

24 November 2021

Mr Alan Raine
Secretary
Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

By email: economics.sen@aph.gov.au

Dear Mr Raine

Inquiry into Sterling Income Trust – response to Questions on Notice

At the public hearing of the Inquiry into Sterling Income Trust on 18 November 2021, CPA Australia was asked to respond to the following questions on notice.

1. **Senator Scarr:** (In relation to ASIC's response to Question on Notice no. 1 asked in the hearing of 16 November 2016) - Could you take on notice to review that answer, and provide your further thoughts from a potential regulatory perspective as to whether or not what should have happened at that point in time, or what should happen, what the Corporations Act should provide happens at that point in time, if such a finding is made with respect to a PDS?
2. **Senator Pratt:** Lastly, I wanted you to take on notice anything that you are able to provide the committee with to support us in terms of amending the compensation scheme of last resort.

CPA Australia's responses are as follows:

1. Observations on ASIC's response to regarding the Sterling Income Trust Product Disclosure Statement

CPA Australia acknowledges that it is not ASIC's role to endorse or otherwise approve a Product Disclosure Statement (PDS) when it is issued. However, if ASIC held serious enough concerns regarding a PDS to issue an interim and then final stop order, arguably it would then appear to have been prudent to review the replacement PDS upon issuance to ensure there were no material omissions or misleading statements that would render the replacement PDS defective. This is particularly so given ASIC's broader focus on the solvency of the Sterling Income Trust. There is no indication in ASIC's response that any further review occurred beyond ASIC providing comments on the draft replacement PDS.

2. Amending the compensation scheme of last resort

The proposed Compensation Scheme of Last Resort (CSLR) will consider claims for unpaid Australian Financial Complaints Authority (AFCA) determinations (that is, where a complaint was made to AFCA from 1 November 2018) and the determination is in relation to a financial product or service within the scheme's scope.

The Bill proposes that the CSLR will encompass five financial products and services:

- personal advice on relevant financial products to retail clients
- credit intermediation
- securities dealing
- credit provision; and
- insurance product distribution.

It is proposed that the CSLR levy framework will align with the ASIC Industry Funding Model (IFM), which currently applies to 48 sub-sectors across the financial services industry¹.

Of note, the Government announced² in August that Treasury will review the ASIC IFM to ensure it remains fit for purpose in the longer term given the structural changes taking place in the advice industry. The Government also announced temporary levy relief for financial advisers during this review, to support Australians having access to affordable professional advice. Given the review potentially may result in structural changes to the current ASIC IFM, this raises concerns with respect to aligning the CSLR levy framework to this model.

Unless the scope of the CSLR as proposed in the package of Bills before Parliament is amended to include all financial products, not all consumers who engage with an ASIC regulated financial product, with or without seeking professional advice, will have access to adequate compensation and redress.

To ensure consumers are adequately protected, the scope of the CSLR could be amended to include all licensees who are legally required to be a member of AFCA as part of their respective licence conditions. That is:

- Australian Financial Services (AFS) licensees who provide financial services to a retail client must be a member of AFCA (*Corporations Act 2001* s912A (1)(g) and s912A(2)(c)), and
- Australian Credit licensees (*National Consumer Credit Protection Act 2009* s47(1)(i)).

In the *Financial Sector Reform (Hayne Royal Commission Response No. 3) Bill 2021* the following amendments would be required:

- the removal of s1065 (1)(a)(ii)
- the removal of s1065(2)
- the replacement of all references to '**sub-sector**' with '**AFCA member**' in s1069M, which sets out the scope via notifiable instrument of will pay the CLSR levy, and
- the replacement of '**sub-sector**' with '**AFCA member**' and related terms throughout the Bill.

Noting that the *Financial Sector Reform (Hayne Royal Commission Response No. 3) Bill 2021* already refers to '**AFCA member**' throughout the Bill, these amendments would not only achieve the broader scope but also provide greater consistency within the Bill.

In both the *Financial Services Compensation Scheme of Last Resort Levy Bill 2021* and the *Financial Services Compensation Scheme of Last Resort Levy (Collection) Bill 2021* relevant references to the ASIC IFM such as '**sub-sector**' and '**levy period**' would need to be replaced with '**AFCA member**' to align with the suggested amendments (above) to the *Financial Sector Reform (Hayne Royal Commission Response No. 3) Bill 2021*.

The levy payable to fund the CSLR could then form part of the annual AFCA membership invoice, which could also streamline the administration and associated operation costs of the scheme. Relevant amendments would need to be made to reflect this provision.

We have marked up the relevant provisions that would require amendment, attention, or removal in the attached copies of the following Bills for consideration by the Office of Parliamentary Counsel:

- *Financial Sector Reform (Hayne Royal Commission Response No. 3) Bill 2021*
- *Financial Services Compensation Scheme Of Last Resort Levy Bill 2021*
- *2021 Financial Services Compensation Scheme Of Last Resort Levy (Collection) Bill 2021*.

CPA Australia has worked collaboratively with the Financial Planning Association in relation to these proposed amendments.

If you have any queries about this submission, please contact Keddie Waller, Head of Public Practice & SME on
or .

Yours sincerely

Dr Gary Pflugrath
Executive General Manager, Policy and Advocacy

¹ ASIC SUPERVISORY COST RECOVERY LEVY REGULATIONS 2017 (F2017L00805) - SCHEDULE 1
http://classic.austlii.edu.au/au/legis/cth/num_reg/asclr/2017201700805566/sch1.html

² <https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/temporary-and-targeted-relief-asic-levies-financial>

2019-2020-2021

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Financial Sector Reform (Hayne Royal Commission Response No. 3) Bill 2021

No. , 2021

(Treasury)

**A Bill for an Act to deal with consequential
amendments and transitional matters arising from
the enactment of the *Financial Accountability
Regime Act 2021* and to establish the financial
services compensation scheme of last resort, and for
related purposes**

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1 **A Bill for an Act to deal with consequential**
2 **amendments and transitional matters arising from**
3 **the enactment of the *Financial Accountability***
4 ***Regime Act 2021* and to establish the financial**
5 **services compensation scheme of last resort, and for**
6 **related purposes**

7 The Parliament of Australia enacts:

8 **1 Short title**

9 This Act is the *Financial Sector Reform (Hayne Royal Commission*
10 *Response No. 3) 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. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day after this Act receives the Royal Assent.	
2. Schedule 1, Part 1	At the same time as the <i>Financial Accountability Regime Act 2021</i> commences. However, the provisions do not commence at all if that Act does not commence.	
3. Schedule 1, Part 2	The later of: (a) 1 July 2022; and (b) the day that is 6 months after the <i>Financial Accountability Regime Act 2021</i> commences. However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	
4. Schedule 2	At the same time as the <i>Financial Accountability Regime Act 2021</i> commences. However, the provisions do not commence at all if that Act does not commence.	
5. Schedule 3	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.	

1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 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.

7 3 Schedules

8 Legislation that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.

Schedule 1—Consequential amendments

Part 1—Amendments for the start of the financial accountability regime

Australian Prudential Regulation Authority Act 1998

1 Subsection 3(1) (after paragraph (b) of the definition of *prudential regulation framework law*)

Insert:

(ba) the *Financial Accountability Regime Act 2021*;

(bb) Schedules 1 and 2 to the *Financial Sector Reform (Hayne Royal Commission Response No. 3) Act 2021*;

2 Section 48

Omit “Under”, substitute “(1) Under”.

3 At the end of section 48

Add:

(2) Subsection (1) does not apply to an appointment made under, or for the purposes of, the *Financial Accountability Regime Act 2021*.

4 Paragraph 53(1)(d)

Repeal the paragraph, substitute:

(d) amounts of any fees, charges or penalties paid to APRA, on behalf of the Commonwealth, under section 51 or any other law of the Commonwealth except the following:

(i) Part 3A of the *Financial Institutions Supervisory Levies Collection Act 1998*;

(ii) the *Financial Accountability Regime Act 2021*;

5 Subsection 56(1) (after paragraph (cb) of the definition of *protected document*)

Insert:

1 ; or (cc) a person in relation to whom information is, or was, required
2 to be given under the *Financial Accountability Regime Act*
3 2021;

4 **6 Subsection 56(1) (after paragraph (d) of the definition of**
5 ***protected document*)**

6 Insert:

7 (da) a document given or produced to ASIC under, or for the
8 purposes of, a provision of the *Financial Accountability*
9 *Regime Act 2021*, other than a document given or produced
10 to ASIC by APRA; or

11 **7 Subsection 56(1) (after paragraph (cb) of the definition of**
12 ***protected information*)**

13 Insert:

14 ; or (cc) a person in relation to whom information is, or was, required
15 to be given under the *Financial Accountability Regime Act*
16 2021;

17 **8 Subsection 56(1) (after paragraph (d) of the definition of**
18 ***protected information*)**

19 Insert:

20 (da) information given or produced to ASIC under, or for the
21 purposes of, a provision of the *Financial Accountability*
22 *Regime Act 2021*, other than information given or produced
23 to ASIC by APRA; or

24 **9 Paragraph 56(2)(c)**

25 Omit “or (7F)”, substitute “, (7F), (7G), (7H), (7J), (7K) or (7L)”.

26 **10 After subsection 56(7F)**

27 Insert:

28 (7G) It is not an offence if:

29 (a) the disclosure of protected information or the production of a
30 protected document is to an accountable entity (within the
31 meaning of the *Financial Accountability Regime Act 2021*);
32 and

Schedule 1 Consequential amendments

Part 1 Amendments for the start of the financial accountability regime

- 1 (b) the information, or the information contained in the
2 document, as the case may be, is information contained in the
3 register kept under section 40 of the *Financial Accountability*
4 *Regime Act 2021*.

5 Note: A defendant bears an evidential burden in relation to the matters in
6 subsection (7G) (see subsection 13.3(3) of the *Criminal Code*).

7 (7H) It is not an offence if:

- 8 (a) the disclosure of protected information or the production of a
9 protected document is to an individual; and
10 (b) the information, or the information contained in the
11 document, as the case may be, is only personal information
12 about the individual; and
13 (c) the information, or the information contained in the
14 document, as the case may be, is information contained in the
15 register kept under section 40 of the *Financial Accountability*
16 *Regime Act 2021*.

17 Note: A defendant bears an evidential burden in relation to the matters in
18 subsection (7H) (see subsection 13.3(3) of the *Criminal Code*).

19 (7J) It is not an offence if:

- 20 (a) the disclosure of protected information or the production of a
21 protected document is by APRA; and
22 (b) the information, or the information contained in the
23 document, as the case may be, is information that discloses:
24 (i) whether a person is disqualified under section 42 of the
25 *Financial Accountability Regime Act 2021*; or
26 (ii) a decision made under Division 2 of Part 3 of Chapter 3
27 of that Act (which is about disqualification of
28 accountable persons), or the reasons for such a decision.

29 Note: A defendant bears an evidential burden in relation to the matters in
30 subsection (7J) (see subsection 13.3(3) of the *Criminal Code*).

31 (7K) It is not an offence if the disclosure of protected information or the
32 production of a protected document by a person is in accordance
33 with section 39 of the *Financial Accountability Regime Act 2021*.

34 Note: A defendant bears an evidential burden in relation to the matters in
35 subsection (7K) (see subsection 13.3(3) of the *Criminal Code*).

36 (7L) It is not an offence if:

- 1 (a) the disclosure of protected information or the production of a
2 protected document is by ASIC, for the purposes of the
3 performance of ASIC's functions, or the exercise of ASIC's
4 powers; and
5 (b) the protected information was disclosed previously to ASIC,
6 or the protected document was produced previously to ASIC,
7 in accordance with section 39 of the *Financial Accountability*
8 *Regime Act 2021*.

9 Note: A defendant bears an evidential burden in relation to the matters in
10 subsection (7L) (see subsection 13.3(3) of the *Criminal Code*).

11 **11 Paragraph 56(12)(a)**

12 Omit "and (7F)", substitute ", (7F), (7G), (7H), (7J), (7K) and (7L)".

13 **12 At the end of subsection 58(4)**

14 Add:

15 ; (d) section 101 or 102 of the *Financial Accountability Regime*
16 *Act 2021*.

17 **13 After paragraph 59(2)(ba)**

18 Insert:

19 (bb) information about investigations (including joint
20 investigations) conducted by APRA under Division 1 of
21 Part 4 of Chapter 3 of the *Financial Accountability Regime*
22 *Act 2021* during the period;

23 **14 After subsection 59(3)**

24 Insert:

25 (4) Paragraph (2)(bb) does not authorise the inclusion in the annual
26 report of information with respect to the affairs of a particular
27 person.

28 ***Australian Securities and Investments Commission Act 2001***

29 **15 Subsection 12A(1)**

30 Omit "Acts".

1 **16 At the end of subsection 12A(1)**

2 Add:

- 3 (m) the *Financial Accountability Regime Act 2021*;
4 (n) Schedules 1 and 2 to the *Financial Sector Reform (Hayne*
5 *Royal Commission Response No. 3) Act 2021*.

6 **17 After subsection 127(6)**

7 Insert:

8 (7) A person (the ***officer***) commits an offence if:

9 (a) the officer is or has been:

10 (i) a member of ASIC; or

11 (ii) a staff member; or

12 (iii) a Commonwealth officer within the meaning of the
13 *Crimes Act 1914*; and

14 (b) the officer intentionally or recklessly, and directly or
15 indirectly:

16 (i) discloses information to any person or to a court; or

17 (ii) produces a document to any person or to a court; and

18 (c) if subparagraph (b)(i) applies—the information is protected
19 information disclosed to, or obtained by, ASIC for the
20 purposes of a function (a ***FAR-related function***) conferred
21 on ASIC by:

22 (i) the *Financial Accountability Regime Act 2021*; or

23 (ii) Schedule 1 or 2 to the *Financial Sector Reform (Hayne*
24 *Royal Commission Response No. 3) Act 2021*; and

25 (d) if subparagraph (b)(ii) applies—the document:

26 (i) is protected information and was given or produced to
27 ASIC for the purposes of a FAR-related function; or

28 (ii) contains protected information disclosed to, or obtained
29 by, ASIC for the purposes of a FAR-related function;
30 and

31 (e) the officer acquired the information, or has or had access to
32 the document, as the case may be, in the course of the
33 officer's duties as a member of ASIC, a staff member or a
34 Commonwealth officer within the meaning of the *Crimes Act*
35 *1914*.

Penalty: Imprisonment for 2 years.

(7A) Subsection (7) does not apply if the disclosure or production constitutes authorised disclosure of the protected information for the purposes of subsection (1).

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

(8) A document is an exempt document for the purposes of section 38 of the *Freedom of Information Act 1982* if the document:

(a) is protected information and was given or produced to ASIC;
or

(b) contains protected information disclosed to, or obtained by, ASIC;

for the purposes of a function conferred on ASIC by:

(c) the *Financial Accountability Regime Act 2021*; or

(d) Schedule 1 or 2 to the *Financial Sector Reform (Hayne Royal Commission Response No. 3) Act 2021*.

18 After paragraph 136(1)(d)

Insert:

(da) information about investigations (including joint investigations) conducted by ASIC under Division 1 of Part 4 of Chapter 3 of the *Financial Accountability Regime Act 2021* during the period;

19 After subsection 136(2A)

Insert:

(3) Paragraph (1)(da) does not authorise the inclusion in the annual report of information with respect to the affairs of a particular person.

20 In the appropriate position

Insert:

**Part 37—Transitional provisions relating to the
Financial Sector Reform (Hayne Royal
Commission Response No. 3) Act 2021**

337 Application—confidentiality

The amendment of section 12A made by Part 1 of Schedule 1 to the *Financial Sector Reform (Hayne Royal Commission Response No. 3) Act 2021*, so far as it relates to the definition of protected information in subsection 127(9) of this Act, applies in relation to any use or disclosure of information after the commencement of that Part, whether ASIC obtained the information before or after that commencement.

338 Information to be included in ASIC’s annual report

The amendment of section 136 made by Part 1 of Schedule 1 to the *Financial Sector Reform (Hayne Royal Commission Response No. 3) Act 2021* applies to reports on ASIC’s investigations during the financial year ending on 30 June 2023, and later financial years.

Banking Act 1959

21 After subparagraph 9A(2)(b)(ii)

Insert:

(ia) a requirement of the *Financial Accountability Regime Act 2021*;

22 After subparagraph 11AB(2)(a)(ii)

Insert:

(ia) a requirement of the *Financial Accountability Regime Act 2021*;

23 Paragraph 15D(1)(a)

After “the *Financial Sector (Collection of Data) Act 2001*”, insert “or the *Financial Accountability Regime Act 2021*”.

24 Paragraph 15D(1)(b)

Omit “that Act”, substitute “those Acts”.

25 Subsection 16B(1)

After “functions under this Act”, insert “or the *Financial Accountability Regime Act 2021*”.

26 Subparagraph 16BA(6)(a)(i)

Omit “the regulations or the *Financial Sector (Collection of Data) Act 2001*”, substitute “the regulations, the *Financial Sector (Collection of Data) Act 2001* or the *Financial Accountability Regime Act 2021*”.

27 Section 16C

Omit “this Act or the *Financial Sector (Collection of Data) Act 2001*”, substitute “this Act, the *Financial Sector (Collection of Data) Act 2001* or the *Financial Accountability Regime Act 2021*”.

28 Paragraph 17(2)(a)

Omit “this Act or the prudential standards”, substitute “this Act, the prudential standards or the *Financial Accountability Regime Act 2021*”.

29 After subparagraph 20(1)(a)(ii)

Insert:

(iia) the *Financial Accountability Regime Act 2021*; or

30 Section 69BA

Omit “this Act or the *Financial Sector (Collection of Data) Act 2001*”, substitute “this Act, the *Financial Sector (Collection of Data) Act 2001* or the *Financial Accountability Regime Act 2021*”.

Corporations Act 2001

31 After subparagraph 1317AA(5)(c)(iii)

Insert:

(iiia) the *Financial Accountability Regime Act 2021*;

1 ***Financial Regulator Assessment Authority Act 2021***

2 **32 Subparagraph 40(3)(a)(iv)**

3 Omit “or”.

4 **33 At the end of paragraph 40(3)(a)**

5 Add:

6 (v) subsection 72(1) or section 73 of the *Financial*
7 *Accountability Regime Act 2021*; or

8 ***Financial Sector (Transfer and Restructure) Act 1999***

9 **34 At the end of paragraph 36B(1A)(a)**

10 Add:

11 (iv) section 64 of the *Financial Accountability Regime Act*
12 *2021*;

13 ***Insurance Act 1973***

14 **35 After subparagraph 15(1)(a)(ii)**

15 Insert:

16 (iaaa) a requirement of the *Financial Accountability Regime*
17 *Act 2021*; or

18 **36 After subparagraph 21(1)(a)(ii)**

19 Insert:

20 (iaaa) a requirement of the *Financial Accountability Regime*
21 *Act 2021*; or

22 **37 After subparagraph 25(1)(a)(ii)**

23 Insert:

24 (iaa) the *Financial Accountability Regime Act 2021*; or

25 **38 After paragraph 43(2)(a)**

26 Insert:

27 (aa) has failed to comply with a requirement of the *Financial*
28 *Accountability Regime Act 2021*; or

1 **39 After subparagraph 44(1)(a)(i)**

2 Insert:

- 3 (ia) the person has failed to comply with a requirement of
4 the *Financial Accountability Regime Act 2021*;

5 **40 Paragraph 44(4)(a)**

6 Omit “this Act and the prudential standards”, substitute “this Act, the
7 prudential standards and the *Financial Accountability Regime Act*
8 *2021*”.

9 **41 After subparagraphs 48(1)(a)(i) and (2)(a)(i)**

10 Insert:

- 11 (ia) the *Financial Accountability Regime Act 2021*; or

12 **42 Subsection 49(1)**

13 After “functions under this Act”, insert “or the *Financial Accountability*
14 *Regime Act 2021*”.

15 **43 Subparagraph 49A(6)(a)(iv)**

16 Omit “this Act or a requirement under the *Financial Sector (Collection*
17 *of Data) Act 2001*”, substitute “this Act, a requirement under the
18 *Financial Sector (Collection of Data) Act 2001* or a requirement of the
19 *Financial Accountability Regime Act 2021*”.

20 **44 Section 49B**

21 Omit “this Act or the *Financial Sector (Collection of Data) Act 2001*”,
22 substitute “this Act, the *Financial Sector (Collection of Data) Act 2001*
23 or the *Financial Accountability Regime Act 2021*”.

24 **45 After subparagraph 62M(1)(a)(iv)**

25 Insert:

- 26 (ivaa) the general insurer has failed to comply with a
27 requirement of the *Financial Accountability Regime Act*
28 *2021*; or

29 **46 Subsection 62W(1)**

30 Repeal the subsection, substitute:

Schedule 1 Consequential amendments

Part 1 Amendments for the start of the financial accountability regime

- 1 (1) None of the matters mentioned in subsection (2) affect:
2 (a) the continued operation of other Parts of this Act in relation
3 to a general insurer; or
4 (b) the operation of the *Financial Sector (Collection of Data) Act*
5 *2001* or the *Financial Accountability Regime Act 2021* in
6 relation to a general insurer; or
7 (c) the obligation of a general insurer to comply with those other
8 Parts and those Acts.

9 **47 Subsection 62ZOY(1)**

10 Repeal the subsection, substitute:

- 11 (1) None of the matters mentioned in subsection (2) affect:
12 (a) the continued operation of other provisions of this Act in
13 relation to a body corporate; or
14 (b) the operation of the *Financial Sector (Collection of Data) Act*
15 *2001* or the *Financial Accountability Regime Act 2021* in
16 relation to a body corporate; or
17 (c) the obligation of a body corporate to comply with those other
18 provisions and those Acts.

19 **48 Section 129AA**

20 Omit “this Act or the *Financial Sector (Collection of Data) Act 2001*”,
21 substitute “this Act, the *Financial Sector (Collection of Data) Act 2001*
22 or the *Financial Accountability Regime Act 2021*”.

23 ***Life Insurance Act 1995***

24 **49 Paragraph 21(3)(e)**

25 Omit “this Act or the *Financial Sector (Collection of Data) Act 2001*”,
26 substitute “this Act, the *Financial Sector (Collection of Data) Act 2001*
27 or the *Financial Accountability Regime Act 2021*”.

28 **50 After subparagraph 26(1)(a)(ii)**

29 Insert:

- 30 (ia) a requirement of the *Financial Accountability Regime*
31 *Act 2021*; or

1 **51 After subparagraph 28C(1)(a)(ii)**

2 Insert:

3 (iaaa) a requirement of the *Financial Accountability Regime*
4 *Act 2021*; or

5 **52 After paragraph 85(1)(b)**

6 Insert:

7 (ba) the person has failed to comply with a requirement of the
8 *Financial Accountability Regime Act 2021*; or

9 **53 Paragraph 88(1)(a)**

10 Omit “this Act or the *Financial Sector (Collection of Data) Act 2001*”,
11 substitute “this Act, the *Financial Sector (Collection of Data) Act 2001*
12 or the *Financial Accountability Regime Act 2021*”.

13 **54 Subparagraph 88(3)(a)(i)**

14 Omit “this Act or the *Financial Sector (Collection of Data) Act 2001*”,
15 substitute “this Act, the *Financial Sector (Collection of Data) Act 2001*
16 or the *Financial Accountability Regime Act 2021*”.

17 **55 Section 88A**

18 Omit “this Act or under the *Financial Sector (Collection of Data) Act*
19 *2001*”, substitute “this Act, the *Financial Sector (Collection of Data)*
20 *Act 2001* or the *Financial Accountability Regime Act 2021*”.

21 **56 Subsection 88B(1)**

22 Omit “this Act or the *Financial Sector (Collection of Data) Act 2001*”,
23 substitute “this Act, the *Financial Sector (Collection of Data) Act 2001*
24 or the *Financial Accountability Regime Act 2021*”.

25 **57 Paragraph 89(2)(a)**

26 Omit “this Act or the *Financial Sector (Collection of Data) Act 2001*”,
27 substitute “this Act, the *Financial Sector (Collection of Data) Act 2001*
28 or the *Financial Accountability Regime Act 2021*”.

29 **58 After paragraph 94(1)(b)**

30 Insert:

1 (ba) the person has failed to comply with a requirement of the
2 *Financial Accountability Regime Act 2021*; or

3 **59 Paragraph 98(1)(a)**

4 Omit “this Act or the *Financial Sector (Collection of Data) Act 2001*”,
5 substitute “this Act, the *Financial Sector (Collection of Data) Act 2001*
6 or the *Financial Accountability Regime Act 2021*”.

7 **60 Subparagraph 98(3)(a)(i)**

8 Omit “this Act or the *Financial Sector (Collection of Data) Act 2001*”,
9 substitute “this Act, the *Financial Sector (Collection of Data) Act 2001*
10 or the *Financial Accountability Regime Act 2021*”.

11 **61 Section 98A**

12 Omit “this Act or under the *Financial Sector (Collection of Data) Act*
13 *2001*”, substitute “this Act, the *Financial Sector (Collection of Data)*
14 *Act 2001* or the *Financial Accountability Regime Act 2021*”.

15 **62 Subsection 98B(1)**

16 Omit “this Act or the *Financial Sector (Collection of Data) Act 2001*”,
17 substitute “this Act, the *Financial Sector (Collection of Data) Act 2001*
18 or the *Financial Accountability Regime Act 2021*”.

19 **63 Paragraph 99(2)(a)**

20 After “this Act”, insert “or the *Financial Accountability Regime Act*
21 *2021*”.

22 **64 Paragraph 125A(2)(c)**

23 Omit “the regulations or the *Financial Sector (Collection of Data) Act*
24 *2001*”, substitute “the regulations, the *Financial Sector (Collection of*
25 *Data) Act 2001* or the *Financial Accountability Regime Act 2021*”.

26 **65 Subsection 166(1)**

27 Repeal the subsection, substitute:

28 (1) None of the matters mentioned in subsection (2) affect:

29 (a) the continued operation of other Parts of this Act in relation
30 to a life company; or

- 1 (b) the operation of the *Financial Sector (Collection of Data)*
2 *Act 2001* or the *Financial Accountability Regime Act 2021* in
3 relation to a life company; or
4 (c) the obligation of a life company to comply with those other
5 Parts and those Acts.

6 **66 Subsection 179AY(1)**

7 Repeal the subsection, substitute:

8 (1) None of the matters mentioned in subsection (2) affect:

- 9 (a) the continued operation of other provisions of this Act in
10 relation to a body corporate; or
11 (b) the operation of the *Financial Sector (Collection of Data) Act*
12 *2001* or the *Financial Accountability Regime Act 2021* in
13 relation to a body corporate; or
14 (c) the obligation of a body corporate to comply with those other
15 provisions and those Acts.

16 **67 Paragraph 245(1)(a)**

17 Omit “this Act or the *Life Insurance Act 1945*”, substitute “this Act, the
18 repealed *Life Insurance Act 1945* or the *Financial Accountability*
19 *Regime Act 2021*”.

20 **68 Subsection 248(2)**

21 Omit “this Act or the *Financial Sector (Collection of Data) Act 2001*”,
22 substitute “this Act, the *Financial Sector (Collection of Data) Act 2001*
23 or the *Financial Accountability Regime Act 2021*”.

24 ***National Consumer Credit Protection Act 2009***

25 **69 Subsection 5(1) (definition of *large ADI*)**

26 Omit “has the same meaning as in the *Banking Act 1959*”, substitute
27 “means an ADI of a kind determined under subsection (1A)”.

28 **70 After subsection 5(1)**

29 Insert:

- 30 (1A) The Minister may, by legislative instrument, determine the kinds of
31 ADIs that are large ADIs.

1 ***Payment Systems and Netting Act 1998***

2 **71 Section 5 (after paragraph (b) of the definition of *direction***
3 ***stay provision*)**

4 Insert:

5 (baa) subsection 77(2) of the *Financial Accountability Regime Act*
6 *2021*;

7 **72 Section 5 (before paragraph (fc) of the definition of**
8 ***specified provisions*)**

9 Insert:

10 (fca) subsections 77(3) and (4) of the *Financial Accountability*
11 *Regime Act 2021*;

12 **73 Section 5 (after paragraph (e) of the definition of *specified***
13 ***stay provision*)**

14 Insert:

15 (eaa) subsection 77(2) of the *Financial Accountability Regime Act*
16 *2021*;

17 ***Private Health Insurance (Prudential Supervision) Act 2015***

18 **74 After subsection 21(1)**

19 Insert:

20 (1A) APRA may, in writing, cancel the registration of a private health
21 insurer if APRA is satisfied that the private health insurer has
22 failed to comply with a requirement of the *Financial*
23 *Accountability Regime Act 2021*.

24 **75 Subsections 84(1) and (2)**

25 Omit “or of the *Private Health Insurance Act 2007*”, substitute “the
26 *Private Health Insurance Act 2007* or the *Financial Accountability*
27 *Regime Act 2021*”.

28 **76 After paragraph 107(2)(c)**

29 Insert:

30 ; and (d) the *Financial Accountability Regime Act 2021*.

77 Subsection 107(2) (note 2)

Omit “paragraphs (b) and (c)”, substitute “paragraphs (b), (c) and (d)”.

78 Paragraph 110(1)(a)

Omit “the *Private Health Insurance Act 2007* or the *Financial Sector (Collection of Data) Act 2001*”, substitute “the *Private Health Insurance Act 2007*, the *Financial Sector (Collection of Data) Act 2001* or the *Financial Accountability Regime Act 2021*”.

79 Subparagraph 110(5)(a)(i)

Omit “the *Private Health Insurance Act 2007* or the *Financial Sector (Collection of Data) Act 2001*”, substitute “the *Private Health Insurance Act 2007*, the *Financial Sector (Collection of Data) Act 2001* or the *Financial Accountability Regime Act 2021*”.

80 Subsections 111(1) and 112(1)

Omit “the *Private Health Insurance Act 2007* or the *Financial Sector (Collection of Data) Act 2001*”, substitute “the *Private Health Insurance Act 2007*, the *Financial Sector (Collection of Data) Act 2001* or the *Financial Accountability Regime Act 2021*”.

81 Paragraph 113(2)(a)

Omit “the *Private Health Insurance Act 2007* or the *Financial Sector (Collection of Data) Act 2001*”, substitute “the *Private Health Insurance Act 2007*, the *Financial Sector (Collection of Data) Act 2001* or the *Financial Accountability Regime Act 2021*”.

82 After subparagraphs 119(1)(a)(iii) and 120(4)(b)(iii)

Insert:

(iiia) the *Financial Accountability Regime Act 2021*; or

83 Subsection 168(1) (after table item 3)

Insert:

3A	to cancel the registration of a private health insurer	subsection 21(1A)
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1 ***Superannuation Industry (Supervision) Act 1993***

2 **84 Subsection 10(1) (after paragraph (c) of the definition of**
3 ***RSE licensee law*)**

4 Insert:

5 (ca) the *Financial Accountability Regime Act 2021*; and

6 **85 Section 38A (before paragraph (ab) of the definition of**
7 ***regulatory provision*)**

8 Insert:

9 (aba) a provision of the *Financial Accountability Regime Act 2021*;
10 or

11 **86 Paragraph 126H(3)(a)**

12 Omit “this Act or the *Financial Sector (Collection of Data) Act 2001*”,
13 substitute “this Act, the *Financial Sector (Collection of Data) Act 2001*
14 or the *Financial Accountability Regime Act 2021*”.

15 **87 Subparagraph 129(1)(a)(ii)**

16 After “*Financial Sector (Collection of Data) Act 2001*”, insert “or the
17 *Financial Accountability Regime Act 2021*”.

18 **88 Section 130A**

19 Omit “the prudential standards or the *Financial Sector (Collection of*
20 *Data) Act 2001*”, substitute “the prudential standards, the *Financial*
21 *Sector (Collection of Data) Act 2001* or the *Financial Accountability*
22 *Regime Act 2021*”.

23 **89 At the end of paragraph 130D(4)(a)**

24 Add:

25 (iv) any duties required to be performed under the *Financial*
26 *Accountability Regime Act 2021*; or

27 **90 Paragraph 131AA(2)(c)**

28 Omit “the prudential standards or the *Financial Sector (Collection of*
29 *Data) Act 2001*”, substitute “the prudential standards, the *Financial*
30 *Sector (Collection of Data) Act 2001* or the *Financial Accountability*
31 *Regime Act 2021*”.

1 **91 At the end of paragraph 131A(1)(a)**

2 Add:

3 (iv) any duties required to be performed under the *Financial*
4 *Accountability Regime Act 2021*; or

5 **92 Subparagraph 313(1)(a)(ii)**

6 Omit “this Act or under the *Financial Sector (Collection of Data) Act*
7 *2001*”, substitute “this Act, or under the *Financial Sector (Collection of*
8 *Data) Act 2001* or the *Financial Accountability Regime Act 2021*,”.

**Part 2—Amendments for the end of the banking
executive accountability regime**

Australian Prudential Regulation Authority Act 1998

**93 Subsection 56(1) (paragraph (cb) of the definition of
protected document)**

Repeal the paragraph.

**94 Subsection 56(1) (paragraph (cb) of the definition of
protected information)**

Repeal the paragraph.

95 Paragraph 56(2)(c)

Omit “(7D), (7E), (7F),”.

96 Subsections 56(7D), (7E) and (7F)

Repeal the subsections.

97 Paragraph 56(12)(a)

Omit “(7D), (7E), (7F),”.

Banking Act 1959

98 Paragraph 2A(2)(e)

Repeal the paragraph.

99 Subsection 5(1) (definition of *accountable person*)

Repeal the definition.

**100 Subsection 5(1) (paragraph (g) of the definition of
direction under this Act)**

Omit “31F;”, substitute “31F.”.

1 **101 Subsection 5(1) (paragraph (h) of the definition of**
2 ***direction under this Act*)**

3 Repeal the paragraph.

4 **102 Subsection 5(1)**

5 Repeal the following definitions:

- 6 (a) definition of *large ADI*;
- 7 (b) definition of *medium ADI*;
- 8 (c) definition of *non-ADI holding company*;
- 9 (d) definition of *remuneration*;
- 10 (e) definition of *small ADI*;
- 11 (f) definition of *variable remuneration*.

12 **103 Subsection 11AF(1AC)**

13 Repeal the subsection.

14 **104 Paragraphs 11CG(1)(b) and (2)(a)**

15 Omit “, 29 or 37DB”, substitute “or 29”.

16 **105 Subsection 11CG(2A)**

17 Omit “, 29 or 37DB”, substitute “or 29”.

18 **106 Part IIAA**

19 Repeal the Part.

Schedule 2—Application, saving and transitional provisions

Part 1—Preliminary

1 Definitions

(1) In this Schedule:

banking start time means the time when Part 2 of Schedule 1 commences.

BEAR means:

(a) Part IIAA of the old Banking Act; and

(b) any instruments made under that Part as in force immediately before the banking start time; and

(c) any sections of the old Banking Act that apply in relation to a provision of that Part.

FAR Act means the *Financial Accountability Regime Act 2021*.

FAR start time for a body corporate that is an accountable entity under subsection 9(3) of the FAR Act means the time when the body corporate starts to be an accountable entity, as determined under subsection 9(4) of the FAR Act.

old Banking Act means the *Banking Act 1959*, and any instruments made under that Act, as in force immediately before the banking start time.

(2) Expressions used in this Schedule that are defined for the purposes of the FAR Act, and used in relation to that Act, have the same meaning as in that Act.

(3) Expressions used in this Schedule that were defined for the purposes of the old Banking Act, and are used in relation to that Act, have the same meaning as in that Act.

2 Section 7 of the *Acts Interpretation Act 1901*

This Schedule does not limit the effect of section 7 of the *Acts Interpretation Act 1901* as it applies in relation to the repeals made by this Act.

3 Compensation for acquisition of property

- (1) If the operation of the old Banking Act, or of this Act or the FAR Act as it applies under this Act, would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) Subitem (1) applies whether the acquisition of property occurred before or occurs after the commencement of this Part.
- (3) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in:
- (a) the Federal Court of Australia; or
 - (b) the Supreme Court of a State or Territory;
- for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

Part 2—Banking sector

Division 1—Key personnel obligations

4 Persons registered under BEAR

When this item applies

(1) This item applies in relation to a person and an ADI if, immediately before the banking start time:

- (a) the person is an accountable person of the ADI, or of a subsidiary of the ADI, under the old Banking Act; and
- (b) the person is registered under section 37HA of the old Banking Act.

Accountable persons taken to be registered under FAR

(2) If, at the banking start time, the person is an accountable person of the ADI or the subsidiary under section 10 of the FAR Act, then the person is taken from the banking start time to be registered under the FAR Act as an accountable person in respect of the ADI or the subsidiary.

Note 1: If the person was an accountable person of a subsidiary of the ADI, and the subsidiary is not a significant related entity of the ADI under the FAR Act, then the person may not be an accountable person of the ADI or the subsidiary under the FAR Act.

Note 2: See also item 13 (old accountability statement taken to be new accountability statement).

Persons ceasing to be accountable persons

(3) If, at the banking start time, the person is *not* an accountable person of the ADI or the subsidiary under section 10 of the FAR Act, then:

- (a) the person is taken to have ceased to be an accountable person of the ADI or the subsidiary for the purposes of the paragraph 32(a) of the FAR Act; and
- (b) for the purposes of subparagraph 31(1)(a)(i) of the FAR Act, that ceasing event is taken to have occurred at the banking start time.

Note: Events mentioned in section 32 of the FAR Act must be notified to the Regulator in accordance with section 31 of the FAR Act (notification obligations of an accountable

entity). Failure to comply with a notification obligation is a contravention of a civil penalty provision (see section 80 of the FAR Act).

5 Persons disqualified under BEAR

When this item applies

- (1) This item applies in relation to a person if:
- (a) before the banking start time, the person is disqualified from being, or acting as, an accountable person under section 37J of the old Banking Act; and
 - (b) the disqualification is in effect immediately before the banking start time.

Persons are taken to be disqualified under FAR

- (2) The person is taken, from the banking start time, to be disqualified from being or acting as an accountable person under section 42 of the FAR Act.
- (3) For the purposes of subsection 42(2) of the FAR Act, the disqualification applies in accordance with the following table.

Disqualified accountable persons

	Column 1	Column 2
Item	If, before the banking start time, the person is disqualified under the old Banking Act in relation to ...	then, from the banking start time, the person is taken to be disqualified under the FAR Act in relation to ...
1	a particular ADI	the accountable entity that is that ADI.
2	a particular subsidiary of an ADI	if the subsidiary is a significant related entity of the accountable entity that is the ADI—that significant related entity.
3	a class of ADIs	a class of accountable entities that includes those ADIs.
4	a class of subsidiaries of ADIs	a class of significant related entities of accountable entities that includes those subsidiaries of ADIs.
5	any ADI	any accountable entity.

Disqualified accountable persons		
	Column 1	Column 2
Item	If, before the banking start time, the person is disqualified under the old Banking Act in relation to ...	then, from the banking start time, the person is taken to be disqualified under the FAR Act in relation to ...
6	any subsidiary of an ADI	any significant related entity of an accountable entity.

- 1 (4) The period of disqualification ends when the period of the
2 disqualification under the old Banking Act would have ended.
- 3 (5) Paragraphs 42(1)(a) and (b) and subsections 42(3) to (7) of the FAR Act
4 do not apply in relation to the disqualification.

5 *Applications to vary or revoke disqualification*

- 6 (6) If:
- 7 (a) before the banking start time, the person applies to APRA
8 under section 37JA of the old Banking Act to vary or revoke
9 the disqualification; and
- 10 (b) as at the banking start time, the application has not been
11 withdrawn by the applicant, or dealt with by APRA;
- 12 the application is taken, after the banking start time, to have been made
13 under section 43 of the FAR Act.

14 **6 Pending applications to register a person under BEAR**

15 *When this item applies*

- 16 (1) This item applies if:
- 17 (a) before the banking start time, an application is made to
18 APRA under section 37HA of the old Banking Act to register
19 a person as an accountable person; and
- 20 (b) as at the banking start time, the application has not been
21 withdrawn by the applicant, or dealt with by APRA.

1 *Application taken to be made under FAR*

2 (2) The application is taken to be an application made under section 41 of
3 the FAR Act.

4 Note: The Regulator may request further information under subsection 41(3) of the FAR Act.

5 (3) For the purposes of paragraph 41(5)(a) of the FAR Act, the application
6 is taken to have been made at the banking start time.

7 **7 Persons filling a temporary or unforeseen vacancy when**
8 **FAR starts**

9 To avoid doubt, the period of 90 days referred to in paragraph 24(2)(a)
10 of the FAR Act begins no earlier than the banking start time, regardless
11 of when the person started to fill the temporary or unforeseen vacancy.

12 **8 Applications to register under FAR**

13 *When this item applies*

14 (1) This item applies to a body corporate that is:

- 15 (a) an ADI; or
16 (b) an authorised NOHC of an ADI.

17 *Early application for registration of accountable persons*

18 (2) From 30 days before the banking start time, the body corporate may
19 apply to the Regulator under section 41 of the FAR Act to register a
20 person as an accountable person in respect of the body or a significant
21 related entity of the body.

22 (3) If the body corporate makes the application before the banking start
23 time, section 41 of the FAR Act (and any other provision of the FAR
24 Act that applies in relation to that section) applies in relation to the body
25 corporate as if the body corporate were an accountable entity.

26 Note: Under paragraph 41(2)(d) of the FAR Act, if an accountable entity meets the enhanced
27 notification threshold under subsection 31(3) of the FAR Act, the application must
28 include an accountability statement for the person complying with section 33 of the
29 FAR Act.

1 *When registration comes into force*

- (4) The registration of the person as an accountable person comes into force at the later of the following times:
- (a) the banking start time;
 - (b) when the Regulator registers the person.

6 **9 Disqualification under FAR for non-compliance with BEAR**

7 APRA may, after the banking start time, disqualify a person under
8 section 42 of the FAR Act from being, or acting as, an accountable
9 person if APRA is satisfied that:

- (a) the person has failed to comply with one or more of their obligations under section 37CA of the old Banking Act; and
- (b) the disqualification is justified, having regard to the seriousness of the failure to comply.

14 Note: A decision to disqualify a person is a reviewable decision under Part 5
15 of Chapter 3 of the FAR Act.

16 **Division 2—Deferred remuneration obligations**

17 **10 Deferral of variable remuneration continues under BEAR**
18 **after FAR starts**

19 *When this item applies*

- 20 (1) This item applies in relation to a person if:
- 21 (a) immediately before the banking start time, the person is an
- 22 accountable person of an ADI, or of a subsidiary of an ADI,
- 23 under the old Banking Act; and
- 24 (b) at the banking start time, the person is an accountable person
- 25 of the ADI or subsidiary under section 10 of the FAR Act.

26 *Old Banking Act continues to apply until FAR applies*

- (2) Despite the repeal of Part IIAA of the *Banking Act 1959* by Part 2 of Schedule 1, the old Banking Act applies, after the banking start time, in relation to the variable remuneration of the accountable person unless Part 5 of Chapter 2 of the FAR Act applies to the variable remuneration (see item 11 of this Schedule).

Note: APRA may exercise powers etc. under repealed provisions for the purposes of this item:
see item 29.

11 Deferral of variable remuneration under FAR

When this item applies

- (1) This item applies in relation to a person who is an accountable person under section 10 of the FAR Act of an entity (the *deferring entity*) that is, at the banking start time:
- (a) an accountable entity under subsection 9(1) of the FAR Act;
or
 - (b) a significant related entity of such an accountable entity.

FAR applies to financial years starting at least 6 months after banking start time

- (2) Part 5 of Chapter 2 of the FAR Act applies in relation to the variable remuneration of the accountable person only if the minimum deferral period for the variable remuneration (see section 28 of the FAR Act) starts in:
- (a) the first financial year of the deferring entity that begins after the end of the period of 6 months after the banking start time;
or
 - (b) a later financial year.

12 Deferral of variable remuneration under BEAR—savings provision

When this item applies

- (1) This item applies in relation to a person if:
- (a) immediately before the banking start time:
 - (i) the person is an accountable person of an ADI, or of a subsidiary of an ADI, under the old Banking Act; and
 - (ii) Division 4 of Part IIAA of the old Banking Act applies in relation to the variable remuneration of the person;
and
 - (b) at the banking start time, the person is *not* an accountable person of the ADI or the subsidiary under section 10 of the FAR Act.

Note: If the person was an accountable person of a subsidiary of the ADI, and the subsidiary is not a significant related entity of the ADI under the FAR Act, then the person may not be an accountable person of the ADI or the subsidiary under the FAR Act.

Old Banking Act continues to apply

(2) Despite the repeal of Part IIAA of the *Banking Act 1959* by Part 2 of Schedule 1, the old Banking Act continues to apply, after the banking start time, in relation to the variable remuneration, as if that repeal had not happened.

Division 3—Notification obligations

13 Accountability statements under BEAR

When this item applies

- (1) This item applies if:
- (a) before the banking start time, an ADI or a subsidiary of an ADI gave APRA a document (the *old accountability statement*) complying with section 37FA of the old Banking Act for a person who was registered under section 37HA of that Act; and
 - (b) at the banking start time, the person is an accountable person of the ADI or of the subsidiary under section 10 of the FAR Act.

Note: For transfer of registration of the person, see item 4.

(2) The old accountability statement (including any changes notified to APRA before the banking start time) is taken, from the banking start time, to have been given to the Regulator in accordance with section 33 of the FAR Act for the person.

Note: Any material change to the information contained in the accountability statement must be notified to the Regulator: see subsection 31(2) of the FAR Act.

14 Notification obligations under BEAR—savings provision

(1) Despite the repeal of Part IIAA of the *Banking Act 1959* by Part 2 of Schedule 1, the old Banking Act continues to apply, after the banking start time, in relation to an obligation covered by subitem (2) and arising before that time, as if that repeal had not happened.

- 1 (2) For the purposes of subitem (1), the obligations are any of the
2 following:
- 3 (a) an obligation under paragraph 37F(1)(a) of the old Banking
4 Act to notify APRA of a change to an accountability
5 statement;
- 6 (b) an obligation under paragraph 37F(1)(b) of the old Banking
7 Act to notify APRA of a change to an accountability map;
- 8 (c) an obligation under paragraph 37F(1)(c) of the old Banking
9 Act to notify APRA of an event.

10 **Division 4—Regulatory powers and enforcement**

11 **15 Directions about reallocating responsibilities given under** 12 **BEAR**

13 *When this item applies*

- 14 (1) This item applies if:
- 15 (a) before the banking start time, APRA gives a body corporate a
16 direction under section 37DB of the old Banking Act in
17 relation to a responsibility; and
- 18 (b) as at the banking start time, APRA has not revoked the
19 direction.

20 *Direction under FAR Act taken to be given*

- 21 (2) After the banking start time, the direction continues in force (and may
22 be dealt with) as if it had been given by the Regulator under section 65
23 of the FAR Act.
- 24 (3) For the purposes of section 65 of the FAR Act:
- 25 (a) the requirements in paragraphs 65(3)(a) and (c) are taken to
26 be met; and
- 27 (b) if the direction under section 37DB of the old Banking Act
28 did not specify a period within which the direction is to be
29 complied with—paragraph 65(3)(b) does not apply to the
30 direction.

Secrecy obligations

- (4) If, immediately before the banking start time, the direction was covered by a determination under subsection 11CH(2) of the old Banking Act, then it is taken after the banking start time to be covered by a determination under subsection 67(2) of the FAR Act.
- (5) If, immediately before the banking start time, the direction was covered by a determination under subsection 11CK(2) or (5) of the old Banking Act, then it is taken after the banking start time to be covered by:
- (a) for a direction covered by a determination under subsection 11CK(2) of the old Banking Act—a determination under subsection 70(2) of the FAR Act;
 - (b) for a direction covered by a determination under subsection 11CK(5) of the old Banking Act—a determination under subsection 70(4) of the FAR Act.

16 Directions under FAR for non-compliance with BEAR

When this item applies

- (1) This item applies if:
- (a) APRA has reason to believe that a body corporate has contravened a provision of Part IIAA of the old Banking Act before the banking start time; and
 - (b) as at the banking start time, APRA has not given a direction under section 11CA of the old Banking Act in relation to the contravention; and
 - (c) immediately after the banking start time, the body corporate is an accountable entity.

APRA may give direction under FAR Act

- (2) Both of the following apply:
- (a) APRA may give the body corporate a direction under section 64 of the FAR Act;
 - (b) for the purposes of paragraph 64(3)(b) of the FAR Act, the ground for giving the direction is the contravention of the old Banking Act provision.

1 **17 Revocation of authority for non-compliance with FAR**

2 The amendment of section 9A of the *Banking Act 1959* made by Part 1
3 of Schedule 1 applies in relation to a body corporate's authority under
4 section 9 of that Act whether the authority was granted before or after
5 the banking start time.

6 **18 Contraventions under BEAR—savings provision**

7 (1) Despite the repeal of Part IIAA of the *Banking Act 1959* by Part 2 of
8 Schedule 1, the old Banking Act continues to apply, after the banking
9 start time, in relation to a contravention (or an alleged contravention) of
10 a provision of the BEAR that occurs before that time, as if that repeal
11 had not been made.

12 (2) This item does not limit any other item of this Schedule.

13 Note: As a result, APRA may have a choice as to whether to deal with BEAR non-compliance
14 under the old Banking Act or whether to take action under the FAR Act in reliance on
15 item 9 or 16 of this Schedule.

16 **19 Directions under BEAR for non-compliance with BEAR—**
17 **savings provision**

18 *When this item applies*

19 (1) This item applies if:

- 20 (a) before the banking start time, APRA gives a body corporate a
21 direction under section 11CA of the old Banking Act in
22 relation to a contravention of the BEAR; and
23 (b) as at the banking start time, APRA has not revoked the
24 direction.

25 *Old Banking Act continues to apply*

26 (2) Despite the repeals and amendments of the *Banking Act 1959* made by
27 Part 2 of Schedule 1, the old Banking Act continues to apply, after the
28 banking start time, in relation to the direction, as if those repeals and
29 amendments had not been made.

1 **20 Review of decisions under BEAR—savings provision**

2 Despite the repeal of Part IIAA of the *Banking Act 1959* by Part 2 of
3 Schedule 1, Part VI (review of decisions) of the old Banking Act
4 continues to apply, after the banking start time, in relation to a decision
5 made under Part IIAA of the *Banking Act 1959*:

6 (a) before the banking start time; or

7 (b) after the banking start time as a result of the operation of a
8 provision of this Schedule;

9 as if that repeal had not been made.

10 **21 Enforceable undertakings and injunctions under BEAR—**
11 **savings provision**

12 To avoid doubt, the repeal of Part IIAA of the *Banking Act 1959* by
13 Part 2 of Schedule 1 does not affect:

14 (a) an enforceable undertaking given under section 18A of the
15 old Banking Act before the banking start time; or

16 (b) an injunction granted under section 65A of the old Banking
17 Act before the banking start time.

Part 3—Other sectors

Division 1—Key personnel obligations

22 Applications to register under FAR

When this item applies

(1) This item applies to a body corporate that is any of the following:

- (a) a general insurer;
- (b) an authorised NOHC of a general insurer;
- (c) a life company;
- (d) a registered NOHC of a life company;
- (e) a private health insurer;
- (f) an RSE licensee.

Early application for registration of accountable persons

(2) From 30 days before the FAR start time for the body corporate, the body may apply to the Regulator under section 41 of the FAR Act to register a person as an accountable person in respect of the body or a significant related entity of the body.

(3) If the body corporate makes the application before the FAR start time, section 41 of the FAR Act (and any other provision of the FAR Act that applies in relation to that section) applies in relation to the body corporate as if the body corporate were an accountable entity.

Note: Under paragraph 41(2)(d) of the FAR Act, if the accountable entity meets the enhanced notification threshold under subsection 31(3) of the FAR Act, the application must include an accountability statement for the person complying with section 33 of the FAR Act.

When registration comes into force

(4) The registration of the person as an accountable person comes into force at the later of the following times:

- (a) the FAR start time for the body corporate;
- (b) when the Regulator registers the person.

Division 2—Deferred remuneration obligations

23 Deferral of remuneration under FAR

When this item applies

- (1) This item applies in relation to a person who is an accountable person under section 10 of the FAR Act of:
- (a) an accountable entity under subsection 9(3) of the FAR Act;
 - or
 - (b) a significant related entity of such an accountable entity.

Deferred remuneration obligations apply when entity becomes an accountable entity

- (2) Part 5 of Chapter 2 of the FAR Act applies in relation to the variable remuneration of the accountable person only if the day referred to in paragraph 28(2)(a) of the FAR Act in relation to the remuneration occurs after the FAR start time for the accountable entity referred to in paragraph (1)(a) or (b) of this item.

Division 3—Insurance

24 Revocation of authorisation for non-compliance with FAR

The amendment of section 15 of the *Insurance Act 1973* made by Part 1 of Schedule 1 applies in relation to a body corporate's authorisation under section 12 of that Act whether the authorisation was granted before or after the FAR start time for the body corporate.

Division 4—Life insurance

25 Application for registration as a life company

The amendment of section 21 of the *Life Insurance Act 1995* made by Part 1 of Schedule 1 applies in relation to an application under section 20 of the *Life Insurance Act 1995* for registration as a life company if:

- (a) the application was made before the commencement of this Part and, as at that commencement, APRA has not decided the application; or
- (b) the application is made after that commencement.

1 **26 Revocation of registration for non-compliance with FAR**

2 The amendment of section 26 of the *Life Insurance Act 1995* made by
3 Part 1 of Schedule 1 applies in relation to a body corporate's
4 registration under section 21 of that Act whether the registration was
5 made before or after the FAR start time for the body corporate.

6 **Division 5—Private health insurance**

7 **27 Cancellation of registration for non-compliance with FAR**

8 The amendment of section 21 of the *Private Health Insurance*
9 (*Prudential Supervision*) *Act 2015* made by Part 1 of Schedule 1 applies
10 in relation to a body corporate's registration under section 15 of that
11 Act whether the registration was made before or after the FAR start
12 time for the body corporate.

13 **Division 6—Superannuation**

14 **28 Cancellation of RSE licence for non-compliance with FAR**

15 The amendment of the definition of *RSE licensee law* in
16 subsection 10(1) of the *Superannuation Industry (Supervision) Act 1993*
17 made by Part 1 of Schedule 1 applies in relation to a body corporate's
18 RSE licence under section 29D of that Act whether the RSE licence was
19 granted before or after the FAR start time for the body corporate.

Part 4—APRA and ASIC

Division 1—Transition from the BEAR

29 Doing things under repealed provisions

- (1) The amendments of the *Australian Prudential Regulation Authority Act 1998* and the *Banking Act 1959* made by Part 2 of Schedule 1 do not apply for the purpose of APRA exercising any right or power, performing any obligation or duty or doing any other thing (including under a provision that is itself repealed or amended):
- (a) in relation to variable remuneration to which the old Banking Act applies under item 10 of this Schedule; or
 - (b) in relation to any other matter in relation to which an item of this Schedule requires or permits APRA to do something under the old Banking Act.

Secrecy

- (2) In addition to subitem (1), despite the amendments of section 56 of the *Australian Prudential Regulation Authority Act 1998* made by Part 2 of Schedule 1, that Act as in force immediately before the banking start time, continues to apply in relation to:
- (a) information disclosed or obtained before or after the commencement of that Part and relating to the affairs of a person in relation to whom information is, or was, required to be given under Part IIAA of the *Banking Act 1959* (including that Part as it continues to apply under an item of this Schedule); and
 - (b) a document given or produced before or after the commencement of that Part and containing information relating to the affairs of a person in relation to whom information is, or was, required to be given under Part IIAA of the *Banking Act 1959* (including that Part as it continues to apply under an item of this Schedule).

1 **30 Agreement about exercise of powers**

2 Section 38 of the FAR Act does not apply in relation to APRA
3 performing a function, or exercising a power, that an item of this
4 Schedule requires or permits APRA to perform or exercise.

5 **Division 2—Application of the FAR**

6 **31 Secrecy**

7 The amendments of sections 3 and 56 of the *Australian Prudential*
8 *Regulation Authority Act 1998* made by Part 1 of Schedule 1 apply in
9 relation to:

- 10 (a) any disclosure of information after the commencement of
11 that Part, whether the information was disclosed or obtained
12 under, or for the purposes of, a prudential regulation
13 framework law before or after that commencement; and
14 (b) any production of a document after the commencement of
15 that Part, whether the document was given or produced
16 under, or for the purposes of, a prudential regulation
17 framework law before or after that commencement.

18 **32 Information to be included in APRA's annual report**

19 The amendment of section 59 of the *Australian Prudential Regulation*
20 *Authority Act 1998* made by Part 1 of Schedule 1 applies to reports on
21 APRA's investigations during the financial year ending on 30 June
22 2023, and later financial years.

23 **33 Sharing information and documents between APRA and**
24 **ASIC**

- 25 (1) Section 39 of the FAR Act is taken to apply in relation to information
26 disclosed to or obtained by APRA or ASIC, or a document that is given
27 or produced to APRA or ASIC, under or for the purposes of:
28 (a) the BEAR; or
29 (b) this Schedule.
- 30 (2) Section 39 of the FAR Act (including as it applies because of
31 subitem (1) of this item) applies in relation to information disclosed or
32 obtained, or a document that is given or produced, whether before or
33 after the FAR Act commences.

Part 5—Transitional rules

34 Transitional rules

- (1) ASIC and APRA may jointly, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to:
- (a) the amendments or repeals made by this Act; or
 - (b) the enactment of this Act or the FAR Act.
- (2) To avoid doubt, the rules may not do the following:
- (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act or the FAR Act.
- (3) This Act (other than subitem (2) of this item) does not limit the rules that may be made.

1 **Schedule 3—Financial services compensation**
2 **scheme of last resort**

3 **Part 1—Main amendments**

4 ***Corporations Act 2001***

5 **1 Section 761A**

6 Insert:

7 ***accumulation recovery day*** means the day the Bill for the
8 *Financial Sector Reform (Hayne Royal Commission Response No.*
9 *3) Act 2021* was introduced into the House of Representatives.

10 ***AFCA's accumulated unpaid fees*** has the meaning given by
11 subsection 1058B(4).

12 ***AFCA's unpaid fees***, for a month, has the meaning given by
13 subsection 1058B(2).

14 ***capital reserve establishment contribution*** has the same meaning
15 as in the *Financial Services Compensation Scheme of Last Resort*
16 *Levy (Collection) Act 2021*.

17 ***CSLR operator*** (short for financial services compensation scheme
18 of last resort operator) means the person for whom an authorisation
19 under section 1060 is in force.

20 ***CSLR staff member*** means:

- 21 (a) a director, officer or employee of the CSLR operator; or
22 (b) a person engaged as a consultant to, or to perform services
23 for, the CSLR operator for the purposes of the financial
24 services compensation scheme of last resort.

25 ***financial services compensation scheme of last resort*** means the
26 financial services compensation scheme of last resort established
27 under Part 7.10B.

28 ***financial services compensation scheme of last resort operator***:
29 see ***CSLR operator***.

- 1 *levy period* has the same meaning as in the *Financial Services*
2 *Compensation Scheme of Last Resort Levy Act 2021*.
- 3 *pre-CSLR complaint* has the same meaning as in the *Financial*
4 *Services Compensation Scheme of Last Resort Levy (Collection)*
5 *Act 2021*.
- 6 *relevant AFCA determination* has the meaning given by section
7 1065.
- 8 *revised claims, fees and costs estimate* has the same meaning as in
9 the *Financial Services Compensation Scheme of Last Resort Levy*
10 *Act 2021*.
- 11 *sub-sector* has the same meaning as in the *Financial Services*
12 *Compensation Scheme of Last Resort Levy Act 2021*.
- 13 *sub-sector levy cap* has the same meaning as in the *Financial*
14 *Services Compensation Scheme of Last Resort Levy Act 2021*.

2 At the end of Part 7.10A

Add:

Division 4—Information sharing and reporting

1058A Authorised use or disclosure of information

- (1) An AFCA staff member may use or disclose information or documents obtained by the AFCA staff member under or for the purposes of this Part if:
- (a) the use or disclosure is for the purposes of:
 - (i) this Part; or
 - (ii) Part 7.10B; or
 - (iii) the *Financial Services Compensation Scheme of Last Resort Levy Act 2021*; or
 - (iv) the *Financial Services Compensation Scheme of Last Resort Levy (Collection) Act 2021*; or
 - (b) the use or disclosure is to the CSLR operator for the purposes of assisting the CSLR operator to perform its functions or exercise its powers.

(2) In this section:

use or disclosure, for information or documents, includes making a record of the information, disclosing the information, producing the document or permitting access to the document.

1058B AFCA reporting to CSLR operator

Notification of unpaid fees to CSLR operator

(1) AFCA must notify the CSLR operator, in writing, of AFCA's unpaid fees, for a month ending on or after the accumulation recovery day, as soon as practicable after the end of the month.

Note: The notification could include information about AFCA's unpaid fees, including whether those fees relate to pre-CSLR complaints.

(2) *AFCA's unpaid fees*, for a month, is the sum of each fee that:

(a) relates to a complaint:

- (i) made against a person (the *AFCA member*) who, at the time the complaint was made, was a member of the AFCA scheme; and
- (ii) about a product, or service, of a kind mentioned in subsection 1065(2); and
- (iii) that has been finalised by AFCA (including by making a determination); and

(b) AFCA has charged to the AFCA member; and

(c) the AFCA member has not paid to AFCA; and

(d) AFCA finished taking steps to recover on or after the accumulation recovery day and during the month, which may have included taking one or more of the following steps if AFCA considered them appropriate:

- (i) seeking an explanation from the AFCA member for the AFCA member not paying the fee;
- (ii) explaining to the AFCA member the consequences of not paying the fee;
- (iii) discussing with the AFCA member a reasonable payment plan or other alternatives to paying the fee;
- (iv) if the AFCA member is (or has become) a Chapter 5 body corporate—engaging with an officer of the

- 1 Chapter 5 body corporate to assess whether the body
2 can pay the fee to AFCA.
- 3 Note: In addition to the steps in subparagraphs (d)(i) to (iv), AFCA may take
4 any other steps it considers appropriate and cost effective.
- 5 *AFCA's accumulated unpaid fees*
- 6 (3) AFCA must notify the CSLR operator, in writing, of AFCA's
7 accumulated unpaid fees as soon as practicable after the
8 accumulation recovery day.
- 9 (4) *AFCA's accumulated unpaid fees* is the sum of each fee that:
10 (a) relates to a complaint:
11 (i) made against a person (the *AFCA member*) who, at the
12 time the complaint was made, was a member of the
13 AFCA scheme; and
14 (ii) about a product, or service, of a kind mentioned in
15 subsection 1065(2); and
16 (iii) that has been finalised by AFCA (including by making a
17 determination); and
18 (b) AFCA has charged to the AFCA member; and
19 (c) the AFCA member has not paid to AFCA; and
20 (d) AFCA finished taking steps to recover during the period:
21 (i) starting on 1 November 2018; and
22 (ii) ending on the day before the accumulation recovery
23 day;
24 which may have included taking one or more of the steps
25 mentioned in subparagraphs (2)(d)(i) to (iv) of this section if
26 AFCA considered them appropriate.

3 After Part 7.10A

Insert:

**Part 7.10B—Financial services compensation
scheme of last resort**

Division 1—Establishment of the scheme

1059 Establishment of the scheme

The financial services compensation scheme of last resort is
established by this Part.

1060 Minister may authorise an operator of the scheme

- (1) The Minister may, by notifiable instrument, authorise a person to
operate the financial services compensation scheme of last resort if
the Minister is satisfied the person will meet the mandatory
requirements under section 1062.

Note: The person who is authorised by the Minister to operate the scheme is
the CSLR operator (short for financial services compensation scheme
of last resort operator).

- (2) An authorisation of a person to operate the financial services
compensation scheme of last resort must not come into force while
an authorisation of another person to operate that scheme is in
force.

- (3) The Minister may, by notifiable instrument, vary or revoke an
authorisation.

- (4) In an instrument made under subsection (1) or (3), the Minister:
(a) must specify the day the authorisation, variation or
revocation comes into force; and
(b) may impose, vary or revoke conditions relating to the
authorisation.

1061 Minister may appoint independent member

The Minister may, by written instrument, appoint an independent
person to be a member of the board of the CSLR operator.

Note: The independent person appointed by the Minister is the Chair of the
board (see the mandatory requirement in paragraph 1062(3)(d)).

1062 Mandatory requirements

- (1) The mandatory requirements for a person (the *operator*) to operate the financial services compensation scheme of last resort are:
- (a) the organisational requirement under subsection (2); and
 - (b) the operator requirements under subsection (3); and
 - (c) the operational requirements under subsection (4); and
 - (d) the compliance requirements under subsection (5).

Organisational requirement

- (2) The organisational requirement is that the operator does not require a person applying for compensation to pay any fee or charge to the operator, or to any other entity, in relation to the application.

Operator requirements

- (3) The operator requirements are that:
- (a) the operator is a company limited by guarantee; and
 - (b) the operator's constitution provides that the operator must not be operated for profit; and
 - (c) the operator's constitution provides that amounts paid to the operator by the Commonwealth must be maintained for the purposes of the financial services compensation scheme of last resort; and
 - (d) the operator's constitution provides that the Chair of the board of the operator must be an independent person appointed by the Minister as a member of the board; and
 - (e) the operator's constitution provides that, within 6 months after the operator is authorised under section 1060, the following must be appointed as members of the board:
 - (i) the person who is the Chair of the board of AFCA;
 - (ii) a person who is a Fellow of the Institute of Actuaries of Australia and has at least 5 years' experience in actuarial analysis.

Operational requirements

- (4) The operational requirements are that:

- 1 (a) the operator operates in accordance with the operator's
- 2 constitution; and
- 3 (b) the operator administers the financial services compensation
- 4 scheme of last resort in accordance with this Part and
- 5 regulations made for the purposes of this Part; and
- 6 (c) the operator manages money of the operator in a manner that
- 7 is efficient, effective and economical; and
- 8 (d) the operator has appropriate expertise available to deal with
- 9 applications for compensation; and
- 10 (e) the operator has appropriate expertise available to undertake
- 11 actuarial analysis and modelling to estimate the value of
- 12 claims to be made against the financial services
- 13 compensation scheme of last resort.

14 *Compliance requirements*

- 15 (5) The compliance requirements are that:
- 16 (a) the operator is to ensure that any conditions of the
- 17 authorisation of the operator (see paragraph 1060(4)(b)) are
- 18 complied with; and
- 19 (b) the operator is to ensure that regulatory requirements issued
- 20 under section 1069K are complied with.

21 **Division 2—Compensation payments under the scheme**

22 **1063 Compensation payments**

- 23 (1) The CSLR operator must pay to a person an amount of
- 24 compensation for a relevant AFCA determination made in respect
- 25 of the person if:
- 26 (a) the person is eligible under section 1064 for compensation
- 27 for the determination; and
- 28 (b) the amount of compensation for the determination is the
- 29 amount referred to in section 1067; and
- 30 (c) the CSLR operator has offered under section 1068 that
- 31 amount of compensation; and
- 32 (d) the person has accepted under section 1069 that offer of that
- 33 amount of compensation.

- 1 (2) The CSLR operator must pay the amount of compensation to the
2 person:
3 (a) in a single lump sum; or
4 (b) if a determination under subsection 1069H(2) specifies,
5 under subsection 1069H(3), a class of persons that includes
6 the person—in the instalments specified in the determination
7 for that class of persons over the period specified in the
8 determination.
- 9 (3) The CSLR operator must not pay an amount under this section
10 before:
11 (a) the start of the first levy period; or
12 (b) any later day prescribed by regulations made for the purposes
13 of this paragraph.

14 **1064 Eligibility for compensation payments**

15 *Eligibility for compensation*

- 16 (1) A person is eligible for compensation for a relevant AFCA
17 determination made in respect of the person if:
18 (a) the determination requires an amount to be paid to the person
19 by another person (the **AFCA member**); and
20 (b) the person has notified AFCA within:
21 (i) 12 months after the day the determination was made; or
22 (ii) such longer period as AFCA agrees with the person;
23 that the person has not been paid the amount; and
24 (c) AFCA has finished taking steps to require the amount to be
25 paid to the person by the AFCA member, which may have
26 included taking one or more of the steps mentioned in
27 subsection (2) if AFCA considered them appropriate; and
28 (d) AFCA has notified the person, in writing, that AFCA has
29 finished taking such steps; and
30 (e) the amount has not been fully paid to the person; and
31 (f) the person is not eligible to receive, under any other statutory
32 compensation scheme, compensation:
33 (i) for the matters covered by the determination; and
34 (ii) for an amount equal to or greater than the amount
35 required to be paid under the determination; and

- (g) the person applies in accordance with section 1066 to the CSLR operator for compensation for the determination; and
- (h) the person has not withdrawn that application for compensation; and
- (i) the CSLR operator reasonably believes that the AFCA member is, having regard to the AFCA member's financial position, unlikely to fully pay the amount.

Note: A person's application for compensation may be withdrawn at any time before an offer of compensation is accepted by the person (see subsection 1066(4)).

Appropriate steps by AFCA

- (2) For the purposes of paragraph (1)(c), the steps are the following:
- (a) seeking an explanation from the AFCA member for the AFCA member not paying the amount to the person in accordance with the relevant AFCA determination;
- (b) explaining to the AFCA member the consequences of not paying the amount to the person;
- (c) discussing with the AFCA member a reasonable payment plan or other alternatives to paying the amount to the person;
- (d) if the AFCA member is (or has become) a Chapter 5 body corporate—engaging with an officer of the Chapter 5 body corporate to assess whether the body will pay the amount to the person.

Note: In addition to these steps, AFCA may take any other steps it considers appropriate and cost effective.

1065 Meaning of relevant AFCA determination

- (1) A determination made by AFCA in respect of a person is a **relevant AFCA determination** if:
- (a) the determination relates to a complaint:
- (i) made by the person against another person (the **AFCA member**) who, at the time the complaint was made, was a member of the AFCA scheme; and
- (ii) about a product, or service, of a kind mentioned in subsection (2); and
- (b) the determination:

- 1 (i) requires the AFCA member to pay an amount to the
2 person; and
3 (ii) is accepted by the person.
- 4 (2) For the purposes of subparagraph (1)(a)(ii), the kinds of products
5 and services are as follows:
6 (a) engaging in a credit activity (within the meaning of the
7 *National Consumer Credit Protection Act 2009*):
8 (i) as a credit provider; or
9 (ii) other than as a credit provider;
10 (b) providing financial product advice that is personal advice
11 provided to a person as a retail client about one or more
12 products that include at least one relevant financial product
13 (within the meaning of Part 7.6 of this Act);
14 (c) dealing in securities for a person as a retail client, other than
15 issuing securities.
- 16 (3) In this section:
17 *credit provider* has the same meaning as in any Part of the *National*
18 *Consumer Credit Protection Act 2009* other than Part 3-2CA.

19 **1066 Applications for compensation payments**

- 20 (1) A person may apply, in the approved form, to the CSLR operator
21 for compensation for a relevant AFCA determination made in
22 respect of the person.
- 23 (2) An application is in the approved form if and only if:
24 (a) it is in the form approved by the CSLR operator; and
25 (b) it includes any information (including any declarations)
26 required by the form; and
27 (c) it is given in the manner required by the CSLR operator.
- 28 (3) The CSLR operator may approve a form for the purposes of
29 paragraph (2)(a).
- 30 (4) If a person makes an application for compensation for a relevant
31 AFCA determination made in respect of the person, the person
32 may:

- 1 (a) amend the application at any time before the CSLR operator
2 offers under section 1068 to the person an amount of
3 compensation for the determination; or
4 (b) withdraw the application any time before the person accepts
5 under 1069 such an offer.

6 **1067 Amount of compensation payments**

7 The amount of compensation for a person for a relevant AFCA
8 determination made in respect of the person must be an amount
9 equal to the lower of the following amounts:

- 10 (a) \$150,000;
11 (b) the amount payable to the person in accordance with the
12 relevant AFCA determination, less:
13 (i) any amount paid to the person in accordance with the
14 relevant AFCA determination, including any partial
15 payments or any payments made to the person as an
16 unsecured creditor of a Chapter 5 body corporate for the
17 matters covered by the determination; and
18 (ii) any compensation to which the person is eligible under
19 any other statutory compensation scheme for the matters
20 covered by the determination; and
21 (iii) any other payments made to the person of a kind
22 prescribed by regulations made for the purposes of this
23 subparagraph.

24 **1068 Offer of compensation payments**

25 *Offer of compensation*

- 26 (1) If a person is eligible under section 1064 for compensation for a
27 relevant AFCA determination made in respect of the person, the
28 CSLR operator must offer to the person, in writing, the amount of
29 compensation referred to in section 1067 for the determination.
30 (2) The offer must explain the effect of section 1069A (subrogation of
31 rights).
32 (3) Before the offer is accepted by the person, the CSLR operator may
33 vary or revoke the offer if the CSLR operator reasonably believes:

- 1 (a) there is an error relating to the offer; or
2 (b) there is fraud relating to the offer; or
3 (c) there is a change in circumstances affecting:
4 (i) the person's eligibility under section 1064 for the
5 amount of compensation in the offer; or
6 (ii) the amount of compensation in the offer; or
7 (d) other exceptional circumstances exist that justify the
8 variation or revocation.

9 *Notification that person is not eligible for compensation*

- 10 (4) If a person:
11 (a) is not eligible under section 1064 for compensation for a
12 relevant AFCA determination made in respect of the person;
13 and
14 (b) has made an application under section 1066 for compensation
15 for the relevant AFCA determination;
16 the CSLR operator must, as soon as reasonably practicable, notify
17 the person, in writing, that the person is not eligible for
18 compensation.
19 (5) A notice to a person under subsection (4) must include reasons
20 why the person is not eligible for compensation.

21 **1069 Acceptance of offer of compensation payments**

- 22 (1) A person accepts an offer made under section 1068 of an amount
23 of compensation if the person notifies the CSLR operator, in
24 writing, that the person accepts the offer.
25 (2) If the person does not accept the offer within 90 days after the day
26 the offer is made, the person is taken to have withdrawn their
27 application for compensation for the relevant AFCA determination
28 to which the offer relates.

29 **1069A CSLR operator's right of subrogation if compensation is paid**

- 30 If:
31 (a) the CSLR operator pays an amount of compensation:
32 (i) to a person under section 1063; and

- 1 (ii) for a relevant AFCA determination that required
2 payment of an amount by another person (the **AFCA**
3 **member**) who is, or was, a member of the AFCA
4 scheme; and
5 (b) the AFCA member is (or has become) a Chapter 5 body
6 corporate;
7 the CSLR operator is subrogated, to the extent of that amount of
8 compensation, to any rights and remedies that the person may
9 have, in relation to the relevant AFCA determination, that are
10 recognised by an officer of the Chapter 5 body corporate.

11 **Division 3—Reimbursement of unpaid AFCA fees**

12 **1069B Payment of AFCA’s unpaid fees**

- 13 (1) The CSLR operator must pay to AFCA an amount equal to
14 AFCA’s unpaid fees for a month starting on or after the
15 accumulation recovery day if AFCA has notified the CSLR
16 operator of those fees in accordance with subsection 1058B(1).
17 (2) The CSLR operator must pay the amount to AFCA as soon as
18 reasonably practicable after AFCA’s notification to the CSLR
19 operator of those fees.
20 (3) However, the CSLR operator must not pay an amount under this
21 section before:
22 (a) the start of the first levy period; or
23 (b) any later day prescribed by regulations made for the purposes
24 of this paragraph.

25 **1069C Payment of AFCA’s accumulated unpaid fees**

- 26 (1) The CSLR operator must pay to AFCA an amount equal to
27 AFCA’s accumulated unpaid fees if AFCA has notified the CSLR
28 operator of those fees in accordance with subsection 1058B(3).
29 (2) The CSLR operator must pay the amount to AFCA as soon as
30 reasonably practicable after AFCA’s notification to the CSLR
31 operator of those fees.

- 1 (3) However, the CSLR operator must not pay an amount under this
2 section before:
3 (a) the start of the first levy period; or
4 (b) any later day prescribed by regulations made for the purposes
5 of this paragraph.

6 **Division 4—Powers, reporting and information sharing**

7 **Subdivision A—Powers of CSLR operator**

8 **1069D Power to obtain information and documents**

- 9 (1) If the CSLR operator has reason to believe that a person is capable
10 of giving information or producing documents relevant to an
11 application for compensation under this Part, the CSLR operator
12 may, by written notice to the person, require the person:
13 (a) to give to the CSLR operator, by writing, any such
14 information; or
15 (b) to produce to the CSLR operator such documents or copies of
16 such documents as are stated in the notice;
17 in the manner and within the period specified in the notice.
- 18 (2) The period specified in a notice given under subsection (1) must be
19 at least 14 days after the day the notice is given.
- 20 (3) If documents (whether originals or copies) are so produced, the
21 CSLR operator:
22 (a) may take possession of, and may make copies of, or take
23 extracts from, the documents; and
24 (b) may keep the documents for as long as is necessary for the
25 purpose of dealing with the application; and
26 (c) must, while keeping the documents, permit a person who
27 would be entitled to inspect any one or more of them (if the
28 documents were not in the possession of the CSLR operator)
29 to inspect at all reasonable times such of the documents as
30 that person would be so entitled to inspect.
- 31 (4) A person must not fail to comply with a requirement made by the
32 CSLR operator under subsection (1).

Penalty: 30 penalty units.

(5) Subsection (4) is an offence of strict liability.

(6) Subsection (4) does not apply to the extent that the person has a reasonable excuse.

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

(7) If a person who is, or was, a member of the AFCA scheme fails, without a reasonable excuse, to comply with a requirement made by the CSLR operator under subsection (1), the CSLR operator must notify AFCA and ASIC of the person's failure to comply with the notice.

(8) The CSLR operator must not require ASIC to give information or produce documents under this section.

Note: For information sharing between ASIC and the CSLR operator, see subparagraph 127(4)(aa)(ia) of the *Australian Securities and Investments Commission Act 2001*.

Subdivision B—Information sharing and reporting

1069E Authorised use or disclosure of information

A CSLR staff member may use or disclose information or documents obtained by the CSLR staff member under or for the purposes of this Part if:

(a) the use or disclosure is for the purposes of:

(i) this Part; or

(ii) Part 7.10A; or

(iii) the *Financial Services Compensation Scheme of Last Resort Levy Act 2021*; or

(iv) the *Financial Services Compensation Scheme of Last Resort Levy (Collection) Act 2021*; or

(b) the use or disclosure is to:

(i) ASIC; or

(ii) AFCA; or

(iii) the Information Commissioner; or

(iv) the Commissioner of Taxation;

1 for the purposes of assisting the entity or person to perform
2 its functions or exercise its powers.

3 **1069F Reporting by CSLR operator**

4 *Reporting compensation payments*

5 (1) If the CSLR operator pays an amount of compensation:

- 6 (a) to a person under section 1063; and
7 (b) for a relevant AFCA determination that required payment of
8 an amount by another person (the **AFCA member**) who is, or
9 was, a member of the AFCA scheme;

10 the CSLR operator must, as soon as reasonably practicable, notify
11 ASIC, in writing, of details about the AFCA member and the
12 AFCA member's failure to pay the amount required by the relevant
13 AFCA determination.

14 (2) If the CSLR operator:

15 (a) pays an amount of compensation:

- 16 (i) to a person under section 1063; and
17 (ii) for a relevant AFCA determination that required
18 payment of an amount by another person (the **AFCA**
19 **member**) who is, or was, a member of the AFCA
20 scheme; and

21 (b) becomes aware that the AFCA member is a Chapter 5 body
22 corporate while the determination is in force;

23 the CSLR operator must, as soon as reasonably practicable, notify
24 an officer of the Chapter 5 body corporate, in writing, of the
25 amount of compensation paid.

26 *Reporting revised claims, fees and costs estimates that exceed cap*

27 (3) If a revised claims, fees and costs estimate for a levy period and a
28 sub-sector comes into force that could cause the sub-sector levy
29 cap for the levy period and sub-sector to be exceeded (or further
30 exceeded), the CSLR operator must notify the Minister of this as
31 soon as practicable.

- 1 (4) A notice to the Minister under subsection (3) must include the
2 information (if any) prescribed by regulations made for the
3 purposes of this subsection.

4 **1069G Publishing reports**

- 5 (1) The CSLR operator must, as soon as reasonably practicable after
6 the end of a levy period, prepare a report for the levy period that
7 contains information about the matters prescribed by regulations
8 made for the purposes of this subsection.
- 9 (2) The CSLR operator must publish the report on its website.

10 **Subdivision C—Powers of the Minister**

11 **1069H Ministerial determination**

12 *Ministerial determination*

- 13 (1) Subsection (2) applies if the Minister is notified under subsection
14 1069F(3) that a revised claims, fees and cost estimate for:
15 (a) a levy period; and
16 (b) a sub-sector (the *primary sub-sector*);
17 could cause the sub-sector levy cap for the levy period and the
18 primary sub-sector to be exceeded (or further exceeded).
- 19 (2) The Minister may, by legislative instrument, make a determination
20 for the levy period and the primary sub-sector dealing with one or
21 more of the matters mentioned in subsections (3) to (5).

22 *Manner of payment*

- 23 (3) A determination made under subsection (2) may provide that an
24 amount of compensation payable by the CSLR operator to a person
25 in a specified class of persons must be paid in specified instalments
26 over a specified period of time.

Special levy for just the primary sub-sector

- (4) For the purposes of paragraph 8(3)(b) of the *Financial Services Compensation Scheme of Last Resort Levy Act 2021*, a determination made under subsection (2) of this section may:
- (a) specify that levy needs to be imposed by subsection 8(3) of that Act for the levy period and the primary sub-sector; and
 - (b) specify the total amount of levy that needs to be imposed by subsection 8(3) of that Act across all persons for the levy period and the primary sub-sector, which must not exceed the difference between:
 - (i) the revised claims, fees and costs estimate (referred to in subsection (1) of this section) for the levy period and the primary sub-sector; and
 - (ii) the total amount of levy already paid as worked out under subsection (6) of this section.

Special levy for several sub-sectors not just the primary sub-sector

- (5) For the purposes of paragraph 9(b) of the *Financial Services Compensation Scheme of Last Resort Levy Act 2021*, a determination made under subsection (2) of this section may:
- (a) specify that levy needs to be imposed by section 9 of that Act (*special levy*) for the levy period if the Minister is satisfied that imposing special levy:
 - (i) is necessary due to the number of persons accepting amounts of compensation under section 1069 of this Act for the levy period and the primary sub-sector, and due to the size of the sum of those amounts; and
 - (ii) is the most effective way of enabling payment of those amounts to those persons in a timely manner; and
 - (b) for each of one or more specified sub-sectors—specify a total amount of special levy that needs to be imposed for the levy period across all members of the specified sub-sector if the Minister has had regard to:
 - (i) the impact that imposing that total amount of special levy may have on the financial sustainability and viability of the specified sub-sector; and

- (ii) the impact that imposing that total amount of special levy across all members of the specified sub-sector may have on the financial system more broadly; and
- (c) specify the sum of the total amounts of special levy specified under paragraph (b) of this subsection, which must not exceed the difference between:
- (i) the revised claims, fees and costs estimate (referred to in subsection (1) of this section) for the levy period and the primary sub-sector; and
 - (ii) the total amount of levy already paid as worked out under subsection (6) of this section.

Working out the total amount of levy already paid

- (6) For the purposes of subparagraph (4)(b)(ii) or (5)(c)(ii), work out the sum of:
- (a) the total amount of levy paid that was earlier imposed by section 8 of the *Financial Services Compensation Scheme of Last Resort Levy Act 2021* across all persons for the levy period and the primary sub-sector; and
 - (b) the total amount of levy paid that was earlier imposed by section 9 of that Act across all persons for all sub-sectors in relation to any earlier revised claims, fees and costs estimate for the levy period and the primary sub-sector.

Division 5—Regulating the CSLR operator

1069J Obligation to comply with mandatory requirements

The CSLR operator must ensure that the mandatory requirements for the CSLR operator under section 1062 are complied with.

1069K ASIC may issue regulatory requirements

ASIC may, by legislative instrument, issue to the CSLR operator regulatory requirements relating to compliance with the mandatory requirements for the CSLR operator under section 1062.

1069L General directions to CSLR operator

Notice of intention to issue a direction

- (1) If ASIC considers that the CSLR operator has not done all things reasonably practicable to ensure compliance with:
- (a) the mandatory requirements for the CSLR operator under section 1062; or
 - (b) a condition of the authorisation of the CSLR operator imposed by the Minister (see paragraph 1060(4)(b)); or
 - (c) regulatory requirements issued under section 1069K;
- ASIC may give the CSLR operator written notice that it intends to give the CSLR operator a specified direction under this section.
- (2) The notice must set out:
- (a) the specific measures that the direction will require the CSLR operator to take to comply with the requirements or condition; and
 - (b) the reasons for ASIC's intention to give the direction.

Issuing a direction

- (3) If, after receiving the notice:
- (a) the CSLR operator does not take those specific measures; and
 - (b) ASIC still considers that it is appropriate to give the direction to the CSLR operator;
- ASIC may give the CSLR operator the direction, in writing, with a statement setting out the reasons for giving the direction.
- (4) The direction must deal with the time by which, or the period during which, it is to be complied with. The time or period must be reasonable.
- (5) A direction made under this section is not a legislative instrument.

Compliance

- (6) The CSLR operator must comply with a direction made under this section.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

- (7) If the CSLR operator fails to comply with the direction, ASIC may apply to the Court for, and the Court may make, an order that the CSLR operator comply with the direction.

Varying or revoking a direction

- (8) ASIC may vary a direction made under this section by giving written notice to the CSLR operator.
- (9) The direction has effect until ASIC revokes it by giving written notice to the CSLR operator.
- (10) ASIC may revoke the direction, by giving written notice to the CSLR operator, if, at the time of revocation, ASIC considers that the direction is no longer necessary or appropriate.

Division 6—Financial matters

1069M Costs for first levy period

Estimate of costs for first levy period

- (1) The CSLR operator may, by notifiable instrument made at any time before the start of the first levy period, determine for the first levy period and a sub-sector an estimate that is the sum of:
- (a) the specified amount equal to what the CSLR operator reasonably believes (having regard to actuarial principles) will be the total amount of compensation payable under section 1063:
 - (i) during the first levy period; and
 - (ii) for the sub-sector;other than any such compensation relating to pre-CSLR complaints; and
 - (b) the specified amount equal to what the CSLR operator reasonably believes (having regard to actuarial principles) will be the portion of the sum of the following that is attributable to the sub-sector:

- 1 (i) the sum of AFCA's unpaid fees expected for each of the
2 months in the first levy period, other than any such fees
3 relating to pre-CSLR complaints;
4 (ii) the sum of AFCA's unpaid fees expected for each of the
5 months ending on or after the accumulation recovery
6 day but before the first levy period, other than any such
7 fees relating to pre-CSLR complaints;
8 (iii) the capital reserve establishment contribution;
9 (iv) the CSLR operator's expected administrative costs for
10 the first levy period.

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

- 12 (2) The notifiable instrument must include each of the amounts
13 referred to in subparagraphs (1)(b)(i) to (iv).

14 *Reconciliation of costs for first levy period*

- 15 (3) The CSLR operator may, by notifiable instrument and as soon as
16 reasonably practicable after the first levy period, determine the
17 revised costs for the first levy period and a sub-sector by
18 calculating the sum of the following amounts:
19 (a) the total amount of compensation paid under section 1063
20 during the first levy period for the sub-sector, other than any
21 such compensation relating to pre-CSLR complaints;
22 (b) the amount equal to the portion of the sum of the following
23 amounts that the CSLR operator reasonably believes (having
24 regard to actuarial principles) are attributable to the
25 sub-sector:
26 (i) the sum of AFCA's unpaid fees for each of the months
27 in the first levy period, other than any such fees relating
28 to pre-CSLR complaints;
29 (ii) the sum of AFCA's unpaid fees for each of the months
30 ending on or after the accumulation recovery day but
31 before the first levy period, other than any such fees
32 relating to pre-CSLR complaints;
33 (iii) the capital reserve establishment contribution;
34 (iv) the CSLR operator's administrative costs for the first
35 levy period.

Note: A single instrument may determine revised costs for several sub-sectors.

1069N Payment to the CSLR operator of amount for the first levy period for the scheme

- (1) The Commonwealth must pay to the CSLR operator the amount mentioned in subsection (2) for the first levy period for the following purposes:
- (a) the CSLR operator paying compensation under section 1063 during the first levy period, other than any such compensation relating to pre-CSLR complaints;
 - (b) the CSLR operator paying AFCA's unpaid fees for each month in the first levy period, other than any such fees relating to pre-CSLR complaints;
 - (c) the CSLR operator paying AFCA's unpaid fees for each month ending on or after the accumulation recovery day but before the first levy period, other than any such fees relating to pre-CSLR complaints;
 - (d) the CSLR operator establishing approximately one third of the capital reserve (within the meaning of the *Financial Services Compensation Scheme of Last Resort Levy (Collection) Act 2021*);
 - (e) the CSLR operator paying the CSLR operator's administrative costs for the first levy period.
- (2) For the purposes of subsection (1), the amount is equal to the sum of each estimate determined under subsection 1069M(1) for the first levy period and a sub-sector.

1069P Payment to the CSLR operator of amounts equal to levy

- (1) The Commonwealth must pay to the CSLR operator an amount equal to each amount received by ASIC, on behalf of the Commonwealth, by way of:
- (a) levy (within the meaning of the *Financial Services Compensation Scheme of Last Resort Levy (Collection) Act 2021*); or
 - (b) late payment penalty (within the meaning of that Act); or
 - (c) shortfall penalty (within the meaning of that Act).

- 1 (2) The Consolidated Revenue Fund is appropriated for the purposes
2 of subsection (1).

3 **1069Q Application of money by CSLR operator**

- 4 (1) The money of the CSLR operator is to be applied only:
5 (a) to pay compensation under section 1063; and
6 (b) to pay AFCA's unpaid fees under section 1069B; and
7 (c) to pay AFCA's accumulated unpaid fees under section
8 1069C; and
9 (d) to pay the CSLR operator's administrative costs; and
10 (e) to reimburse to ASIC the costs that ASIC has notified to the
11 CSLR operator under subsection 9(4) of the *Financial*
12 *Services Compensation Scheme of Last Resort Levy*
13 *(Collection) Act 2021*; and
14 (f) to establish and restore the capital reserve (within the
15 meaning of the *Financial Services Compensation Scheme of*
16 *Last Resort Levy (Collection) Act 2021*).
17 (2) Subsection (1) does not prevent investment of money.

18 **1069R Investment by CSLR operator**

- 19 The CSLR operator must not invest money of the CSLR operator
20 unless:
21 (a) the money is not immediately required for the purposes
22 mentioned in paragraphs 1069Q(1)(a) to (e); and
23 (b) the money is invested:
24 (i) on deposit with an ADI (within the meaning of the
25 *Banking Act 1959*), including a deposit evidenced by a
26 certificate of deposit; or
27 (ii) in securities of, or securities guaranteed by, the
28 Commonwealth, a State or a Territory.

29 **1069S Recovery of overpayments**

- 30 (1) If:
31 (a) the CSLR operator pays an amount of compensation to a
32 person under, or purportedly under, this Part; and

- 1 (b) the amount paid exceeds the amount (if any) properly
2 payable to the person under this Part;
3 the amount of the excess is recoverable by the CSLR operator as a
4 debt due to the CSLR operator by action against the person in the
5 Federal Court or the Federal Circuit and Family Court of Australia
6 (Division 2).
- 7 (2) An amount equal to the excess may alternatively be deducted from
8 any other amount of compensation payable under this Part to, or
9 for the benefit of, the person.

Part 2—Other amendments

Australian Securities and Investments Commission Act 2001

4 After paragraph 12A(1)(b)

Insert:

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

5 After subparagraph 127(4)(aa)(i)

Insert:

- (ia) the CSLR operator (within the meaning of Chapter 7 of the *Corporations Act 2001*);

Corporations Act 2001

6 After subsection 601AB(1B)

Insert:

- (1C) ASIC may also decide to deregister a company if the company is liable to pay levy (within the meaning of the *Financial Services Compensation Scheme of Last Resort Levy (Collection) Act 2021*) and the company has not paid in full at least 12 months after the due date for payment:
- (a) the amount of the levy; and
 - (b) the amount of any late payment penalty payable in relation to the levy; and
 - (c) the amount of any shortfall penalty payable in relation to the levy.

7 After subsection 601AH(1A)

Insert:

- (1B) ASIC may reinstate the registration of a company deregistered under subsection 601AB(1C) if:
- (a) ASIC receives an application in relation to the reinstatement of the company's registration; and

- (b) the levy (within the meaning of the *Financial Services Compensation Scheme of Last Resort Levy (Collection) Act 2021*) imposed on the company is paid in full; and
- (c) the amount of any late payment penalty payable in relation to the levy is paid in full; and
- (d) the amount of any shortfall penalty payable in relation to the levy is paid in full.

8 After paragraph 915B(1)(f)

Insert:

- ; or (g) is liable to pay levy (within the meaning of the *Financial Services Compensation Scheme of Last Resort Levy (Collection) Act 2021*) and has not paid in full at least 12 months after the due date for payment:
- (i) the amount of levy; and
- (ii) the amount of any late payment penalty in relation to the levy; and
- (iii) the amount of any shortfall penalty payable in relation to the levy.

9 After subsection 915B(1A)

Insert:

- (1B) ASIC must cancel an Australian financial services licence held by an individual, by giving written notice to the individual, if:
- (a) the individual is required to pay an amount to another person in accordance with a relevant AFCA determination; and
- (b) the CSLR operator has paid, under section 1063, an amount of compensation to the other person for the relevant AFCA determination.

10 After paragraph 915B(2)(e)

Insert:

- ; or (f) in the case of a partnership that is liable to pay levy (within the meaning of the *Financial Services Compensation Scheme of Last Resort Levy (Collection) Act 2021*)—the following have not been paid in full at least 12 months after the due date for payment:

- 1 (i) the amount of levy;
2 (ii) the amount of any late payment penalty in relation to the
3 levy;
4 (iii) the amount of any shortfall penalty payable in relation
5 to the levy.

6 **11 After subsection 915B(2A)**

7 Insert:

- 8 (2B) ASIC must cancel an Australian financial services licence held by
9 a partnership, by giving written notice to the partnership, if:
10 (a) one or more of the partners is required to pay an amount to a
11 person in accordance with a relevant AFCA determination;
12 and
13 (b) the CSLR operator has paid, under section 1063, an amount
14 of compensation to the person for the relevant AFCA
15 determination.

16 **12 After paragraph 915B(3)(e)**

17 Insert:

- 18 ; or (f) the body is liable to pay levy (within the meaning of the
19 *Financial Services Compensation Scheme of Last Resort*
20 *Levy (Collection) Act 2021*) and has not paid in full at least
21 12 months after the due date for payment:
22 (i) the amount of levy; and
23 (ii) the amount of any late payment penalty in relation to the
24 levy; and
25 (iii) the amount of any shortfall penalty payable in relation
26 to the levy.

27 **13 After subsection 915B(3A)**

28 Insert:

- 29 (3B) ASIC must cancel an Australian financial services licence held by
30 a body corporate, by giving written notice to the body, if:
31 (a) the body is required to pay an amount to a person in
32 accordance with a relevant AFCA determination; and

- (b) the CSLR operator has paid, under section 1063, an amount of compensation to the person for the relevant AFCA determination.

14 After paragraph 915B(4)(e)

Insert:

- ; or (f) in the case of a licensee that is a single legal entity under section 761FA of this Act and also liable to pay levy (within the meaning of the *Financial Services Compensation Scheme of Last Resort Levy (Collection) Act 2021*)—the following have not been paid in full at least 12 months after the due date for payment:
- (i) the amount of levy;
 - (ii) the amount of any late payment penalty in relation to the levy;
 - (iii) the amount of any shortfall penalty payable in relation to the levy.

15 At the end of section 915B

Add:

- (4B) ASIC must cancel an Australian financial services licence held by the trustees of a trust, by giving written notice to the trustees, if:
- (a) the trustees of the trust are required to pay an amount to a person in accordance with a relevant AFCA determination; and
 - (b) the CSLR operator has paid, under section 1063, an amount of compensation to the person for the relevant AFCA determination.

16 After paragraph 920A(1)(j)

Insert:

- (ja) all of the following apply:
- (i) an individual who holds an Australian financial services licence, a partner in a partnership, a body corporate or a trustee of a trust is required to pay an amount in accordance with a relevant AFCA determination;

- 1 (ii) the CSLR operator has paid, under section 1063, an
2 amount of compensation for the relevant AFCA
3 determination;
4 (iii) at the time the payment is made by the CSLR operator,
5 the person is the individual licensee, a partner in the
6 partnership, an officer of the body corporate or the
7 trustee of the trust; or

8 **17 After paragraph 1317C(gdc)**

- 9 Insert:
10 (gdca) a decision by ASIC under subsection 915B(1B), (2B), (3B)
11 or (4B) (immediate cancellation of an Australian financial
12 services licence); or

13 **18 In the appropriate position in Schedule 3**

14 Insert:

- 15 Subsection 1069L(6) (a) for an individual—100 penalty units for each
day, or part of a day, in respect of which the
offence is committed; and
(b) for a body corporate—1,000 penalty units
for each day, or part of a day, in respect of
which the offence is committed

16 ***National Consumer Credit Protection Act 2009***

17 **19 At the end of subsection 54(1)**

- 18 Add:
19 ; or (e) in the case of a licensee that is liable to pay levy (within the
20 meaning of the *Financial Services Compensation Scheme of*
21 *Last Resort Levy (Collection) Act 2021*)—the following have
22 not been paid in full at least 12 months after the due date for
23 payment:
24 (i) the amount of levy;
25 (ii) the amount of any late payment penalty in relation to the
26 levy;
27 (iii) the amount of any shortfall penalty payable in relation
28 to the levy.

1 **20 After subsection 54(1A)**

2 Insert:

3 (1B) ASIC must cancel a licensee's licence if:

- 4 (a) the licensee is required to pay an amount to a person in
5 accordance with a relevant AFCA determination (within the
6 meaning of Chapter 7 of the *Corporations Act 2001*); and
7 (b) the CSLR operator (within the meaning of that Chapter) has
8 paid, under section 1063 of that Act, an amount of
9 compensation to the person for the relevant AFCA
10 determination.

11 **21 After paragraph 80(1)(fb)**

12 Insert:

13 (fba) if all of the following apply:

- 14 (i) an individual who holds a licence, a partner in a
15 partnership, a body corporate or a trustee of a trust is
16 required to pay an amount in accordance with a relevant
17 AFCA determination (within the meaning of Chapter 7
18 of the *Corporations Act 2001*);
19 (ii) the CSLR operator (within the meaning of that Chapter)
20 has paid, under section 1063 of that Act, an amount of
21 compensation for the relevant AFCA determination;
22 (iii) at the time the payment is made by the CSLR operator,
23 the person is the individual licensee, a partner in the
24 partnership, an officer (within the meaning of that Act)
25 of the body corporate or the trustee of the trust; or

26 **22 Before paragraph 327(1)(a)**

27 Insert:

- 28 (aa) a decision of ASIC under subsection 54(1B) (which deals
29 with immediate cancellation of a licence); or

2019-2020-2021

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Financial Services Compensation Scheme of Last Resort Levy Bill 2021

No. , 2021

(Treasury)

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

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1 **A Bill for an Act to impose levy on persons relating**
2 **to the AFCA scheme, and for related purposes**

3 The Parliament of Australia enacts:

4 **Part 1—Preliminary**
5

6 **1 Short title**

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

Section 2

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.

Section 6

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 in Chapter 7 of the *Corporations Act 2001*.

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 scheme 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.

ASIC means the Australian Securities and Investments Commission.

body regulated by APRA has the same meaning as in the *Australian Prudential Regulation Authority Act 1998*.

claims, fees and costs estimate means:

- (a) an initial claims, fees and costs estimate; or
- (b) a revised claims, fees and costs estimate.

4 *Financial Services Compensation Scheme of Last Resort Levy Bill* No. , 2021
2021

Part 2—Levy

Division 1—Imposition of levy

8 Imposition of levy—main cases

Annual levy

- (1) Levy is imposed on a person for the second levy period or a later levy period if, at any time during the qualifying period for 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.

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, fees 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, fees 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 1069H of the *Corporations Act 2001*. This alternative levy can be based on the full revised claims, fees and costs estimate and cause the sub-sector levy cap to be exceeded.

Part 2 Levy

Division 1 Imposition of levy

Section 9

1 Note 3: Further levy can be imposed under this subsection more than once for
2 the levy period and the sub-sector if more than one revised claims,
3 fees and costs estimate comes into force for the levy period and the
4 sub-sector.

5 *Special levy for a sub-sector—total levy exceeds the sub-sector*
6 *levy cap*

7 (3) Levy is imposed on the person for the levy period if both of the
8 following have come into force for the levy period and the
9 sub-sector:

- 10 (a) a revised claims, fees and costs estimate;
11 (b) as a result of that estimate, a determination under
12 section 1069H of the *Corporations Act 2001* that, under
13 subsection 1069H(4) of that Act, specifies that levy needs to
14 be imposed by this subsection for the levy period and the
15 sub-sector.

16 Note 1: Such a determination will only come into force if the Minister decides
17 that special levy needs to be imposed across just this sub-sector when
18 the revised claims, fees and costs estimate causes the sub-sector levy
19 cap to be exceeded.

20 Note 2: Special levy can be imposed under this subsection more than once for
21 the levy period and the sub-sector if more than one of these estimates,
22 and determinations, come into force for the levy period and the
23 sub-sector.

24 **9 Imposition of special levy—revised estimate of claims, fees and** 25 **costs exceeds the sub-sector levy cap and is to be spread** 26 **across several sub-sectors etc.**

27 Levy is imposed on a person for the second levy period or a later
28 levy period if:

- 29 (a) a revised claims, fees and costs estimate comes into force for
30 the levy period and a sub-sector; and
31 (b) as a result of that estimate, a determination comes into force
32 under section 1069H of the *Corporations Act 2001* that,
33 under subsection 1069H(5) of that Act, specifies that levy
34 needs to be imposed by this section:
35 (i) for the levy period; and

Section 10

- (ii) across all members of one or more specified sub-sectors (which need not include the sub-sector to which that estimate relates); and
- (c) at any time during the levy period or the previous levy period, the person is a member of one of the sub-sectors specified in that determination; 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.

Note 1: Such a determination will only come into force if the Minister decides that special levy needs to be imposed across one or more other sub-sectors to deal with a revised claims, fees 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 1069H(4) of the *Corporations Act 2001*, specifies that special 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, fees and costs estimate relates.

Note 3: Special levy can be imposed under this section more than once for the levy period and the sub-sector if more than one of these estimates, and determinations, come into force for the levy period.

10 Imposition of levy—unpaid claims, and AFCA’s unpaid fees, for complaints given to AFCA before the accumulation recovery day

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

- (a) at any time during the 12 months before the start of the first levy period, the person is a body regulated by APRA, other than:
- (i) a private health insurer covered by paragraph 3(2)(ea) of the *Australian Prudential Regulation Authority Act 1998*; or
- (ii) a trustee covered by paragraph 3(2)(f) of that Act; and
- (b) section 3C of the *Taxation Administration Act 1953* applies to the person for the 2018-2019 income year; and

Part 2 Levy

Division 1 Imposition of levy

Section 11

- 1 (c) the person's total income exceeds \$4.5 billion for that income
2 year according to information reported to the Commissioner
3 in the person's income tax return (within the meaning of the
4 *Income Tax Assessment Act 1997*) for that income year.

5 **11 By whom levy payable**

- 6 Levy imposed on a person for a levy period is payable by the
7 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) across all persons for a levy period and a sub-sector:
- (a) does not exceed the initial claims, fees 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, fees 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, fees and costs estimate comes into force for the levy period and the sub-sector;

Section 14

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) across all persons for a levy period, a sub-sector
6 and a revised claims, fees and costs estimate:
7 (a) does not exceed the difference between:
8 (i) the revised claims, fees and costs estimate; and
9 (ii) the total amount of levy paid that was earlier imposed
10 by section 8 across 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, fees and costs estimate for the levy period and
22 the sub-sector.

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

- 24 (1) The amount of levy imposed by subsection 8(3) on a person:
25 (a) for a levy period and a sub-sector; and
26 (b) because the following have come into force for the levy
27 period and the sub-sector:
28 (i) a revised claims, fees and costs estimate;
29 (ii) a determination under section 1069H of the
30 *Corporations Act 2001* (the ***Minister's determination***);

Section 15

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 amounts of special levy*

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

11 *Regulations*

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

20 **15 Amount of special levy—total levy exceeds the sub-sector levy cap**
21 **and is to be spread across several sub-sectors etc.**

- 22 (1) The amount of levy imposed by section 9 on a person:
23 (a) for a levy period; and
24 (b) because the following have come into force for the levy
25 period:
26 (i) a revised claims, fees and costs estimate;
27 (ii) a determination under section 1069H of the
28 *Corporations Act 2001* (the ***Minister's determination***);
29 is the amount worked out in accordance with a method prescribed
30 by the regulations for the purposes of this subsection.

Section 16

Objectives for working out amounts of special levy

- (2) An objective is that the total amount of levy imposed by section 9:
- (a) for the levy period; and
 - (b) across all members of a sub-sector specified, under paragraph 1069H(5)(b) of the *Corporations Act 2001*, in the Minister's determination;
- does not exceed the total amount specified, under that paragraph, for that sub-sector in the Minister's determination.
- (3) Another objective is that the sum of the total amounts of levy imposed by section 9:
- (a) for the levy period; and
 - (b) specified, under paragraph 1069H(5)(c) of the *Corporations Act 2001*, in the Minister's determination;
- does not cause the scheme levy cap to be exceeded.

Regulations

- (4) 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 subsections (2) and (3).
- (5) 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, fees and costs estimate; and
 - (b) the Minister's determination.

16 Amount of levy for unpaid claims, and AFCA's unpaid fees, for complaints given to AFCA before the accumulation recovery day

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

Section 16

Objectives for working out amounts of levy

- (2) The objectives are that the total amount of levy imposed by section 10 across all persons for the first levy period:
- (a) does not exceed the estimate determined under section 11 of the Levy Collection Act for the first levy period; 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 first levy period may have regard to a determination under section 11 of the Levy Collection Act for the first levy period.

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 across 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 across all persons for all sub-sectors.

Sub-sector levy cap

- (2) The total amount of levy that may be imposed for the second levy period, or a later levy period, across all persons in a particular sub-sector must not exceed the cap (the ***sub-sector levy 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 1069H of the *Corporations Act 2001* for the levy period and the sub-sector specifying that levy needs to be imposed by subsection 8(3) or section 9 of this Act.

Note 1: Unless the Minister makes such a determination, this sub-sector levy cap is an absolute maximum amount of levy that may be imposed for a levy period across all persons in the sub-sector.

Note 2: Subsection 8(3) and section 9 of this Act are about special levy.

Note 3: Special levy imposed by section 9 on members of a sub-sector is counted towards that sub-sector's sub-sector levy cap.

- (3) 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*.

Section 19

- 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.

2019-2020-2021

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

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 persons relating to the AFCA scheme,
and for related purposes**

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1 **A Bill for an Act to provide for the collection of levy**
2 **imposed on persons relating to the AFCA scheme,**
3 **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*.

Section 2

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 <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.	

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 Simplified outline of this Act

This Act is about the collection of levy imposed by the *Financial Services Compensation Scheme of Last Resort Levy Act 2021*.

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

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

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

Section 4

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

4 Act binds the Crown

(1) 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.

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

5 External Territories

This Act extends to every external Territory.

6 Extraterritorial application

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

7 Definitions

In this Act:

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

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

Section 7

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

3 *amount* includes a nil amount.

4 *approved form* has the meaning given by section 29.

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

7 *capital reserve* means an amount equal to \$5 million to be applied
8 by the CSLR operator for the purposes mentioned in paragraphs
9 1069Q(1)(a) to (e) of the *Corporations Act 2001*.

10 *capital reserve establishment contribution* means an amount equal
11 to approximately one third of the capital reserve.

12 Note: Levy equal to this amount may be imposed (see subsections 8(1) and
13 12(2) of the Levy Act and subparagraph 9(1)(b)(iv) of this Act). The
14 CSLR operator will then be paid an amount equal to that levy (see
15 section 1069P of the *Corporations Act 2001*).

16 *claims, fees and costs estimate* means an estimate determined
17 under section 9 or 10.

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 levy imposed by the Levy Act.

22 *Levy Act* means the *Financial Services Compensation Scheme of*
23 *Last Resort Levy Act 2021*.

24 *levy month* means one of the 12 months of the calendar year.

25 *levy period* has the same meaning as in the Levy Act.

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

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

Section 7

pre-CSLR complaint means a complaint that:

- (a) is for AFCA to finalise (including by making a determination); and
- (b) is given to AFCA before the accumulation recovery day; and
- (c) is a complaint of a kind covered by paragraph 1065(1)(a) of the *Corporations Act 2001*.

Note: AFCA will have finalised many of these complaints before this Act commences.

qualifying period has the same meaning as in the Levy Act.

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

shortfall penalty means penalty payable under section 15.

sub-sector has the same meaning as in the Levy Act.

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, 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.

Note: The information may be used to work out the amount of levy payable by the person, and may need to be substantiated (see section 19). A penalty may apply if the information is false or misleading (see section 15).

- (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.

Note: The approved form could also be the approved form for returns to be provided to ASIC under section 11 of the *ASIC Supervisory Cost Recovery Levy (Collection) Act 2017*.

- (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.

Section 9

1 A notice under this subsection must state the date on which the
2 notice was published on ASIC's website.

- 3 (5) A day determined by ASIC under paragraph (4)(a):
4 (a) must be 2 months or more after the day on which the notice
5 is first published on ASIC's website; and
6 (b) may be a different day for different classes of persons on
7 whom levy may be imposed for the levy period.

Offence

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

14 Penalty: 10 penalty units.

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

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

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

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

9 Initial estimate of claims, fees and costs for a levy period

- 24 (1) The CSLR operator may, by legislative instrument made within 12
25 months before the start of the second levy period or a later levy
26 period, determine for the levy period and a sub-sector an estimate
27 that is the sum of:

- 28 (a) the specified amount equal to what the CSLR operator
29 reasonably believes (having regard to actuarial principles)

Section 9

- 1 will be the total amount of compensation payable under
2 section 1063 of the *Corporations Act 2001*:
- 3 (i) during the levy period; and
4 (ii) for the sub-sector;
5 other than any such compensation relating to pre-CSLR
6 complaints; and
- 7 (b) the specified amount equal to what the CSLR operator
8 reasonably believes (having regard to actuarial principles)
9 will be the portion of the sum of the following that is
10 attributable to the sub-sector:
- 11 (i) the sum of AFCA's unpaid fees expected for each of the
12 months in the levy period, other than any such fees
13 relating to pre-CSLR complaints;
14 (ii) the CSLR operator's expected administrative costs for
15 the levy period;
16 (iii) ASIC's expected administrative costs notified under
17 subsection (4) for the levy period;
18 (iv) for each of the second and third levy periods—the
19 capital reserve establishment contribution reduced (but
20 not below zero) by half of any specified excess worked
21 out under subsection (7);
22 (v) for the fourth and each later levy period—the amount (if
23 any) equal to that necessary to restore the capital
24 reserve; and
- 25 (c) any specified shortfall worked out under subsection (5) for an
26 earlier levy period and the sub-sector; and
- 27 (d) for the second levy period—the portion of any specified
28 shortfall worked out under subsection (7) that the CSLR
29 operator reasonably believes (having regard to actuarial
30 principles) is the portion attributable to the sub-sector; and
- 31 (e) for the third levy period—any specified shortfall worked out
32 under subsection (8) for the first levy period and the
33 sub-sector;
- 34 less any excess amounts referred to in subsection (2).
- 35 (2) The excess amounts are as follows:

Section 9

- 1 (a) any specified excess worked out under subsection (5) for an
- 2 earlier levy period and the sub-sector;
- 3 (b) for the third levy period—any specified excess worked out
- 4 under subsection (8) for the first levy period and the
- 5 sub-sector;
- 6 (c) for the fourth levy period—the portion of any specified
- 7 excess:
- 8 (i) worked out under subsection (7); and
- 9 (ii) that remains after the application of
- 10 subparagraph (1)(b)(iv) for earlier levy periods;
- 11 that the CSLR operator reasonably believes (having regard to
- 12 actuarial principles) is the portion attributable to the
- 13 sub-sector.

14 Note: A single instrument under subsection (1) may determine estimates for
15 several sub-sectors.

- 16 (3) The legislative instrument must include each of the amounts
- 17 referred to in subparagraphs (1)(b)(i) to (v) and paragraph (2)(c).

18 *ASIC's administrative costs*

- 19 (4) Before the second levy period or a later levy period, ASIC may
- 20 notify the CSLR operator of the administrative costs that ASIC has
- 21 incurred, or expects to incur, for the levy period in performing
- 22 ASIC's functions:
- 23 (a) under this Act; and
- 24 (b) under Part 7.10B of the *Corporations Act 2001*; and
- 25 (c) under Part 5A.1 or 7.6 of that Act, or Part 2-2 of the *National*
- 26 *Consumer Credit Protection Act 2009*, relating to:
- 27 (i) liability to pay levy; or
- 28 (ii) payments by the CSLR operator.

29 *Reconciliation for earlier levy periods—annual levy*

- 30 (5) The CSLR operator may, for an earlier levy period and a
- 31 sub-sector, work out whether the total levy imposed by section 8 or
- 32 9 of the Levy Act for that earlier levy period in relation to claims,

Section 10

- 1 fees and costs estimates for that earlier levy period and the
2 sub-sector:
3 (a) falls short of; or
4 (b) exceeds;
5 the most recent claims, fees and costs estimate for that earlier levy
6 period and the sub-sector.
- 7 (6) The same shortfall or excess worked out under subsection (5) for a
8 particular earlier levy period and sub-sector is not to be included in
9 an estimate under subsection (1) more than once.

10 *Reconciliation for first levy period—levy for pre-CSLR complaints*

- 11 (7) The CSLR operator may, for the first levy period, work out
12 whether the total levy imposed by section 10 of the Levy Act for
13 the first levy period in relation to an estimate under section 11 of
14 this Act:
15 (a) falls short of; or
16 (b) exceeds;
17 a revised estimate under section 12 of this Act.

18 *Reconciliation for first levy period—estimate of costs*

- 19 (8) The CSLR operator may, for the first levy period and a sub-sector,
20 work out whether the estimate under subsection 1069M(1) of the
21 *Corporations Act 2001* for the first levy period and the sub-sector:
22 (a) falls short of; or
23 (b) exceeds;
24 the revised costs determined under subsection 1069M(3) of that
25 Act for the first levy period and the sub-sector.

26 **10 Revised estimate of claims, fees and costs for a levy period**

- 27 (1) The CSLR operator may:
28 (a) after the start of the second levy period or a later levy period;
29 and
30 (b) after recalculating the amounts referred to in subsections 9(1)
31 and (2) for the levy period and a sub-sector;

Section 11

determine for the levy period and the sub-sector a revised estimate using those recalculated amounts.

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

(2) The determination must include each of the recalculated amounts referred to in paragraph (1)(b) (including each of the recalculated amounts referred to in subparagraphs 9(1)(b)(i) to (v) and paragraph 9(2)(c)).

(3) The determination may specify whether further levy needs to be imposed under subsection 8(2) of the Levy Act for the levy period and the sub-sector.

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

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

- (a) as annual levy for a later levy period (see paragraph 9(1)(c) and subsection 9(5)), which will require a legislative instrument to be made under subsection 9(1); or
- (b) as special levy resulting from a legislative instrument made by the Minister under section 1069H of the *Corporations Act 2001*.

11 Initial estimate of unpaid claims, and AFCA's unpaid fees, for complaints given to AFCA before the accumulation recovery day

The CSLR operator may, by legislative instrument made at any time after the commencement of this Act, determine for the first levy period an estimate that is the sum of:

- (a) the specified amount equal to what the CSLR operator reasonably believes (having regard to actuarial principles) will be the total amount of compensation that:
 - (i) will be payable under section 1063 of the *Corporations Act 2001*; and
 - (ii) relates to pre-CSLR complaints; and

Section 12

- 1 (b) the specified amount equal to what the CSLR operator
2 reasonably believes (having regard to actuarial principles)
3 will be the portion of the total amount of AFCA's unpaid
4 fees for all months that relates to pre-CSLR complaints; and
5 (c) the specified amount equal to AFCA's accumulated unpaid
6 fees.

7 Note: Some of this compensation may become payable, or some of these
8 fees may become unpaid fees, after the end of the first levy period.
9 Such compensation and fees will still be part of this estimate for the
10 first levy period.

11 **12 Revised estimate of unpaid claims, and AFCA's unpaid fees, for** 12 **complaints given to AFCA before the accumulation** 13 **recovery day**

14 The CSLR operator may, by notifiable instrument made:

- 15 (a) after the start of the first levy period; and
16 (b) after recalculating the amounts referred to in paragraphs
17 11(a) to (c);

18 determine for the first levy period a revised estimate using those
19 recalculated amounts.

20 Note: From this revised estimate:
21 (a) any shortfall in levy can only be recovered as annual levy for a
22 later levy period (see paragraph 9(1)(d) and subsection 9(7)),
23 which will require a legislative instrument to be made under
24 subsection 9(1); and
25 (b) any surplus in levy will reduce annual levy for a later levy period
26 (see subparagraph 9(1)(b)(iv) and paragraph 9(2)(c)), which will
27 be reflected in a legislative instrument to be made under
28 subsection 9(1).

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

13 When levy due for payment

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

- (a) specified in a notice that ASIC gives to the person in relation to the levy period; and
- (b) not earlier than 30 days after the day on which the notice is given.

Note: A further notice will be given to the person if any further levy, or special levy, is imposed on the person for the levy period (for example, see subsection 8(2) or (3) or section 9 of the Levy Act).

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

- (a) the notice under paragraph (1)(a) may be given to the nominated person; and
- (b) the obligation imposed on the person by subsection (1) may be discharged by the nominated person.

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

14 Late payment penalty

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

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

unpaid at the start of the levy month

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.

9 **15 Shortfall penalty**

- 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
32 payable apart from this subsection, specify a later day as the day on

1 which the shortfall penalty is due and payable. The notice has
2 effect, and is taken always to have had effect, according to its
3 terms.

4 **16 Payment of levy, late payment penalty and shortfall penalty**

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

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

10 **17 Waiver of levy, late payment penalty and shortfall penalty**

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

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

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

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

21 **18 Recovery of levy, late payment penalty and shortfall penalty**

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

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

27 (2) ASIC is authorised, as agent of the Commonwealth, to bring
28 proceedings in the name of the Commonwealth for the recovery of

Section 19

1 a debt due to the Commonwealth of a kind mentioned in
2 subsection (1).

3 **19 Substantiation notices**

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

24 **20 Compliance with substantiation notice**

- 25 (1) A person who is given a substantiation notice must comply with
26 the notice:
- 27 (a) within the period specified in the notice; or
28 (b) within such further time as ASIC allows under
29 subsection (3).
- 30 (2) A person given a substantiation notice under section 19 may apply
31 to ASIC for further time to comply with the notice. An application

Section 21

1 must be in writing and made within 21 days after the notice is
2 given to the person.

3 (3) ASIC may, by written notice given to the person, extend the period
4 within which the person must comply with the notice.

5 **21 Failure to comply with substantiation notice**

6 (1) A person commits an offence if:
7 (a) the person is subject to a requirement under section 20; and
8 (b) the person refuses or fails to comply with the requirement.

9 Penalty: 10 penalty units.

10 (2) An offence against subsection (1) is an offence of strict liability.

11 (3) Subsection (1) does not apply if the person complies with the
12 notice to the extent to which the person is capable of complying
13 with it.

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

16 (4) Subsection (1) does not apply to the extent that the person has a
17 reasonable excuse.

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

20 (5) It is a reasonable excuse for an individual to refuse or fail to
21 answer a question or produce a document on the ground that to do
22 so might tend to incriminate the individual or expose the individual
23 to a penalty.

24 **22 Exempting laws ineffective**

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

27 (2) If a law (including a provision of a law) passed after the
28 commencement of this section purports to exempt a person from:
29 (a) liability to pay taxes under laws of the Commonwealth; or

Section 23

- 1 (b) liability to pay certain taxes under laws of the
2 Commonwealth that would otherwise include levy;
3 the law does not operate to exempt the person from liability to pay
4 levy unless the exemption expressly refers to levy under this Act.
- 5 (3) To avoid doubt, this section does not apply in relation to an
6 exemption under this Act or the Levy Act.

23 Internal review of certain decisions

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

Section 24

- 1 (6) The person reviewing the decision must give a notice in writing to
2 the person that made the request that sets out the result of the
3 reconsideration of the decision and gives the reasons for that
4 reconsideration.

5 **24 Administrative Appeals Tribunal review of certain decisions**

6 Applications may be made to the Administrative Appeals Tribunal
7 for review of:

- 8 (a) a decision of ASIC that has been confirmed or varied under
9 subsection 23(4) or a decision that has been taken to have
10 been confirmed under subsection 23(5); or
11 (b) a decision of ASIC under subsection 23(4) to revoke a
12 decision.

Part 4—Other matters

25 Treatment of partnerships

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

26 Treatment of unincorporated associations

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

Section 27

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

27 Treatment of RSE licensees

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

28 Treatment of multiple trustees

- (1) This section applies if the 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*.
- (2) 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 this section.

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

30 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.