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The Parliament of the

Commonwealth of Australia

HOUSE OF REPRESENTATIVES

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| **EXPOSURE DRAFT** |

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

No. , 2021

(Treasury)

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

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A Bill for an Act to impose levy on persons relating to unpaid AFCA fees, 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 (AFCA Fees)* *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 | At the same time as the *Financial Services Compensation Scheme of Last Resort Levy* *Act 2021* commences.  However, the provisions do not commence at all if that Act does not commence. |  |

Note: This table relates only to the provisions of this Act as originally enacted.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

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

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

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

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

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

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

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

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

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

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

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

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

Part 2—Levy

8 Imposition of levy—AFCA’s accumulated unpaid fees

Levy is imposed on a person for 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.

9 Imposition of levy—AFCA’s unpaid fees

Initial 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

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

(a) immediately before a revised estimate under subsection 12(5) of the Levy Collection Act 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 estimate specifies that further levy needs to be imposed by this subsection for the levy period and the sub‑sector.

10 By whom levy payable

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

11 Amount of levy—AFCA’s accumulated unpaid fees

(1) The amount of levy imposed by section 8 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 8 on all persons for the initial levy period and a sub‑sector:

(a) does not exceed the amount determined under paragraph 12(1)(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 this section.

(4) Without limiting subsection (1), the method determined by the regulations for a levy period and a sub‑sector may have regard to determinations under paragraph 12(1)(b) of the Levy Collection Act for the levy period and the sub‑sector.

12 Amount of levy—AFCA’s unpaid fees

(1) The amount of levy imposed by subsection 9(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.

(2) The amount of levy imposed by subsection 9(2) on a person for:

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

(b) because a revised estimate under subsection 12(5) of the Levy Collection Act 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 amounts of initial levy

(3) The objectives are that the total amount of levy imposed by subsection 9(1) on all persons for a levy period and a sub‑sector:

(a) does not exceed the estimate determined under subsection 12(2) of the Levy Collection Act 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.

Objectives for working out further amounts of levy

(4) The objectives are that the total amount of levy imposed by subsection 9(2) on all persons for a levy period, a sub‑sector and a revised estimate under subsection 12(5) of the Levy Collection Act:

(a) does not exceed the difference between:

(i) the revised estimate; and

(ii) the total amount of levy paid that was earlier imposed by section 9 of this Act 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

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

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

Part 3—Other matters

13 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.

14 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.