

# EXPOSURE DRAFT



EXPOSURE DRAFT

## Financial Services Compensation Scheme of Last Resort Levy Regulations 2022

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I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2022

David Hurley  
Governor-General

By His Excellency's Command

Stephen Jones [**DRAFT ONLY—NOT FOR SIGNATURE**]  
Assistant Treasurer  
Minister for Financial Services

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Preliminary **Part 1**

Section 1

## Part 1—Preliminary

### 1 Name

This instrument is the *Financial Services Compensation Scheme of Last Resort Levy Regulations 2022*.

### 2 Commencement

- (1) Each provision of this instrument 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 instrument	The later of: (a) the day after this instrument is registered; and (b) the day the <i>Financial Services Compensation Scheme of Last Resort Levy Act 2022</i> commences.	

Note: This table relates only to the provisions of this instrument as originally made.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

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

### 3 Authority

This instrument is made under the *Financial Services Compensation Scheme of Last Resort Levy Act 2022*.

### 4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) ASIC;
- (b) levy period;
- (c) qualifying period.

- (1) In this instrument:

*Act* means the *Financial Services Compensation Scheme of Last Resort Levy Act 2022*.

*admit to quotation* has the same meaning as in the *Corporations Act 2001*.

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## Part 1 Preliminary

### Section 4

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**amount of credit** has the same meaning as in subsection 3(2) of the National Credit Code.

**basic banking product** has the same meaning as in section 910A of the *Corporations Act 2001*.

**credit** has the same meaning as in the *National Consumer Credit Protection Act 2009*.

**credit contract** has the same meaning as in the *National Consumer Credit Protection Act 2009*.

**credit intermediaries sub-sector** means the sub-sector mentioned in paragraph 6(a).

**credit providers sub-sector** means the sub-sector mentioned in paragraph 6(b).

**entity metric** has the meaning given by section 12.

**financial product** has the same meaning as in Chapter 7 of the *Corporations Act 2001*.

**graduated levy component** has the meaning given by section 11.

**large securities exchange** has the same meaning as in the *ASIC Supervisory Cost Recovery Levy Regulations 2017*.

**leviable entity** has the same meaning as in the *ASIC Supervisory Cost Recovery Levy Act 2017*.

**licensed personal advice sub-sector** means the sub-sector mentioned in paragraph 6(c).

**medium amount credit contract** has the same meaning as in the National Credit Code.

**minimum levy component** has the meaning given by subsection 9(2).

**Ministerial determination** has the meaning given by subparagraph 15(b)(ii).

**not subject to the AFCA scheme**: a person is **not subject to the AFCA scheme** at a particular time if the person is not required (directly or indirectly) by a law of the Commonwealth to be a member of the AFCA scheme at that time.

**personal advice** has the same meaning as in Chapter 7 of the *Corporations Act 2001*.

**retail client** has the same meaning as in Chapter 7 of the *Corporations Act 2001*.

**securities dealers sub-sector** means the sub-sector mentioned in paragraph 6(d).

**security** has the meaning given by section 761A of the *Corporations Act 2001* for the purposes of Chapter 7 of that Act (disregarding Part 7.11 of that Chapter).

**small amount credit contract** has the same meaning as in the *National Consumer Credit Protection Act 2009*.

- (2) Other expressions used in this instrument that are defined in section 9 or 761A of the *Corporations Act 2001* have the same meaning as they have in those sections.

## **5 Rules about amounts**

- (1) A monetary amount worked out under this instrument must be rounded to the nearest whole dollar (rounding 50 cents upwards).
- (2) If any other amount worked out under this instrument is not a whole number, the amount must be rounded to the nearest whole number (rounding 0.5 upwards).

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## Part 2 Matters relating to imposition of levy

### Section 6

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## Part 2—Matters relating to imposition of levy

### 6 Sub-sectors subject to annual levy

Each of the following is a kind of sub-sector prescribed for the purposes of paragraph 8(1)(a) of the Act for the qualifying period for a levy period:

- (a) the credit intermediaries sub-sector (within the meaning of subsection 25(1) of the *ASIC Supervisory Cost Recovery Levy Regulations 2017*);
- (b) the credit providers sub-sector (within the meaning of subsection 26(1) of those regulations);
- (c) the licensees that provide personal advice on relevant financial products to retail clients sub-sector (within the meaning of subsection 43(1) of those regulations);
- (d) the securities dealers sub-sector (within the meaning of subsection 67(1) of those regulations).

### 7 General conditions for imposition of annual levy

For working out whether levy is imposed by subsection 8(1) of the Act on a person for a levy period, each of the following is a general condition prescribed for the purposes of paragraph 8(1)(b) of the Act:

- (a) the condition that the person is a leviable entity for the qualifying period for the levy period;
- (b) the condition that a law of the Commonwealth requires (directly or indirectly) the person to be a member of the AFCA scheme.

Note: For annual levy to be imposed on the person, subsection 8(1) of the Act requires each of these conditions to be met at any time during the qualifying period for the levy period.

### 8 General conditions for imposition of special levy

For working out whether levy is imposed by section 9 of the Act on a person for a levy period, each of the following is a general condition prescribed for the purposes of paragraph 9(d) of the Act:

- (a) the condition that the person is a leviable entity for the levy period or the previous levy period;
- (b) the condition that a law of the Commonwealth requires (directly or indirectly) the person to be a member of the AFCA scheme at any time during the levy period or the previous levy period.



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Amount of levy payable **Part 3**  
Amount of annual levy for members of a sub-sector **Division 1**

Section 9

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## Part 3—Amount of levy payable

### Division 1—Amount of annual levy for members of a sub-sector

#### 9 Amount of annual levy

- (1) For the purposes of subsection 12(1) of the Act, the amount of levy imposed by subsection 8(1) of the Act on a person for a levy period and a sub-sector is the sum of:
  - (a) the minimum levy component for the sub-sector; and
  - (b) the graduated levy component for the person for the levy period and the sub-sector.

Note: For the graduated levy component, see section 11.

- (2) The *minimum levy component* for each sub-sector is \$100.

#### 10 Levy component for persons who are deregistered or who cease to be a member of a sub-sector

- (1) Despite section 9, the amount of levy imposed by subsection 8(1) of the Act on a person for a levy period and a sub-sector is nil if:
  - (a) the person is required under section 8 of the Levy Collection Act to provide information to ASIC for the levy period; and
  - (b) before the end of the day on which the information is required to be so provided:
    - (i) the person is deregistered under Part 5A.1 of the *Corporations Act 2001*; or
    - (ii) ASIC publishes a notice regarding the proposed deregistration of the person under section 601AA or 601AB of that Act; and
  - (c) the person's registration is not reinstated before the end of that day.
- (2) Despite section 9, the amount of levy imposed by subsection 8(1) of the Act on a person for a levy period and a sub-sector is nil if:
  - (a) the person is required under section 8 of the Levy Collection Act to provide information to ASIC for the levy period; and
  - (b) before the end of the day on which the information is required to be so provided, the person ceases to be a member of the sub-sector; and
  - (c) the person does not resume being a member of the sub-sector before the end of that day.

#### 11 Graduated levy component

- (1) The *graduated levy component* for a person for a levy period and a sub-sector is the amount worked out using the formula:

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## Part 3 Amount of levy payable

### Division 1 Amount of annual levy for members of a sub-sector

#### Section 12

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$$\left[ \text{Sub-sector costs} - \left( \text{Minimum levy component} \times \text{Sub-sector population} \right) \right] \times \frac{\text{Graduated entity metric}}{\text{Sub-sector metric}}$$

where:

**graduated entity metric**, for the levy period and the sub-sector, means:

- (a) unless paragraph (b) applies—the person’s entity metric for the levy period and the sub-sector; or
- (b) if the sub-sector is the credit providers sub-sector—the difference between:
  - (i) the person’s entity metric for the levy period and the sub-sector; and
  - (ii) \$100,000,000.

Note: For the person’s entity metric, see section 12.

**sub-sector costs** means the initial claims, fees and costs estimate for the levy period and the sub-sector.

**sub-sector metric** means the sum of the amounts of graduated entity metric for the levy period and the sub-sector for all persons that form part of the sub-sector population.

**sub-sector population** means the difference between:

- (a) the sub-sector population (within the meaning of section 10 of the *ASIC Supervisory Cost Recovery Levy Regulations 2017*) for the sub-sector:
    - (i) for the financial year that is the qualifying period for the levy period; and
    - (ii) for the purposes of levy of the kind worked out under those regulations; and
  - (b) so many of that population as are not subject to the AFCA scheme at any time during that qualifying period.
- (2) However, if a component of the formula is nil or a negative amount, the amount of the **graduated levy component** is nil.

## 12 Entity metric

### *General rule*

- (1) A person’s **entity metric** for a levy period and a sub-sector is worked out as follows:

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<b>Working out the person’s entity metric</b>		
<b>Item</b>	<b>For this sub-sector:</b>	<b>The person’s entity metric is:</b>
1	credit intermediaries sub-sector	the number of credit representatives (within the meaning of the <i>National Consumer Credit Protection Act 2009</i> ) the person has at the end of the qualifying period for the levy period.
2	credit providers sub-sector	the gross amount of credit provided by the person in

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Amount of levy payable **Part 3**  
Amount of annual levy for members of a sub-sector **Division 1**

## Section 12

### Working out the person's entity metric

Item	For this sub-sector:	The person's entity metric is:
3	licensed personal advice sub-sector	<p>the qualifying period for the levy period under credit contracts (other than small amount credit contracts or medium amount credit contracts).</p> <p>subject to subsection (2), the number of relevant providers (within the meaning of section 910A of the <i>Corporations Act 2001</i>) that:</p> <ul style="list-style-type: none"><li>(a) are registered on the Register of Relevant Providers (within the meaning of section 910A of that Act) at the end of the qualifying period for the levy period; and</li><li>(b) are authorised to provide personal advice to retail clients on behalf of the person.</li></ul>
4	securities dealers sub-sector	<p>the total value of transactions in securities (as measured by the buy price plus the sale price of securities) that:</p> <ul style="list-style-type: none"><li>(a) are executed for the person on, or reported for the person to, a large securities exchange in the qualifying period for the levy period; and</li><li>(b) are reported by the operator of the large securities exchange to ASIC's Market Surveillance System; and</li><li>(c) are recognised by ASIC's Market Surveillance System as executed transactions.</li></ul> <p>For this purpose, 2 or more reports that relate to the same transaction, and contain the same information, are counted as one transaction.</p>

- (2) For the purposes of working out the number of relevant providers under item 3 of the table in subsection (1) for a person that also forms part of a sub-sector mentioned in section 64, 65 or 67 of the *ASIC Supervisory Cost Recovery Levy Regulations 2017* at any time in the qualifying period for the levy period, disregard relevant providers that only provide the following kinds of advice:

- (a) advice on financial products that are admitted to quotation;
- (b) advice on financial products that are traded on a prescribed foreign financial market (within the meaning of subregulation 7.7A.12D(2) of the *Corporations Regulations 2001*);
- (c) advice on basic banking products.

Note: Those sections of the *ASIC Supervisory Cost Recovery Levy Regulations 2017* describe the large futures exchange participants sub-sector, the large securities exchange participants sub-sector, and the securities dealer sub-sector.

### *Pro-rata adjustment of entity metric for certain sub-sectors*

- (3) Despite subsection (1), if:
- (a) the sub-sector is the credit intermediaries sub-sector, and the person holds a licence of the kind mentioned in subsection 25(1) of the *ASIC Supervisory*

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## Part 3 Amount of levy payable

### Division 1 Amount of annual levy for members of a sub-sector

#### Section 12

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*Cost Recovery Levy Regulations 2017* on only some of the days in the qualifying period for the levy period; or

- (b) the sub-sector is the licensed personal advice sub-sector, and the person holds a licence of the kind mentioned in subsection 43(1) of the *ASIC Supervisory Cost Recovery Levy Regulations 2017* on only some of the days in the qualifying period for the levy period;

the person's **entity metric** for the levy period and the sub-sector is worked out by multiplying the amount worked out under subsection (1) for the person for the levy period and the sub-sector by the following fraction:

$$\frac{\text{Counted days}}{\text{Number of days in the qualifying period for the levy period}}$$

where:

**counted days** means the number of days in the qualifying period for the levy period on which the person holds a licence of the kind referred to in paragraph (a) or (b) (as applicable).

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Amount of levy payable **Part 3**  
Amount of further levy across members of the sub-sector **Division 2**

Section 13

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## **Division 2—Amount of further levy across members of the sub-sector**

### **13 Amount of further levy—total levy does not exceed the sub-sector levy cap**

- (1) For the purposes of subsection 13(1) of the Act, the amount of levy imposed by subsection 8(2) of the Act on a person:
  - (a) for a levy period and a sub-sector; and
  - (b) because a revised claims, fees and costs estimate comes into force for the levy period and the sub-sector;is the amount worked out under subsection (2) of this section.
- (2) The amount is the difference between:
  - (a) the amount that would have been worked out under paragraph 9(1)(b) for the person for the levy period and the sub-sector if the sub-sector costs in subsection 11(1) were the revised claims, fees and costs estimate; and
  - (b) the sum of the following:
    - (i) the amount worked out under paragraph 9(1)(b) for the person for the levy period and the sub-sector (using the initial claims, fees and costs estimate for the levy period and the sub-sector);
    - (ii) each amount (if any) worked out under an earlier application of this subsection for an earlier revised claims, fees and costs estimate that comes into force for the levy period and the sub-sector.

### **14 Amount of special levy—total levy exceeds the sub-sector levy cap**

For the purposes of subsection 14(1) of the Act, the amount of levy imposed by subsection 8(3) of the Act 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, fees and costs estimate;
  - (ii) a determination under section 1069H of the *Corporations Act 2001*;

is the amount that would have been worked out under paragraph 9(1)(b) of this instrument for the person for the levy period and the sub-sector if the sub-sector costs in subsection 11(1) of this instrument were the amount specified, under paragraph 1069H(4)(b) of that Act, in that determination.

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Part 3 Amount of levy payable

Division 3 Amount of special levy across several sub-sectors

Section 15

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## Division 3—Amount of special levy across several sub-sectors

### 15 Amount of special levy—total levy exceeds the sub-sector levy cap

For the purposes of subsection 15(1) of the Act, the amount of levy imposed by section 9 of the Act 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, fees and costs estimate for a sub-sector (the **primary sub-sector**);
    - (ii) a determination under section 1069H of the *Corporations Act 2001* (the **Ministerial determination**) for the primary sub-sector; and
  - (c) because, at any time during the levy period or the previous levy period, the person is a member of a sub-sector (the **leviable sub-sector**) specified, under paragraph 1069H(5)(b) of that Act, in the Ministerial determination;
- is the amount worked out under section 16 or 17 of this instrument.

### 16 Amount of special levy—basic levy component applies to the leviable sub-sector

- (1) This section applies to the person if a provision of Part 3 of the *ASIC Supervisory Cost Recovery Levy Regulations 2017* provides that the basic levy component (within the meaning of those regulations) applies to the leviable sub-sector:
  - (a) for the financial year that is the qualifying period for the levy period; and
  - (b) for the purposes of levy of the kind worked out under those regulations.
- (2) The amount of levy imposed by section 9 of the Act on the person for the levy period and the leviable sub-sector is worked out using the formula:

$$\text{Total special levy to be imposed across all members of the leviable sub-sector} \times \frac{\text{Basic rate entity metric}}{\text{Sub-sector metric}}$$

where:

**basic rate entity metric** has the same meaning as in section 9 of the *ASIC Supervisory Cost Recovery Levy Regulations 2017* for the person for the leviable sub-sector:

- (a) for the financial year that is the qualifying period for the levy period; and
- (b) for the purposes of levy of the kind worked out under those regulations.

**sub-sector metric** means the difference between:

- (a) the sub-sector metric (within the meaning of section 9 of the *ASIC Supervisory Cost Recovery Levy Regulations 2017*) for the leviable sub-sector:
  - (i) for the financial year that is the qualifying period for the levy period; and
  - and
  - (ii) for the purposes of levy of the kind worked out under those regulations; and

# EXPOSURE DRAFT

Amount of levy payable **Part 3**

Amount of special levy across several sub-sectors **Division 3**

## Section 17

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- (b) the sum of the amounts of basic rate entity metric for all leviable entities forming part of the leviable sub-sector for that qualifying period that are not subject to the AFCA scheme at any time during that qualifying period.

***total special levy to be imposed across all members of the leviable sub-sector*** means that amount specified, under paragraph 1069H(5)(b) of the *Corporations Act 2001*, for the leviable sub-sector in the Ministerial determination.

- (3) However, if a component of the formula is nil or a negative amount, the amount of levy worked out using the formula is nil.

### **17 Amount of special levy—basic levy component does not apply to the leviable sub-sector**

- (1) This section applies to the person if section 16 does not apply to the person in relation to the leviable sub-sector.
- (2) The amount of levy imposed by section 9 of the Act on the person for the levy period and the leviable sub-sector is worked out using the formula:

$$\left[ \begin{array}{l} \text{Total special levy to be} \\ \text{imposed across all members} \\ \text{of the leviable sub-sector} \end{array} - \left( \begin{array}{l} \text{Minimum} \\ \text{levy} \\ \text{component} \end{array} \times \begin{array}{l} \text{Sub-sector} \\ \text{population} \end{array} \right) \right] \times \frac{\text{Graduated} \\ \text{entity metric}}{\text{Sub-sector} \\ \text{metric}}$$

where:

***graduated entity metric*** has the same meaning as in section 10 of the *ASIC Supervisory Cost Recovery Levy Regulations 2017* for the person for the leviable sub-sector:

- (a) for the financial year that is the qualifying period for the levy period; and  
(b) for the purposes of levy of the kind worked out under those regulations.

***sub-sector metric*** means the sum of the amounts of graduated entity metric:

- (a) for the financial year that is the qualifying period for the levy period; and  
(b) for the leviable sub-sector for all persons that form part of the sub-sector population.

***sub-sector population*** means the difference between:

- (a) the sub-sector population (within the meaning of section 10 of the *ASIC Supervisory Cost Recovery Levy Regulations 2017*) for the leviable sub-sector:  
(i) for the financial year that is the qualifying period for the levy period; and  
(ii) for the purposes of levy of the kind worked out under those regulations; and  
(b) so many of that population as are not subject to the AFCA scheme at any time during that qualifying period.

***total special levy to be imposed across all members of the leviable sub-sector*** means that amount specified, under paragraph 1069H(5)(b) of the *Corporations Act 2001*, for the leviable sub-sector in the Ministerial determination.

# EXPOSURE DRAFT

**Part 3** Amount of levy payable

**Division 3** Amount of special levy across several sub-sectors

## Section 17

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Note: For the minimum levy component, see subsection 9(2).

- (3) However, if a component of the formula is nil or a negative amount, the amount of levy worked out using the formula is nil.



# EXPOSURE DRAFT

Amount of levy payable **Part 3**  
Amount of levy for unpaid claims, and AFCA's unpaid fees, for complaints given to AFCA before the  
accumulation recovery day **Division 4**

Section 18

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## **Division 4—Amount of levy for unpaid claims, and AFCA's unpaid fees, for complaints given to AFCA before the accumulation recovery day**

### **18 Amount of levy**

For the purposes of subsection 16(1) of the Act, the amount of levy imposed by section 10 of the Act on a person for the first levy period is the amount worked out using the formula:

$$\text{Estimate} \times \frac{\text{Person's total income for the 2019-2020 income year}}{\text{Total income of all leviable persons for the 2019-2020 income year}}$$

where:

*estimate* means the estimate determined under section 11 of the Levy Collection Act for the first levy period.

*person's total income for the 2019-2020 income year* means the person's total income for that income year according to information reported to the Commissioner in the person's income tax return (within the meaning of the *Income Tax Assessment Act 1997*) for that income year.

*total income of all leviable persons for the 2019-2020 income year* means the sum of those total incomes for that income year for all persons on which levy is imposed by section 10 of the Act.