Without limiting subsection (1), the method determined by the regulations for the initial levy period and a sub‑sector may have regard to determinations under paragraph 11(b) of the Levy Collection Act for the initial levy period and the sub‑sector.

Division 3—Caps on levy

17 Total caps on levy

Scheme levy cap

 (1) The total amount of levy that may be imposed for any levy period on all persons across all sub‑sectors must not exceed $250 million.

Note: This cap is the absolute maximum amount of levy that may be imposed for a levy period on all persons for all sub‑sectors.

Sub‑sector levy cap

 (2) The total amount of levy that may be imposed for any levy period on all persons in a particular sub‑sector must not exceed the cap that is the highest of the following:

 (a) $10 million;

 (b) the amount prescribed (or the amount worked out in accordance with a method prescribed) for the levy period and the sub‑sector by the regulations for the purposes of this paragraph;

unless the Minister makes a determination under section 1069D of the *Corporations Act 2001* for the levy period and the sub‑sector.

Note: This sub‑sector levy cap is an absolute maximum amount of levy that may be imposed for a levy period on all persons in the sub‑sector.

 (3) Subsection (2) does not apply to either of the following:

 (a) levy imposed by section 10;

 (b) levy imposed by section 8 of the *Financial Services Compensation Scheme of Last Resort Levy (AFCA Fees)* *Act 2021*.

Note: This levy relates to unpaid claims, and unpaid AFCA fees, for which reasonable recovery steps have been taken before the accumulation recovery day.

 (4) Subsection (2) has effect subject to subsection (1).

Part 3—Other matters

18 Treatment of partnerships, unincorporated associations and multiple trustees

Application to partnerships

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

Application to unincorporated associations

 (2) This Act applies to an unincorporated association as if the unincorporated association were a person. However, an obligation that would otherwise be imposed on the association:

 (a) is imposed on each member of the association’s committee of management instead; but

 (b) may be discharged by any of the members.

Application to RSE licensee that is a group of individual trustees

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

Application to multiple trustees treated as single entity

 (4) Subsections (5), (6) and (7) apply if a trustee or trustees of a trust are treated during a period as constituting:

 (a) a single legal entity (the ***notional entity***) under section 761FA of the *Corporations Act 2001*; or

 (b) a single person (also the ***notional entity***) under section 15 of the *National Consumer Credit Protection Act 2009*.

 (5) This Act applies to the notional entity during the period as if the notional entity were a person, but with the changes set out in subsections (6) and (7).

 (6) During the period, or any part of the period, that the trust has 2 or more trustees, an obligation that would otherwise be imposed on the notional entity by this Act is imposed instead on each trustee, but may be discharged by any of the trustees.

 (7) During the period, or any part of the period, that the trust has only one trustee, an obligation that would otherwise be imposed on the notional entity by this Act is imposed instead on that single trustee.

19 Regulations

 The Governor‑General may make regulations prescribing matters:

 (a) required or permitted by this Act to be prescribed by the regulations; or

 (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.