

EXPOSURE DRAFT

2019-2020-2021

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Financial Services Compensation Scheme of Last Resort Levy (Collection) Bill 2021

No. , 2021

(Treasury)

**A Bill for an Act to provide for the collection of levy
imposed on members of the AFCA scheme and
related persons, and for related purposes**

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1 **A Bill for an Act to provide for the collection of levy**
2 **imposed on members of the AFCA scheme and**
3 **related persons, and for related purposes**

4 The Parliament of Australia enacts:

5 **Part 1—Preliminary**
6

7 **1 Short title**

8 *This Act is the Financial Services Compensation Scheme of Last*
9 *Resort Levy (Collection) Act 2021.*

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Part 1 Preliminary

Section 2

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

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.	

- 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 Simplified outline of this Act**

14

This Act is about the collection of levy imposed by:

15

- (a) the *Financial Services Compensation Scheme of Last Resort Levy Act 2021*; and

16

17

- (b) the *Financial Services Compensation Scheme of Last Resort Levy (AFCA Fees) Act 2020*.

18

19

Persons on whom levy is to be imposed may be notified that they must provide information to ASIC for a levy period.

20

21

There are rules dealing with when information that is required to be given is not given, is unsatisfactory, or is false or misleading.

22

2

*Financial Services Compensation Scheme of Last Resort Levy
(Collection) Bill 2021*

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1 ASIC must give a notice specifying when levy is due for payment.

2 Late payment penalty will be payable if levy remains unpaid after
3 it becomes due for payment.

4 **4 Act binds the Crown**

5 (1) This Act binds the Crown in right of each of the States, of the
6 Australian Capital Territory and of the Northern Territory.
7 However, it does not bind the Crown in right of the
8 Commonwealth.

9 (2) This Act does not make the Crown liable to a pecuniary penalty or
10 to be prosecuted for an offence.

11 **5 External Territories**

12 This Act extends to every external Territory.

13 **6 Extraterritorial application**

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

16 **7 Definitions**

17 In this Act:

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

20 *AFCA* (short for the Australian Financial Complaints Authority)
21 has the same meaning as in Chapter 7 of the *Corporations Act*
22 *2001*.

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

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Part 1 Preliminary

Section 7

- 1 **AFCA scheme** has the same meaning as in Chapter 7 of the
2 *Corporations Act 2001*.
- 3 **AFCA's unpaid fees** has the same meaning as in Chapter 7 of the
4 *Corporations Act 2001*.
- 5 **amount** includes a nil amount.
- 6 **approved form** has the meaning given by section 29.
- 7 **ASIC** means the Australian Securities and Investments
8 Commission.
- 9 **capital reserve** means an amount equal to the lesser of:
10 (a) \$5 million; and
11 (b) any amount prescribed by the regulations for the purposes of
12 this paragraph.
- 13 Note: Levy equal to this amount may be imposed (see subsections 8(1) and
14 12(2) of the *Financial Services Compensation Scheme of Last Resort
15 Levy Act 2021* and subparagraphs 9(1)(b)(ii) and (iii) of this Act). The
16 CSLR operator will then be paid an amount equal to that levy for it to
17 apply as described in section 1069J of the *Corporations Act 2001*.
- 18 **CSLR operator** has the same meaning as in Chapter 7 of the
19 *Corporations Act 2001*.
- 20 **late payment penalty** means penalty payable under section 14.
- 21 **levy** means:
22 (a) levy imposed by the *Financial Services Compensation
23 Scheme of Last Resort Levy Act 2021*; or
24 (b) levy imposed by the *Financial Services Compensation
25 Scheme of Last Resort Levy (AFCA Fees) Act 2020*.
- 26 **levy month** means one of the 12 months of the calendar year.
- 27 **levy period** has the same meaning as in the *Financial Services
28 Compensation Scheme of Last Resort Levy Act 2021*.

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Preliminary **Part 1**

Section 7

1 ***offence against this Act*** includes an offence against Chapter 7 of
2 the *Criminal Code* that relates to this Act.

3 ***person*** has a meaning affected by sections 25, 26, 27 and 28.

4 ***relevant AFCA determination*** has the same meaning as in
5 Chapter 7 of the *Corporations Act 2001*.

6 ***shortfall penalty*** means penalty payable under section 15.

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

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Part 2 Pre-imposition information and estimates of claims and costs

Section 8

Part 2—Pre-imposition information and estimates of claims and costs

8 Information required from levy payers before a levy period

- (1) ASIC may, within 4 months before the start of a levy period, notify a person in writing that this section applies to the person for the levy period.
- (2) The person must, for the levy period:
 - (a) provide to ASIC information in the approved form and in the manner (if any) determined under paragraph (4)(b); and
 - (b) do so by:
 - (i) unless subparagraph (ii) applies—28 days after the day the person is notified under subsection (1) for the levy period; or
 - (ii) if ASIC has determined a later day under paragraph (4)(a)—that day.
- (3) An approved form may require:
 - (a) information relating to the person; and
 - (b) information relating to one or more other persons on whom levy may be imposed for the levy period.
- (4) ASIC may, by notice published on ASIC’s website, determine:
 - (a) the day on which the information must be provided to ASIC; and
 - (b) the manner in which ASIC requires the information to be provided.

A notice under this subsection must state the date on which the notice was published on ASIC’s website.
- (5) A day determined by ASIC under paragraph (4)(a):

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- 1 (a) must be 2 months or more after the day on which the notice
2 is first published on ASIC's website; and
3 (b) may be a different day for different classes of persons on
4 whom levy may be imposed for the levy period.

5 *Offence*

- 6 (6) A person commits an offence if:
7 (a) the person is subject to a requirement under subsection (2);
8 and
9 (b) the person omits to do an act; and
10 (c) the omission breaches the requirement.

11 Penalty: 10 penalty units.

- 12 (7) An offence against subsection (6) is an offence of strict liability.

13 Note: For strict liability, see section 6.1 of the *Criminal Code*.

- 14 (8) Subsection (6) does not apply to the extent that the person has a
15 reasonable excuse.

16 Note: A defendant bears an evidential burden in relation to the matters in
17 this subsection (see subsection 13.3(3) of the *Criminal Code*).

- 18 (9) Information provided under this section in the approved form is
19 taken, for the purposes of the *Corporations Act 2001*, not to be a
20 document lodged with ASIC.

21 **9 Initial estimate of claims and costs for a levy period**

- 22 (1) The CSLR operator may, by legislative instrument and within 4
23 months before the start of a levy period, determine for the levy
24 period and a sub-sector an estimate that is the sum of:
25 (a) the specified amount equal to:
26 (i) the total amount of compensation that the CSLR
27 operator reasonably believes will be payable under
28 section 1062 of the *Corporations Act 2001* for the levy
29 period and the sub-sector; less

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Part 2 Pre-imposition information and estimates of claims and costs

Section 9

- 1 (ii) any compensation referred to in paragraph 11(a) of this
2 Act for the levy period and the sub-sector; and
- 3 (b) the specified amount that is the portion of the sum of the
4 following that the CSLR operator reasonably believes will be
5 attributable to the sub-sector:
- 6 (i) the CSLR operator's expected administrative costs for
7 the levy period;
- 8 (ii) for each of the first 3 levy periods—the amount equal to
9 approximately one third of the capital reserve for the
10 purposes of establishing the capital reserve;
- 11 (iii) for each later levy period—the amount (if any) equal to
12 that necessary to restore the capital reserve;
- 13 (iv) for the first levy period—the amount equal to the CSLR
14 operator's expected establishment costs; and
- 15 (c) the specified amount that is the portion of ASIC's
16 administrative costs notified under subsection (3) for the levy
17 period that is attributable to the sub-sector in accordance with
18 the method prescribed by the regulations for the purposes of
19 this paragraph; and
- 20 (d) any specified shortfall worked out under subsection (4) for an
21 earlier levy period and the sub-sector;
- 22 less any specified excess worked out under subsection (4) for an
23 earlier levy period and the sub-sector.

24 Note: A single instrument may determine estimates for several sub-sectors.

- 25 (2) The legislative instrument must include each of the amounts
26 referred to in subparagraphs (1)(b)(i) to (iv).

ASIC's administrative costs

- 27
- 28 (3) Before a levy period, ASIC may notify the CSLR operator of the
29 administrative costs that ASIC has incurred, or expects to incur, for
30 the levy period in performing its functions:
- 31 (a) under this Act; and
32 (b) under Part 7.10B of the *Corporations Act 2001*.

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1 These administrative costs for the first levy period could include
2 costs necessary for ASIC to establish systems to enable it to
3 perform these functions.

4 *Reconciliation for earlier levy periods*

- 5 (4) The CSLR operator may, for an earlier levy period and a
6 sub-sector, work out whether the total levy imposed by
7 subsections 8(1) and (2) of the *Financial Services Compensation*
8 *Scheme of Last Resort Levy Act 2021* for that earlier levy period on
9 all persons in the sub-sector:
10 (a) falls short of; or
11 (b) exceeds;
12 the most recent estimate determined under this section or section
13 10 for that earlier levy period and the sub-sector.
- 14 (5) The same shortfall or excess worked out under subsection (4) for a
15 particular earlier levy period and sub-sector is not to be included in
16 an estimate under subsection (1) more than once.

17 **10 Revised estimate of claims and costs for a levy period**

- 18 (1) The CSLR operator may:
19 (a) after the start of a levy period; and
20 (b) after re-calculating the amounts referred to in subsection 9(1)
21 for the levy period and a sub-sector;
22 determine for the levy period and the sub-sector a revised estimate
23 using those re-calculated amounts.

24 Note: A single instrument may determine revised estimates for several
25 sub-sectors.

- 26 (2) The determination must include each of the re-calculated amounts
27 referred to in paragraph (1)(b) (including each of the re-calculated
28 amounts referred to in subparagraphs 9(1)(b)(i) to (iv)).
- 29 (3) The determination may specify whether further levy needs to be
30 imposed under subsection 8(2) of the *Financial Services*

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Part 2 Pre-imposition information and estimates of claims and costs

Section 11

1 *Compensation Scheme of Last Resort Levy Act 2021* for the levy
2 period and the sub-sector.

3 (4) The determination must be made as a legislative instrument if the
4 determination so specifies that further levy needs to be imposed.
5 Otherwise, the determination may be made as a legislative
6 instrument or a notifiable instrument.

7 Note: If the determination is made as a notifiable instrument, any shortfall in
8 levy can only be recovered:

9 (a) as annual levy for a later levy period, which will require a
10 legislative instrument to be made under subsection 9(1); or

11 (b) as further levy resulting from a legislative instrument made by
12 the Minister under section 1069D of the *Corporations Act 2001*.

13 **11 Unpaid claims for which reasonable recovery steps have been** 14 **taken before the accumulation recovery day**

15 The CSLR operator may, by legislative instrument and within 4
16 months before the start of the first levy period that starts on or after
17 the accumulation recovery day (the *initial levy period*):

18 (a) specify the total amount of compensation that:

19 (i) will be payable under section 1062 of the *Corporations*
20 *Act 2001* for the initial levy period; and

21 (ii) relates to determinations made by AFCA that became
22 relevant AFCA determinations before the accumulation
23 recovery day; and

24 (b) determine for the initial levy period and a sub-sector an
25 amount equal to the portion of that total that the CSLR
26 operator reasonably believes is attributable to the sub-sector.

27 Note: A single instrument may determine amounts for several sub-sectors.

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1 **12 AFCA complaints handling fees**

2 *Determination of AFCA's accumulated unpaid fees*

- 3 (1) The CSLR operator may, by legislative instrument and within 4
4 months before the start of the first levy period that starts on or after
5 the accumulation recovery day (the *initial levy period*):
6 (a) specify the amount of AFCA's accumulated unpaid fees; and
7 (b) determine for the initial levy period and a sub-sector an
8 amount equal to the portion of that amount that the CSLR
9 operator reasonably believes is attributable to the sub-sector.

10 Note: A single instrument may determine amounts for several sub-sectors.

11 *Initial estimate of AFCA's unpaid fees*

- 12 (2) The CSLR operator may, by legislative instrument and within 4
13 months before the start of any levy period, determine for the levy
14 period and a sub-sector an estimate that is the sum of:
15 (a) the specified amount that is the portion of the sum of
16 AFCA's unpaid fees expected for each of the months in the
17 levy period that the CSLR operator reasonably believes will
18 be attributable to the sub-sector; and
19 (b) any specified shortfall worked out under subsection (3) for an
20 earlier levy period and the sub-sector;
21 less any specified excess worked out under subsection (3) for an
22 earlier levy period and the sub-sector.

23 Note 1: A single instrument may determine estimates for several sub-sectors.

24 Note 2: This subsection can apply to the initial levy period as well as other
25 levy periods.

26 *Initial estimate of AFCA's unpaid fees—reconciliation for earlier*
27 *levy periods*

- 28 (3) The CSLR operator may, for an earlier levy period and a
29 sub-sector, work out whether the total levy imposed by section 9 of
30 the *Financial Services Compensation Scheme of Last Resort Levy*

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Part 2 Pre-imposition information and estimates of claims and costs

Section 12

- 1 *(AFCA Fees) Act 2021* for that earlier levy period on all persons in
2 the sub-sector:
- 3 (a) falls short of; or
4 (b) exceeds;
- 5 the most recent estimate determined under subsection (2) or (5) of
6 this section for that earlier levy period and the sub-sector.
- 7 (4) The same shortfall or excess worked out under subsection (3) for a
8 particular earlier levy period and sub-sector is not to be included in
9 an estimate under subsection (2) more than once.
- 10 *Revised estimate of AFCA's unpaid fees*
- 11 (5) The CSLR operator may, by legislative instrument:
- 12 (a) after the start of a levy period; and
13 (b) after re-calculating the amounts referred to in subsection (2)
14 for the levy period and a sub-sector;
- 15 determine for the levy period and the sub-sector a revised estimate
16 using those re-calculated amounts.
- 17 Note: A single instrument may determine revised estimates for several
18 sub-sectors.
- 19 (6) A determination under subsection (5) may specify whether further
20 levy needs to be imposed under subsection 9(2) of the *Financial*
21 *Services Compensation Scheme of Last Resort Levy (AFCA Fees)*
22 *Act 2021* for the levy period and the sub-sector.

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1 **Part 3—Payment of levy, late payment penalty and**
2 **shortfall penalty**
3

4 **13 When levy due for payment**

5 (1) Levy payable by a person for a levy period is due and payable on a
6 business day that is:

7 (a) specified in a notice that ASIC gives to the person in relation
8 to the levy period; and

9 (b) not earlier than 30 days after the day on which the notice is
10 given.

11 Note: A further notice will be given to the person if any further levy is
12 imposed on the person for the levy period (for example, see
13 subsection 8(2) or (3) or section 9 of the *Financial Services*
14 *Compensation Scheme of Last Resort Levy Act 2021*).

15 (2) If the person nominates another person by written notice given to
16 ASIC:

17 (a) the notice under paragraph (1)(a) may be given to the
18 nominated person; and

19 (b) the obligation imposed on the person by subsection (1) may
20 be discharged by the nominated person.

21 (3) To avoid doubt, subsection (2) does not otherwise affect the
22 person's liability to pay levy.

23 **14 Late payment penalty**

24 (1) If any levy payable by a person remains unpaid at the start of a
25 levy month after the levy became due for payment, the person is
26 liable to pay the Commonwealth, for that levy month, a penalty
27 worked out using the following formula:

28
$$\text{Amount of the levy remaining} \times \frac{0.2}{12}$$

unpaid at the start of the levy month

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Part 3 Payment of levy, late payment penalty and shortfall penalty

Section 15

- 1 (2) Late payment penalty for a levy month is due and payable at the
2 end of the levy month.
- 3 (3) However, ASIC may, by written notice given to the person before,
4 on or after the day on which late payment penalty would be due
5 and payable apart from this subsection, specify a later day as the
6 day on which the late payment penalty is due and payable. The
7 notice has effect, and is taken always to have had effect, according
8 to its terms.

15 Shortfall penalty

- 9
- 10 (1) Subsection (3) applies if:
- 11 (a) a person makes a statement to ASIC of information provided
12 under section 8; and
- 13 (b) the statement is false or misleading in a material particular,
14 whether because of things in it or omitted from it; and
- 15 (c) the amount of levy the person paid (the *paid amount*) was
16 worked out on the basis of the statement; and
- 17 (d) the paid amount fell short of the levy payable by the person
18 for the levy period (worked out on the basis of the statement
19 not being false or misleading).
- 20 (2) However, subsection (3) does not apply if the person took
21 reasonable steps to ensure the statement was correct.
- 22 (3) The person is liable to pay, by way of penalty, an amount equal to
23 twice the amount of the shortfall worked out under
24 paragraph (1)(d).
- 25 (4) Shortfall penalty is due and payable on a business day that is:
- 26 (a) specified in a notice that ASIC gives to the person in relation
27 to the levy period; and
- 28 (b) not earlier than 30 days after the day on which the notice is
29 given.
- 30 (5) However, ASIC may, by written notice given to the person before,
31 on or after the day on which shortfall penalty would be due and

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1 payable apart from this subsection, specify a later day as the day on
2 which the shortfall penalty is due and payable. The notice has
3 effect, and is taken always to have had effect, according to its
4 terms.

5 **16 Payment of levy, late payment penalty and shortfall penalty**

6 Each of the following are payable to ASIC on behalf of the
7 Commonwealth:

- 8 (a) levy;
- 9 (b) late payment penalty;
- 10 (c) shortfall penalty.

11 **17 Waiver of levy, late payment penalty and shortfall penalty**

12 (1) ASIC may, on behalf of the Commonwealth, waive the payment of
13 the whole or a part of one or more of the following amounts
14 payable by a person, if ASIC is satisfied that there are exceptional
15 circumstances justifying the waiver:

- 16 (a) levy;
- 17 (b) late payment penalty;
- 18 (c) shortfall penalty.

19 (2) ASIC may do so on its own initiative or on written application by a
20 person.

21 (3) Applications must be in the approved form.

22 **18 Recovery of levy, late payment penalty and shortfall penalty**

23 (1) The following amounts may be recovered by the Commonwealth
24 from a person as debts due to the Commonwealth:

- 25 (a) levy that is due and payable by the person;
- 26 (b) late payment penalty that is due and payable by the person;
- 27 (c) shortfall penalty that is due and payable by the person.

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Part 3 Payment of levy, late payment penalty and shortfall penalty

Section 19

- 1 (2) ASIC is authorised, as agent of the Commonwealth, to bring
2 proceedings in the name of the Commonwealth for the recovery of
3 a debt due to the Commonwealth of a kind mentioned in
4 subsection (1).

5 **19 Substantiation notices**

- 6 (1) This section applies to a person if:
7 (a) the person has provided to ASIC, under section 8,
8 information (***required information***) relating to the person or
9 to one or more other persons on whom levy may be imposed;
10 or
11 (b) information (also ***required information***) relating to the
12 person is to be used by ASIC for the purposes of calculating
13 the levy payable by the person.
- 14 (2) ASIC may give the person a written notice that requires the person
15 to do either or both of the following:
16 (a) give to ASIC, within the period and in the manner and form
17 specified in the notice, information that could be capable of
18 substantiating the required information;
19 (b) produce to ASIC, within the period and in the manner and
20 form specified in the notice, documents that could be capable
21 of substantiating the required information.
- 22 (3) The notice must:
23 (a) name the person to whom it is given; and
24 (b) specify the information to which it relates; and
25 (c) explain the effect of sections 20 and 21.

26 **20 Compliance with substantiation notice**

- 27 (1) A person who is given a substantiation notice must comply with
28 the notice:
29 (a) within the period specified in the notice; or
30 (b) within such further time as ASIC allows under
31 subsection (3).

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- 1 (2) A person given a substantiation notice under section 19 may apply
2 to ASIC for further time to comply with the notice. An application
3 must be in writing and made within 21 days after the notice is
4 given to the person.
- 5 (3) ASIC may, by written notice given to the person, extend the period
6 within which the person must comply with the notice.

21 Failure to comply with substantiation notice

- 8 (1) A person commits an offence if:
9 (a) the person is subject to a requirement under section 20; and
10 (b) the person refuses or fails to comply with the requirement.
- 11 Penalty: 10 penalty units.
- 12 (2) An offence against subsection (1) is an offence of strict liability.
13 Note: For strict liability, see section 6.1 of the *Criminal Code*.
- 14 (3) Subsection (1) does not apply if the person complies with the
15 notice to the extent to which the person is capable of complying
16 with it.
17 Note: A defendant bears an evidential burden in relation to the matters in
18 this subsection (see subsection 13.3(3) of the *Criminal Code*).
- 19 (4) Subsection (1) does not apply to the extent that the person has a
20 reasonable excuse.
21 Note: A defendant bears an evidential burden in relation to the matters in
22 this subsection (see subsection 13.3(3) of the *Criminal Code*).
- 23 (5) It is a reasonable excuse for an individual to refuse or fail to
24 answer a question or produce a document on the ground that to do
25 so might tend to incriminate the individual or expose the individual
26 to a penalty.

22 Exempting laws ineffective

- 28 (1) Nothing in a law passed before the commencement of this section
29 exempts a person from liability to pay levy.

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Part 3 Payment of levy, late payment penalty and shortfall penalty

Section 23

- 1 (2) If a law (including a provision of a law) passed after the
2 commencement of this section purports to exempt a person from:
3 (a) liability to pay taxes under laws of the Commonwealth; or
4 (b) liability to pay certain taxes under laws of the
5 Commonwealth that would otherwise include levy;
6 the law does not operate to exempt the person from liability to pay
7 levy unless the exemption expressly refers to levy under this Act.
- 8 (3) To avoid doubt, this section does not apply in relation to an
9 exemption under this Act or the *Financial Services Compensation*
10 *Scheme of Last Resort Levy Act 2021*.

23 Internal review of certain decisions

- 11
- 12 (1) A person who is affected by a decision of ASIC under section 17
13 may, if dissatisfied with the decision, request ASIC to reconsider
14 the decision.
- 15 (2) The request must:
16 (a) be made by notice given to ASIC in the approved form
17 within:
18 (i) the period of 21 days after the day on which the person
19 first receives notice of the decision; or
20 (ii) any further period that ASIC allows; and
21 (b) set out the reasons for making the request.
- 22 (3) After receiving the request, ASIC must review the decision or
23 cause the decision to be reviewed by a person:
24 (a) to whom ASIC's power under this section is delegated; and
25 (b) who was not involved in the making of the decision.
- 26 (4) Within 30 business days after receiving the request, the person
27 reviewing the decision must:
28 (a) reconsider the decision; and
29 (b) confirm, revoke or vary the decision, as the person thinks fit.

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Payment of levy, late payment penalty and shortfall penalty **Part 3**

Section 24

1 (5) If the person reviewing the decision does not confirm, revoke or
2 vary the decision within the period of 30 business days after
3 receiving the request, the person is taken to have confirmed the
4 decision under subsection (4) immediately after the end of that
5 period.

6 (6) The person reviewing the decision must give a notice in writing to
7 the person that made the request that sets out the result of the
8 reconsideration of the decision and gives the reasons for that
9 reconsideration.

10 **24 Administrative Appeals Tribunal review of certain decisions**

11 Applications may be made to the Administrative Appeals Tribunal
12 for review of:

- 13 (a) a decision of ASIC that has been confirmed or varied under
14 subsection 23(4) or a decision that has been taken to have
15 been confirmed under subsection 23(5); or
16 (b) a decision of ASIC under subsection 23(4) to revoke a
17 decision.

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Part 4 Other matters

Section 25

1 **Part 4—Other matters**
2

3 **25 Treatment of partnerships**

- 4 (1) This Act applies to a partnership as if it were a person, but with the
5 changes set out in this section.
- 6 (2) An obligation that would otherwise be imposed on the partnership
7 by this Act is imposed on each partner instead, but may be
8 discharged by any of the partners.
- 9 (3) An offence against this Act that is committed by a partnership is
10 taken to have been committed by each partner in the partnership, at
11 the time the offence was committed, who:
12 (a) did the relevant act or made the relevant omission; or
13 (b) aided, abetted, counselled or procured the relevant act or
14 omission; or
15 (c) was in any way knowingly concerned in, or party to, the
16 relevant act or omission (whether directly or indirectly and
17 whether by any act or omission of the partner).

18 **26 Treatment of unincorporated associations**

- 19 (1) This Act applies to an unincorporated association as if it were a
20 person, but with the changes set out in this section.
- 21 (2) An obligation that would otherwise be imposed on the association
22 by this Act is imposed on each member of the association's
23 committee of management instead, but may be discharged by any
24 of the members.
- 25 (3) An offence against this Act that would otherwise have been
26 committed by the unincorporated association is taken to have been
27 committed by each member of the association's committee of
28 management, at the time the offence was committed, who:
29 (a) did the relevant act or made the relevant omission; or

- 1 (b) aided, abetted, counselled or procured the relevant act or
2 omission; or
3 (c) was in any way knowingly concerned in, or party to, the
4 relevant act or omission (whether directly or indirectly and
5 whether by any act or omission of the member).

6 **27 Treatment of RSE licensees**

- 7 (1) This Act applies to an RSE licensee that is a group of individual
8 trustees as if the group were a person, but with the changes set out
9 in this section.
- 10 (2) An obligation that would otherwise be imposed on the group by
11 this Act is imposed on each individual, but may be discharged by
12 any of the individuals.
- 13 (3) An offence against this Act that would otherwise have been
14 committed by the group is taken to have been committed by each
15 individual trustee, at the time the offence was committed, who:
16 (a) did the relevant act or made the relevant omission; or
17 (b) aided, abetted, counselled or procured the relevant act or
18 omission; or
19 (c) was in any way knowingly concerned in, or party to, the
20 relevant act or omission (whether directly or indirectly and
21 whether by any act or omission of the individual).

22 **28 Treatment of multiple trustees**

- 23 (1) This section applies if the trustee or trustees of a trust are treated
24 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*.
- 29 (2) This Act applies to the notional entity during the period as if the
30 notional entity were a person, but with the changes set out in this
31 section.

EXPOSURE DRAFT

Part 4 Other matters

Section 29

- 1 (3) During the period, or any part of the period, that the trust has 2 or
2 more trustees:
- 3 (a) an obligation that would otherwise be imposed on the
4 notional entity by this Act is imposed instead on each trustee,
5 but may be discharged by any of the trustees; and
- 6 (b) an offence against this Act that would otherwise have been
7 committed by the notional entity is taken to have been
8 committed by each trustee, at the time the offence was
9 committed, who:
- 10 (i) did the relevant act or made the relevant omission; or
11 (ii) aided, abetted, counselled or procured the relevant act or
12 omission; or
- 13 (iii) was in any way knowingly concerned in, or party to, the
14 relevant act or omission (whether directly or indirectly
15 and whether by any act or omission of the trustee).
- 16 (4) During the period, or any part of the period, that the trust has only
17 one trustee:
- 18 (a) an obligation that would otherwise be imposed on the
19 notional entity by this Act is imposed instead on that single
20 trustee; and
- 21 (b) an offence against this Act that would otherwise have been
22 committed by the notional entity is taken to have been
23 committed by that single trustee.

24 **29 Approved forms**

- 25 (1) Information, a notice, statement, application or other document
26 under this Act is in the ***approved form*** if, and only if:
- 27 (a) it is in the form prescribed in the regulations, or, if the
28 regulations do not prescribe a form, it is in a form approved,
29 in writing, by ASIC; and
- 30 (b) it is provided in the manner prescribed in the regulations, or,
31 if the regulations do not prescribe a manner, in the manner
32 required by ASIC (which may include electronically).

EXPOSURE DRAFT

Other matters **Part 4**

Section 30

- 1 (2) A different approved form may be prescribed, or approved, for
2 different classes of person.

3 **30 Regulations**

- 4 The Governor-General may make regulations prescribing matters:
5 (a) required or permitted by this Act to be prescribed by the
6 regulations; or
7 (b) necessary or convenient to be prescribed for carrying out or
8 giving effect to this Act.