Banking Amendment (Rural Finance Reform) Bill 2018

No.  , 2018

(Ms Sharkie)

A Bill for an Act to amend the Banking Act 1959 in relation to loans to primary production businesses, and for related purposes
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Schedule 1—Amendments

Banking Act 1959

3
A Bill for an Act to amend the Banking Act 1959 in relation to loans to primary production businesses, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act is the Banking Amendment (Rural Finance Reform) Act 2018.

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

<table>
<thead>
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<tr>
<td>Provisions</td>
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<td>Date/Details</td>
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<tr>
<td>1. The whole of this Act</td>
<td>The first 1 July to occur after the day this Act receives the Royal Assent.</td>
<td></td>
</tr>
</tbody>
</table>

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 Note: This table relates only to the provisions of this Act as originally enacted.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

3. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—Amendments

Banking Act 1959

1 Subsection 5(1)
   Insert:

   index number, for a quarter, means the All Groups Consumer Price Index number that is the weighted average of the 8 capital cities and is published by the Australian Statistician in relation to that quarter.

   March quarter means a period of 3 months starting on 1 January.

   primary production business has the same meaning as in the Income Tax Assessment Act 1997.

   primary production business small loan: see section 37.

   primary production business small loan threshold: see section 37A.

2 At the end of Part II
   Add:

Division 6—Loans to primary production businesses

Subdivision A—Primary production business small loan

37 Primary production business small loan

   A primary production business small loan is a loan:

   (a) by an ADI to a person (the borrower); and

   (b) that relates to a primary production business; and

   (c) the amount of which does not exceed the primary production business small loan threshold.
37A Primary production business small loan threshold

(1) If a loan is made in the financial year beginning on the commencement of this section, the primary production business small loan threshold for the loan is $5,000,000.

(2) If a loan is made in a later financial year, the primary production business small loan threshold for the loan is the amount worked out multiplying the indexation factor for that financial year by the primary production business small loan threshold for the previous financial year.

(3) For the purposes of subsection (2), the indexation factor for a financial year is the number calculated, to 3 decimal places (rounding up if the fourth decimal place is 5 or more), using the formula:

\[
\text{Index number for the reference March quarter} \div \text{Index number for the base March quarter}
\]

where:

base March quarter means the last March quarter before the reference March quarter.

reference March quarter means the last March quarter before the financial year.

(4) Subject to subsection (5), if at any time before or after the commencement of this section:

(a) the Australian Statistician has published or publishes an index number in respect of a quarter; and

(b) that index number is in substitution for an index number previously published by the Australian Statistician in respect of that quarter;

disregard the publication of the later index number for the purposes of this section.

(5) If, at any time before or after the commencement of this section, the Australian Statistician has changed or changes the index reference period for the Consumer Price Index, then, for the purposes of applying this section after the change took place or
takes place, have regard only to index numbers published in terms of the new index reference period.

Subdivision B—Key Facts Sheet

37B What is a Key Facts Sheet?

(1) For the purposes of this Division, a Key Facts Sheet for a primary production business small loan is a document that contains the following information relating to the primary production business small loan:
   (a) the amount of the loan;
   (b) the term of the loan;
   (c) the terms and conditions of the loan that may trigger non-monetary default by the borrower.

(2) The Key Facts Sheet must:
   (a) be A4 in size; and
   (b) be set out in Arial font, in the following sizes:
       (i) the heading at the top of the first page that starts with the words “KEY FACTS” must be in size 18 font;
       (ii) the words “TERMS and CONDITIONS” must be in size 16 font;
       (iii) the rest of the document must be in size 10 font; and
   (c) be in plain English; and
   (d) be no more than one page in length; and
   (e) be given to the borrower at least 7 days before the borrower enters into the primary production business small loan.

37C ADI’s obligation to provide Key Facts Sheet

(1) An ADI must provide a Key Facts Sheet for a primary production business small loan, 7 days prior to the borrower entering into the loan.

(2) The ADI must not enter into the loan unless the ADI has provided the borrower with a Key Facts Sheet.

Civil penalty: 200 penalty units.
(3) A failure to provide a borrower with a Key Facts Sheet does not void the primary production business small loan

Subdivision C—Requirements relating to primary production business small loans

37D Terms and conditions

(1) The terms and conditions of a primary production business small loan must not:
   (a) permit the ADI, during the term of the loan, to unilaterally undertake or arrange for a valuation of any security given in respect of the loan; or
   (b) include a material adverse change clause of a broad or general nature unless the clause relates to fraud or criminal activity by the borrower in connection with the loan.

   Civil penalty: 10,000 penalty units.

(2) Such a term or condition of a primary production business small loan is voidable.

37E What an ADI must not do

(1) The ADI must not exercise a power under a general restrictive covenant of the terms and conditions of the loan unless:
   (a) both:
      (i) the ADI has given the borrower written notice of its intention to exercise the power; and
      (ii) the period of 30 business days, starting on the day the borrower is given the notice, has expired; or
   (b) the exercise of the power relates to suspected fraud or criminal activity by the borrower in connection with the loan.

   Civil penalty: 10,000 penalty units.

(2) The ADI must not exercise a power under the terms and conditions of the loan to unilaterally vary any of the terms or conditions, unless:
   (a) the ADI has given the borrower at least 6 months’ written notice of the particulars of the variation; or
(b) the borrower has failed to comply with a term or condition of
the loan, and the non-compliance is not of a minor or
technical nature; or
(c) the change:
   (i) reduces the obligations of the borrower, or extends the
time for payment, under the loan; or
   (ii) is a change in a rate payable under the loan that is
determined by referring to a reference rate, and the
changed reference rate is notified (whether or not by the
ADI) in a newspaper circulating throughout each State
and Territory not later than the date the change takes
effect.

Civil penalty: 10,000 penalty units.

(3) The ADI must not require the borrower to bear any of the costs of a
unilateral variation of a term or condition of the loan.

Civil penalty: 10,000 penalty units.

(4) The ADI must not give the borrower notice of any of the following
events unless the notice includes, or is accompanied by,
information about the borrower’s rights to external dispute
resolution:
   (a) default by the borrower;
   (b) a refusal by the ADI to provide assistance to the borrower in
    connection with the borrower experiencing financial
    hardship;
   (c) a decision by the ADI to refuse to renew or extend the loan.

Civil penalty: 10,000 penalty units.

(5) A contravention of a provision of this section does not affect the
validity of any loan.

37F ADI’s obligations

(1) At least 6 months before the expiry of the term of the primary
production business small loan the ADI must:
   (a) notify the borrower, in writing, of the date on which the loan
    is due to terminate; and
   (b) request the borrower to attend a meeting with the ADI; and
Schedule 1  Amendments

(c) at the meeting enter into good faith discussions with the borrower in relation to the possible renewal or extension of the loan.

Civil penalty: 10,000 penalty units.

(2) An ADI must, unless the borrower has defaulted, give the borrower at least 90 business days’ notice of a decision by the ADI to refuse to renew or extend the loan.

Civil penalty: 10,000 penalty units.

37G  Valuation of security

(1) The ADI must not require the valuation of any security given in respect of the primary production business small loan within less than 7 days after the ADI has given the borrower a copy of the valuation instructions.

(2) The ADI must not require the borrower to meet any part of the cost of the valuation.

(3) The ADI must, within 7 days of receiving the valuation of any security given in respect of the primary production business small loan, give a copy of the valuation report to the borrower.

Civil penalty: 10,000 penalty units.

37H  Opinion of auditor or accountant

(1) The ADI must not appoint an auditor or accountant to provide an opinion about a borrower’s business or books or account in accordance with an AUASB auditing standard or an AASB accounting standard within less than 7 days after the ADI has given the borrower a copy of the instructions to the auditor or accountant.

(2) The ADI must not require the borrower to meet any part of the cost of the report of the auditor or accountant.

(3) The ADI must, within 7 days of receiving the report of the auditor or accountant, give a copy of the report to the borrower.

(4) For the purposes of this section:

AASB means the Australian Accounting Standards Board.
Amendments Schedule 1

1 AUASB means the Auditing and Assurance Standards Board.

2 Civil penalty: 10,000 penalty units.

3 Application of amendments

The amendments made by this Schedule apply in relation to
loans made
on or after the commencement of this Schedule.