

# 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 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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1 **A Bill for an Act to impose levy on members of the**  
2 **AFCA scheme and related persons, 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 *Financial Services Compensation Scheme of Last**  
9 *Resort Levy Act 2021.*

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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.

6

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**Commencement information**

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**Column 1****Column 2****Column 3****Provisions****Commencement****Date/Details**

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1. The whole of  
this Act

The later of:  
(a) 1 January 2022; and  
(b) the day after this Act receives the Royal  
Assent.

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7

Note: This table relates only to the provisions of this Act as originally  
enacted.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.

8

9

- 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.

20 **5 Extra-territorial application**

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

1     **6 Act does not impose levy on property of a State**

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

4             (2) In this section:

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

7     **7 Definitions**

8             In this Act:

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

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

13                     *amount* includes a nil amount.

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

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

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

20                     *levy* means:

- 21                         (a) levy imposed by this Act (see Division 1 of Part 2); or  
22                         (b) levy imposed by the *Financial Services Compensation*  
23                         *Scheme of Last Resort Levy (AFCA Fees) Act 2021*.

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

26                     *levy period* means:

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## Part 1 Preliminary

### Section 7

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- 1 (a) unless paragraph (b) applies—a financial year starting on or  
2 after the day this Act commences; or  
3 (b) a period that:  
4 (i) starts on or after the day this Act commences; and  
5 (ii) is prescribed by (or worked out in accordance with a  
6 method prescribed by) the regulations for the purposes  
7 of this subparagraph.

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

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

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

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

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

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

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



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1 **Part 2—Levy**

2 **Division 1—Imposition of levy**

3 **8 Imposition of levy—main cases**

4 *Annual levy*

- 5 (1) Levy is imposed on a person for a levy period if, at any time during  
6 the 12 months before the start of the levy period:
- 7 (a) the person is a member of a sub-sector of a kind prescribed  
8 by the regulations for the purposes of this paragraph; and
  - 9 (b) the general conditions (if any) prescribed by the regulations  
10 for the purposes of this paragraph are met for the person and  
11 the levy period; and
  - 12 (c) the person is not in a class of persons prescribed by the  
13 regulations for the purposes of this paragraph.

14 *Further levy for a sub-sector—total levy does not exceed the*  
15 *sub-sector levy cap*

- 16 (2) Further levy is imposed on the person for the levy period and the  
17 sub-sector if:
- 18 (a) immediately before a revised claims and costs estimate  
19 comes into force for the levy period and the sub-sector, the  
20 sub-sector levy cap for the levy period and the sub-sector has  
21 not been exceeded; and
  - 22 (b) the revised claims and costs estimate specifies that further  
23 levy needs to be imposed by this subsection for the levy  
24 period and the sub-sector.

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

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



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- 1 (d) the general conditions (if any) prescribed by the regulations  
2 for the purposes of this paragraph are met for the person and  
3 the levy period; and  
4 (e) the person is not in a class of persons prescribed by the  
5 regulations for the purposes of this paragraph.

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

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

## 16 **10 Imposition of levy—unpaid claims for which reasonable recovery** 17 **steps have been taken before the accumulation recovery** 18 **day**

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

- 23 (a) the person is a member of a sub-sector of a kind prescribed  
24 by the regulations for the purposes of this paragraph; and  
25 (b) the general conditions (if any) prescribed by the regulations  
26 for the purposes of this paragraph are met for the person and  
27 the initial levy period; and  
28 (c) the person is not in a class of persons prescribed by the  
29 regulations for the purposes of this paragraph.

## 30 **11 By whom levy payable**

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

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## Part 2 Levy

### Division 2 Amount of levy

#### Section 12

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1 **Division 2—Amount of levy**

2 **12 Amount of annual levy**

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

7 *Objectives for working out amounts of annual levy*

- 8 (2) The objectives are that the total amount of levy imposed by  
9 subsection 8(1) on all persons for a levy period and a sub-sector:  
10 (a) does not exceed the initial claims and costs estimate for the  
11 levy period and the sub-sector; and  
12 (b) does not cause the sub-sector levy cap for the levy period and  
13 the sub-sector to be exceeded; and  
14 (c) does not cause the scheme levy cap to be exceeded.

15 *Regulations*

- 16 (3) Before the Governor-General makes regulations for the purposes of  
17 subsection (1), the Minister must be satisfied that the regulations  
18 are consistent with the objectives stated in subsection (2).
- 19 (4) Without limiting subsection (1), the method determined by the  
20 regulations for a levy period and a sub-sector may have regard to  
21 the initial claims and costs estimate for the levy period and the  
22 sub-sector.

23 **13 Amount of further levy—total levy does not exceed the sub-sector  
24 levy cap**

- 25 (1) The amount of levy imposed by subsection 8(2) on a person:  
26 (a) for a levy period and a sub-sector; and  
27 (b) because a revised claims and costs estimate comes into force  
28 for the levy period and the sub-sector;

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

3 *Objectives for working out further amounts of levy*

- 4 (2) The objectives are that the total amount of levy imposed by  
5 subsection 8(2) on all persons for a levy period, a sub-sector and a  
6 revised claims and costs estimate:
- 7 (a) does not exceed the difference between:
- 8 (i) the revised claims and costs estimate; and  
9 (ii) the total amount of levy paid that was earlier imposed  
10 by subsection 8(1) on all persons for the levy period and  
11 the sub-sector; and
- 12 (b) does not cause the sub-sector levy cap for the levy period and  
13 the sub-sector to be exceeded; and  
14 (c) does not cause the scheme levy cap to be exceeded.

15 *Regulations*

- 16 (3) Before the Governor-General makes regulations for the purposes of  
17 subsection (1), the Minister must be satisfied that the regulations  
18 are consistent with the objectives stated in subsection (2).
- 19 (4) Without limiting subsection (1), the method determined by the  
20 regulations for a levy period and a sub-sector may have regard to  
21 the revised claims and costs estimate for the levy period and the  
22 sub-sector.

23 **14 Amount of further levy—total levy exceeds the sub-sector levy**  
24 **cap**

- 25 (1) The amount of levy imposed by subsection 8(3) on a person:
- 26 (a) for a levy period and a sub-sector; and  
27 (b) because the following have come into force for the levy  
28 period and the sub-sector:
- 29 (i) a revised claims and costs estimate;

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## Part 2 Levy

### Division 2 Amount of levy

#### Section 15

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- 1 (ii) a determination under section 1069D of the  
2 *Corporations Act 2001* (the **Minister's determination**);  
3 is the amount worked out in accordance with a method prescribed  
4 by the regulations for the purposes of this subsection.

5 *Objectives for working out further amounts of levy*

- 6 (2) The objectives are that the total amount of further levy imposed by  
7 subsection 8(3) on all persons for the levy period and sub-sector:  
8 (a) does not exceed the total amount specified, under  
9 paragraph 1069D(4)(b) of the *Corporations Act 2001*, in the  
10 Minister's determination; and  
11 (b) does not cause the scheme levy cap to be exceeded.

12 *Regulations*

- 13 (3) Before the Governor-General makes regulations for the purposes of  
14 subsection (1), the Minister must be satisfied that the regulations  
15 are consistent with the objectives stated in subsection (2).
- 16 (4) Without limiting subsection (1), the method determined by the  
17 regulations for a levy period and a sub-sector may have regard to:  
18 (a) the revised claims and costs estimate for the levy period and  
19 the sub-sector; and  
20 (b) the Minister's determination.

21 **15 Amount of further levy—total levy exceeds the sub-sector levy**  
22 **cap and is to be spread across several sub-sectors etc.**

- 23 (1) The amount of levy imposed by section 9 on a person:  
24 (a) for a levy period; and  
25 (b) because the following have come into force for the levy  
26 period:  
27 (i) a revised claims and costs estimate;  
28 (ii) a determination under section 1069D of the  
29 *Corporations Act 2001* (the **Minister's determination**);

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Levy **Part 2**  
Amount of levy **Division 2**

## Section 16

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

3 *Objectives for working out further amounts of levy*

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

6 (a) for the levy period; and

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

11 both:

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

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

16 *Regulations*

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

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

22 (a) the revised claims and costs estimate; and

23 (b) the Minister's determination.

### 24 **16 Amount of levy for unpaid claims for which reasonable recovery** 25 **steps have been taken before the accumulation recovery** 26 **day**

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

# EXPOSURE DRAFT

## Part 2 Levy

### Division 2 Amount of levy

#### Section 16

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1

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

2

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

3

10 on all persons for the initial levy period and a sub-sector:

4

(a) does not exceed the amount determined under

5

paragraph 11(b) of the Levy Collection Act for the initial

6

levy period and the sub-sector; and

7

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

8

#### *Regulations*

9

(3) Before the Governor-General makes regulations for the purposes of

10

subsection (1), the Minister must be satisfied that the regulations

11

are consistent with the objectives stated in subsection (2).

12

(4) Without limiting subsection (1), the method determined by the

13

regulations for the initial levy period and a sub-sector may have

14

regard to determinations under paragraph 11(b) of the Levy

15

Collection Act for the initial levy period and the sub-sector.



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1 **Division 3—Caps on levy**

2 **17 Total caps on levy**

3 *Scheme levy cap*

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

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

8 *Sub-sector levy cap*

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

- 12 (a) \$10 million;  
13 (b) the amount prescribed (or the amount worked out in  
14 accordance with a method prescribed) for the levy period and  
15 the sub-sector by the regulations for the purposes of this  
16 paragraph;

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

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

- 21 (3) Subsection (2) does not apply to either of the following:  
22 (a) levy imposed by section 10;  
23 (b) levy imposed by section 8 of the *Financial Services*  
24 *Compensation Scheme of Last Resort Levy (AFCA Fees) Act*  
25 *2021*.

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

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

# EXPOSURE DRAFT

## Part 3 Other matters

### Section 18

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1 **Part 3—Other matters**  
2

3 **18 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*.

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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 **19 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.