
TREASURY LAWS AMENDMENT (2017 MEASURES
NO. #) BILL 2017

EXPOSURE DRAFT
EXPLANATORY MEMORANDUM

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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
AAT	Administrative Appeals Tribunal
AFSL	Australian Financial Services Licence
ACL	Australian Credit Licence
ASIC	Australian Securities and Investments Commission
Corporations Act	<i>Corporations Act 2001</i>
Credit Act	<i>National Consumer Credit Protection Act 2009</i>

Chapter 1

Regulatory sandbox to test financial and credit services and products

Outline of chapter

1.1 Schedule # to this Bill amends the *Corporations Act 2001* (the ‘Corporations Act’) and *National Consumer Credit Protection Act 2009* (the ‘Credit Act’) to extend the regulation-making power to enable an exemption from obtaining an Australian Financial Services Licence (AFSL) and/or an Australian Credit Licence (ACL) under certain conditions for the purposes of testing financial and credit services and products.

Context of amendments

1.2 The Australian Securities and Investments Commission (ASIC) has provided for a regulatory sandbox framework (‘ASIC regulatory sandbox’) since December 2016 that enables new and innovative FinTech products and services to be tested in Australia. The ASIC regulatory sandbox is comprised of ASIC’s FinTech licensing exemptions provided under ASIC Corporations (Concept Validation Licensing Exemption) Instrument 2016/1175 and ASIC Credit (Concept Validation Licensing Exemption) Instrument 2016/1176.

1.3 Schedule # of the Bill implements the Government’s reform to enhance the regulatory sandbox as announced in the 2017-18 Budget. The enhanced regulatory sandbox allows more businesses to test a wider range of new financial and credit products and services without a licence, for a longer time.

1.4 The enhanced regulatory sandbox is intended to:

- further promote Australia’s FinTech capability by supporting start-ups and innovative businesses to develop, test and launch their innovative financial and credit services and products under certain conditions; and
- strike a better balance between encouraging competition and innovation that delivers choice for consumers and

minimising risks to consumers or the integrity of the financial system.

Summary of new law

1.5 This schedule extends the regulation-making powers in the Corporations Act and Credit Act to enable regulations to provide conditional exemptions from the AFSL and ACL requirements for the purposes of testing financial and credit services and products.

1.6 As a result of the amendments, eligible entities can test services in relation to certain products without an AFSL or ACL under conditions set out in the regulations. If an entity fails to meet any of the prescribed conditions, ASIC may cancel an entities' exemption or apply to the court for an order requiring the entity to comply in a particular way.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Regulations may provide for conditional exemptions from AFSL and ACL requirements for the purpose of testing financial and credit services and products. The regulations may empower ASIC to make decision regarding how the exemption starts and ceases to apply.	Regulations may provide for unconditional exemptions from the AFSL and ACL requirements.

Detailed explanation of new law

1.7 Schedule # of this Bill amends the Corporations Act and Credit Act to enable regulations to provide for conditional exemptions from the AFSL and ACL requirements. These regulation-making powers provide the framework for a 'regulatory sandbox' to allow businesses to test certain financial and credit services and products without meeting the full regulatory licencing requirements if certain conditions are met.

Amendments to the Corporations Act

1.8 Section 926B of the Corporations Act currently allows for regulations to provide exemptions from the AFSL requirements. However,

section 926B does not specifically allow for the exemptions to apply subject to certain conditions.

1.9 Part 1 of Schedule # of this Bill extends the regulation-making power in section 926B of the Corporations Act to enable regulations to provide conditional exemptions from the AFSL requirements for the purpose of testing certain financial services. *[Schedule #, item 2, subsection 926B(3) of the Corporations Act]*

1.10 It is appropriate for the exemption from the AFSL requirements to allow testing of financial products to be in the regulations so that the Government can make timely changes based on the changing market. As the market changes and develops, it is important to have the flexibility to make changes to ensure the exemption operates appropriately. It may also be necessary to adjust the types of services and conditions under which they can be tested in order to maintain an appropriate balance between facilitating innovation or competition and providing investor protections.

1.11 Entities that access a conditional exemption provided for in the regulations must comply with all the relevant conditions that are prescribed. ASIC may apply to the court to get an order requiring an entity to comply with conditions in a particular way *[Schedule #, item 2, subsection 926B(4) of the Corporations Act]*

1.12 The amendment also enables the regulations to empower ASIC to make decisions regarding how the exemption starts and ceases to apply. This provides that the regulations can enable ASIC to monitor access to the regime to prevent misuse of the licencing exemption and provide for effective arrangements to allow providers to transition out of the regulatory sandbox and become licensed. *[Schedule #, item 2, subsection 926B(5) of the Corporations Act]*

1.13 Any decisions made by ASIC are subject to the Administrative Appeals Tribunal (AAT) review under section 1317B of the Corporations Act.

Amendments to the Credit Act

1.14 Section 110 of the Credit Act currently allows for regulations to provide for an exemption from the ACL requirements. However, section 110 does not specifically allow for exemptions to apply subject to conditions.

1.15 Part 2 of Schedule # of this Bill extends the regulation-making power in section 110 of the Credit Act to enable regulations to provide conditional exemptions from the ACL requirements for the purpose of testing certain credit services or the issuance of certain credit contracts. *[Schedule #, items 4 and 5, subsections 110(1) and 110(2) of the Credit Act]*

1.16 Entities that access a conditional exemption provided for in the regulations must comply with all the relevant conditions that are prescribed. ASIC may apply to the court to get an order requiring an entity to comply with conditions in a particular way. *[Schedule #, item 5, subsection 110(3) of the Credit Act]*

1.17 The amendment also enables the regulations to empower ASIC to make decisions regarding how the exemption starts and ceases to apply. This provides that the regulations can enable ASIC to monitor access to the regime to prevent misuse of the licencing exemption and provide for effective arrangements to allow providers to transition out of the regulatory sandbox and become licenced. *[Schedule #, item 5, subsection 110(4) of the Credit Act]*

1.18 Under paragraph 327(1)(i) of the Credit Act, decisions made by ASIC are only subject to AAT review if the regulations specifically provide for this. As such, to ensure consistency of AAT review of ASIC decisions across the Corporations and Credit Acts, the regulations need to specifically allow for AAT review for decisions ASIC make in relation to the exemption from the ACL requirements.

Consequential amendments

1.19 Section 911B of the Corporations Act is amended to allow an entity that is exempt from the AFSL requirements because of the new extended regulation-making power to have authorised representatives. *[Schedule #, item 1, paragraph 911B(1)(e) of the Corporations Act]*

1.20 As section 110 of the Credit Act has been modified to allow the regulations to provide conditional exemptions from the ACL requirements, a number of cross references have been updated. *[Schedule #, items 3, 6 and 7, paragraph 29(4)(d), subsection 160C(2) and paragraph 160C(3)(c) of the Credit Act]*

Application and transitional provisions

1.21 The amendments in Schedule # of the Bill apply from the day after the Bill receives Royal Assent.