

EXPLANATORY STATEMENT

Issued by authority of the Treasurer

Australian Business Securitisation Fund Act 2019

Australian Business Securitisation Fund Rules 2019

Section 22 of the *Australian Business Securitisation Fund Act 2019* (the Act) provides that the Minister may make rules prescribing matters required or permitted by the Act to be prescribed by the rules, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *Australian Business Securitisation Fund Rules 2019* (the Rules) is to prescribe:

- additional requirements that need to be satisfied for a debt security to constitute an authorised debt security under the Act; and
- an “eligible delegate” for the purposes of the Minister’s delegation powers under the Act.

The Act establishes the Australian Business Securitisation Fund (ABSF), which is aimed at boosting competition in the small and medium enterprise (SME) lending market, and improving access to, and the price of, finance available to businesses in that market.

The ABSF will focus on investing in warehouses and the securitisation market to support eligible lenders to grow and provide credit to SMEs.

The Rules prescribe that an authorised debt security must not be a first loss security, and that each amount of credit must not be provided by major banks or their subsidiaries.

The Rules also prescribe that officials of the Australian Office of Financial Management are eligible delegates for the purposes of the Minister’s delegation powers.

The Act does not specify any conditions that need to be met before the power to make the Rules is exercised.

The content of the Rules was consulted on in the key elements of the draft investment mandate that were released for public consultation between 21 December 2018 and 16 January 2019. The draft contained the Minister’s intentions regarding the rules relating to the additional ‘authorised debt security’ requirements, and other investment related matters.

The Rules commenced on the day after registration.

The establishment and operation of the ABSF is expected to increase compliance costs by \$0.1 million per year. A regulation impact statement has been prepared and is

attached to the explanatory memorandum to the Australian Business Securitisation Fund Bill 2019.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Australian Business Securitisation Fund Rules 2019

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Australian Business Securitisation Fund Rules 2019* prescribe:

- additional requirements that need to be satisfied for a debt security to constitute an authorised debt security under the Act; and
- an “eligible delegate” for the purposes of the Minister’s delegation powers under the Act.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Explanation of provisions

Sections 1, 2 and 3 — Machinery provisions

Sections 1, 2 and 3 of the *Australian Business Securitisation Fund Rules 2019* (the Rules) are machinery provisions setting out:

- the name of the Rules;
- the day the Rules commenced; and
- the authority for making the Rules.

Section 4 — Definitions

Section 4 defines expressions and terms that are used in the Rules.

Section 5 — Authorised debt security requirements

Section 5 prescribes additional requirements for a debt security to come within the definition of **authorised debt security** in subsection 12(4) of the *Australian Business Securitisation Fund Act 2019* (the Act).

In addition to the requirements in section 12(4) of the Act, to be an authorised debt security under the Act, each amount of credit must not be provided by a credit provider that is a major bank or a subsidiary of a major bank.

Additionally, the debt security must not be a first loss security.

“Major bank” is an authorised deposit-taking institution that has had levy imposed under section 4 of the *Major Banking Levy Act 2017* in the past.

“First loss security” takes its ordinary meaning. First loss securities are securities that have no subordination arising from lower ranked securities, and therefore will absorb losses prior to any higher ranked securities. Prohibiting the Australian Business Securitisation Fund (ABSF) from investing in first loss securities reduces risk and moral hazard.

The further criteria on what constitutes an authorised debt security under the Act ensures that investments in debt securities are effective in achieving the intent of the ABSF to support the ability of small lenders to grow, and to provide credit to underserved segments in the small and medium enterprise lending market.

Section 6 — Eligible delegates

Section 6 prescribes the Australian Office of Financial Management (the AOFM) as an entity whose officials can be an eligible delegate under subsection 19(2) of the Act.

Officials of the AOFM who meet the remaining requirements of an eligible delegate in subsection 19(2) of the Act hold specialist positions within the AOFM, and have been recruited for their specialist knowledge and expertise in securities and debt

management. These individuals also already have significant powers delegated to them in relation to the management of the over \$500 billion of Australian Government Debt on issue, and are therefore best placed to exercise powers and carry out the functions delegated under the Act.