



Financial Services Compensation Scheme of Last Resort Levy Act 2023

No. 44, 2023

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

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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[Assented to 3 July 2023]

The Parliament of Australia enacts:

No. 44, 2023 Financial Services Compensation Scheme of Last Resort Levy Act 2023

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Part 1—Preliminary

1 Short title

This Act is the *Financial Services Compensation Scheme of Last Resort Levy Act 2023*.

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 day after this Act receives the Royal Assent.	4 July 2023

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Act to bind Crown

This Act binds the Crown in right of each of the States, of the Australian Capital Territory and of the Northern Territory. However, it does not bind the Crown in right of the Commonwealth.

4 Extension to external Territories

This Act extends to the external Territories.

5 Extra-territorial application

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

6 Act does not impose levy on property of a State

- (1) This Act does not impose a tax on property of any kind belonging to a State.
- (2) In this section:

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

7 Definitions

- (1) In this Act:

accumulation recovery day has the same meaning as in 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 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 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*.

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claims, fees and costs estimate means:

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

Commissioner means the Commissioner of Taxation.

first levy period means the period that:

- (a) starts on the day specified in a determination in force under subsection (2); and
- (b) ends on 30 June 2024.

income year has the same meaning as in the *Income Tax Assessment Act 1997*.

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

levy means levy imposed by this Act (see Division 1 of Part 2).

Levy Collection Act means the *Financial Services Compensation Scheme of Last Resort Levy (Collection) Act 2023*.

levy period means:

- (a) the first levy period; or
- (b) a financial year starting after the end of the first levy period.

person has a meaning affected by section 18.

qualifying period, for a levy period, means the 12-month period starting 24 months before the start of the levy period.

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

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

sub-sector has the same meaning as in the *ASIC Supervisory Cost Recovery Levy Act 2017*.

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

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

- (2) The Minister may, by notifiable instrument, determine a specified day to be the day that the first levy period starts (which must not be before the day the determination commences).

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.

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

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

- (3) Levy is imposed on the person for the levy period if both of the following have come into force for the levy period and the sub-sector:
- (a) a revised claims, fees and costs estimate;
 - (b) as a result of that estimate, a determination under section 1069H of the *Corporations Act 2001* that, under subsection 1069H(4) of that Act, specifies that levy needs to be imposed by this subsection for the levy period and the sub-sector.

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

Note 2: Special levy can be imposed under this subsection 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 and the sub-sector.

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

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

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

Part 2 Levy

Division 1 Imposition of levy

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 2021-2022 income year; and
- (c) the person’s total income for that income year (for the purposes of paragraph 3C(3)(b) of that Act) is one of the 10

highest of all the persons to whom both paragraphs (a) and (b) apply.

11 By whom levy payable

Levy imposed on a person for a levy period is payable by the 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 members of a sub-sector for a levy period:
- (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 prescribed by the regulations for a levy period and a sub-sector may have regard to:
- (a) the initial claims, fees and costs estimate for the levy period and the sub-sector; and
 - (b) one or more determinations by ASIC under regulations made for the purposes of section 9 of the *ASIC Supervisory Cost Recovery Levy Act 2017*.

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

Objectives for working out further amounts of levy

- (2) The objectives are that the total amount of levy imposed by subsection 8(2) across all members of a sub-sector for a levy period and a revised claims, fees and costs estimate:
 - (a) does not exceed the difference between:
 - (i) the revised claims, fees and costs estimate; and
 - (ii) the total amount of levy paid that was earlier imposed by section 8 across all members of the sub-sector for the levy period; 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 prescribed by the regulations for a levy period and a sub-sector may have regard to:
 - (a) the revised claims, fees and costs estimate for the levy period and the sub-sector; and
 - (b) one or more determinations by ASIC under regulations made for the purposes of section 9 of the *ASIC Supervisory Cost Recovery Levy Act 2017*.

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

- (1) The amount of levy imposed by subsection 8(3) on a person:
 - (a) for a levy period and a sub-sector; and
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Division 2 Amount of levy

Section 15

- (b) because the following have come into force for the levy period and the sub-sector:
- (i) a revised claims, fees and costs estimate;
 - (ii) a determination under section 1069H of the *Corporations Act 2001* (the **Minister's determination**);
- 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 special levy

- (2) The objectives are that the total amount of levy imposed by subsection 8(3) across all members of the sub-sector for the levy period:
- (a) does not exceed the total amount specified, under paragraph 1069H(4)(b) of the *Corporations Act 2001*, in the Minister's determination; 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 prescribed by the regulations for a levy period and a sub-sector may have regard to:
- (a) the revised claims, fees and costs estimate for the levy period and the sub-sector; and
 - (b) the Minister's determination; and
 - (c) one or more determinations by ASIC under regulations made for the purposes of section 9 of the *ASIC Supervisory Cost Recovery Levy Act 2017*.

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

- (1) The amount of levy imposed by section 9 on a person:
- (a) for a levy period; and

- (b) because the following have come into force for the levy period:
- (i) a revised claims, fees and costs estimate;
 - (ii) a determination under section 1069H of the *Corporations Act 2001* (the **Minister's determination**);
- 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 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 prescribed 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; and
 - (c) one or more determinations by ASIC under regulations made for the purposes of section 9 of the *ASIC Supervisory Cost Recovery Levy Act 2017*.

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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.

Note: This levy is payable in 2 equal instalments (see subsection 13(1) of the Levy Collection Act).

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 prescribed 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 members of a particular sub-sector must not exceed the cap (the **sub-sector levy cap**) that is the highest of the following:

- (a) \$20 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 cap is exceeded (or further exceeded) because of a determination under section 1069H of the *Corporations Act 2001* for the levy period and a 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 members of the sub-sector.

Note 2: Subsection 8(3) and section 9 of this Act are about special levy. The Minister's determination can specify that special levy needs to be imposed by section 9 on either or both of the following:

- (a) all members of the sub-sector;
- (b) all members of one or more other sub-sectors.

Note 3: Special levy imposed by section 9 of this Act on members of a sub-sector only counts towards the sub-sector levy cap for that sub-sector.

Part 2 Levy

Division 3 Caps on levy

Section 17

(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*.

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- (5) This Act applies to the notional entity during the period as if the notional entity were a person, but with the changes set out in subsections (6) and (7).
- (6) During the period, or any part of the period, that the trust has 2 or more trustees, an obligation that would otherwise be imposed on the notional entity by this Act is imposed instead on each trustee, but may be discharged by any of the trustees.
- (7) During the period, or any part of the period, that the trust has only one trustee, an obligation that would otherwise be imposed on the notional entity by this Act is imposed instead on that single trustee.

19 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.

*[Minister's second reading speech made in—
House of Representatives on 8 March 2023
Senate on 22 March 2023]*

(15/23)
