

15 June 2017

Senator Jane Hume
Chair
Senate Economics Legislation Committee
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Parliament House
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Dear Senator Hume

Major Bank Levy Bill 2017

The Australian Bankers' Association (**ABA**) appreciates the opportunity to provide a submission to the Senate Economics Legislation Committee on the *Major Bank Levy Bill 2017*.

The ABA believes the Committee has a vital role to play in ensuring the Bill is subject to adequate public scrutiny in order to minimise harm to the Australian economy, the financial services system and consumers, and to prevent any unintended consequences. In particular, the Committee should ensure there is no impact on the ability of the Australian banking industry to raise capital from investors, both domestically and offshore, and that it can continue to finance investment, growth and jobs.

The ABA consists of 25 banks, including the five banks directly impacted by the levy, regional banks, foreign banks operating in Australia and customer-owned banks.

Given the differences in the scale and operations of our members, it is inevitable that from time-to-time, the interests of members will not be aligned, but this is the exception rather than the rule. Overall, the industry as a whole, has a common interest in joint representation on a range of issues, including the extensive raft of regulatory changes and major reforms facing the industry.

The ABA acknowledges that a number of non-major banks support the proposed bank levy on the grounds that it will contribute to a more level playing field. The ABA endorses a strong and competitive banking industry. Banks will make individual submissions given the differing opinions on this matter.

The ABA is voicing concerns about the effect of the levy on the five largest banks on the following grounds:

- Consultation for the bank levy has been rushed and inadequate. All ABA members have an interest in good public policy process and that involves consulting widely with the affected industry to avoid unintended consequences.
- The imposition of a new levy on the five largest banks, with no sunset clause, leaves open the possibility that its base will be broadened and the rate lifted by future governments, thereby increasing the impact and possibly extending to other banks.
- The levy cannot be “absorbed” as some suggest. It will have to be borne by savers, borrowers, shareholders, employees, suppliers or a combination of all, and the public is entitled to know this.
- The imposition of a new levy on institutions that are profitable and successful sets a worrying precedent for other successful Australian businesses.



Strong banks – strong Australia

The ABA would draw the Committee's attention to recent comments by the Secretary to the Treasury in his opening statement to Budget Estimates Hearings. These comments were made in reference to developments in Europe, but the ABA suggests are equally applicable to the Australian environment:

“Unconventional or inconsistent policy approaches, or indeed any rapid policy change or uncertainty, can affect the confidence of businesses and consumers and this, in turn, can undermine growth.”¹

Sunset clause

The Government has given a number of reasons for the levy, but the lack of a clear rationale does not promote confidence that it has been well-designed. One of the major justifications put forward by the Government is budget repair. If this is the case, the levy should be abolished once the Budget returns to surplus. This could be embodied in the legislation by including an appropriate sunset clause. This would ensure the levy does not serve as an ongoing revenue raising measure.

Ministerial discretion

The drafting of the legislation provides the Treasurer with significant scope to alter the coverage of the bank levy in the future.

Section 5: Amount of Levy, gives the Minister the power to add additional liability items to the list of exclusions, and **Section 6: Working out amounts for a quarter** gives the Minister the power to determine which liabilities are to be calculated as daily averages.

The ABA appreciates that the financial landscape is constantly evolving so some discretion is required.

Section 8: Minister may determine methods of working out amounts, also provides the Minister with scope to alter the operation of the levy via an “instrument” or put simply, new regulation. These clauses give the Minister the power to determine the total liabilities amount, the exclusions to which the levy will not apply, and the liabilities to which the daily average calculation will apply.

The Explanatory Memorandum does not provide any insight as to why these powers are required. The ABA seeks an understanding of the circumstances under which this clause may be applicable to reduce uncertainty around the future operation of the Bill.

The ABA requests the Committee to seek an explanation from Treasury as to why clauses 8(2) and 8(3) are included. In particular, to elaborate on the intention of the drafting and why the powers are necessary. If it finds the explanation unsatisfactory, the ABA requests the Committee to remove clauses 8(2) and 8(3) from the legislation.

Foreign branches

The levy applies to offshore branches but not offshore subsidiaries.

If it remains on offshore branches, it will mean a larger tax for those banks who operate with offshore branch networks rather than with subsidiaries. No policy rationale has been provided as to why overseas branches, but not overseas subsidiaries of Australian banks should be subject to the levy.

It will also put those foreign branches at a disadvantage in the offshore market in which they compete.

Finally, there is a risk of double taxation where similar levies are applied in other jurisdictions.

The solution would be to amend the legislation so that the levy only applies to domestically domiciled operations, excluding offshore branches and offshore subsidiaries.

¹ Budget Estimates Hearings – Opening Statement (29 May 2017), John Fraser, Secretary to the Treasury



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Prudential policy

The Committee should consider whether the new levy is consistent with the work of the Australian Prudential Regulatory Authority (**APRA**) in ensuring Australia's banks are "unquestionably strong" and with the potential total loss absorbing capacity (**TLAC**) reforms.

"Unquestionably strong" will be achieved through banks holding more capital. The ABA notes that if the levy leads to lower retained earnings then it may impede the accumulation of internally generated capital, and make it more difficult for affected banks to achieve higher capital targets. In this sense, the levy will make it more difficult for these banks to achieve and sustain the "unquestionably strong" status.

If the levy is intended as payment for the implicit government guarantee of the affected banks, then it should be noted that the future reforms requiring these banks to hold significant levels of TLAC securities will effectively reduce the value of the implicit guarantee.

Compliance costs

The ABA is advised that some banks may require system upgrades to enable them to conduct daily valuations and build and provide the APRA return.

The Government has advised that the payment of the levy will be done via the ATO's BAS system under a new form being devised by APRA called the ARF 320. Banks will need to build systems to complete this form, and will also need to work with APRA and the ATO to build a technology platform through which ARF 320 can be submitted to the BAS system and payments made.

The ABA appreciates that the first payment will not be made until March 2018 allowing time to address these issues, but that does not reduce the upfront and ongoing costs of compliance.

Modelling and analysis

The ABA believes the Government should be more transparent regarding the impact of the levy on the economy and on the cost and availability of financial services.

The Explanatory Memorandum for the Bill concludes that the levy "should have a negligible impact on the real economy."

It observes however that "the economic impact of the levy will depend upon the extent to which it affects bank borrowers, lenders, shareholders or some combination of these groups." It goes on to acknowledge the uncertainties around the economic impacts that "it is not possible to be unequivocal as to the ultimate incidence of the levy." Given these uncertainties, the ABA believes that Treasury should be urged to release its economic modelling to enable proper scrutiny by the Committee and the Australian community.

This is especially the case given the large decline in shareholder value since the bank levy was announced, especially as the majority of the five bank shareholders are Australian households, either directly or through their superannuation holdings. The combined market capitalisation of the affected banks has fallen \$32.6 billion from market close on Monday 8 May 2017 to market close on Tuesday 13 June 2017. This is a decline of 7 per cent in shareholder value.

Some guide to the potential impacts could be provided by the experience of the introduction of similar taxes in other countries like the United Kingdom and Austria.

It remains unclear whether the Government's revenue target of \$6.2 billion over four years will be met. Banks were promised, but did not receive, Treasury's calculations of their individual levy, nor has broader modelling been released. The Committee should request this modelling from Treasury.



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Fairness

The levy is imposed on five banks. As noted, Treasury is unable to determine who will pay the cost of the levy, but flag in its Explanatory Memorandum that it could be borrowers, lenders, shareholders or the banks themselves through “cost-cutting measures”².

The ABA believes it is unfair to impose a new levy only on the customers, shareholders or employees of targeted institutions, simply because of the institution they choose to bank with or invest in.

Process

The ABA believes many of the issues raised in this submission would have been avoided had the major bank levy been subject to adequate consultation.

As the Committee would be aware, the consultation process to this point has been a long way short of best practice. Affected banks were not consulted prior to the announcement of the levy on Budget night. They were provided with only very short timelines to submit their thoughts after consultation with Treasury, and they were prevented from commenting on, or discussing the exposure draft legislation with third parties.

A policy initiative of this magnitude should be subject to adequate stakeholder engagement ahead of drafting. Draft legislation should be provided for appropriate public consultation.

Thank you again for the opportunity to provide this submission for the Committee’s consideration.

Yours sincerely

[Redacted Signature]
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² [Explanatory Memorandum](#); Major Bank Levy Bill 2017, Parliament of the Commonwealth of Australia, p. 35.