

Chapter 2

Views on the bills

General views on the measure

2.1 The proposed introduction of the Major Bank Levy (the levy) drew mixed responses from a variety of stakeholders.

2.2 Opposition to the levy was voiced from a number of different perspectives:

The bank levy as it is currently framed is misguided, inefficient, poorly considered, and likely to reduce productivity while encouraging an increase in financial market risk.¹

The Government's proposed levy should be abandoned. It is a tax on all Australians which will increase the cost of buying a house and starting business, was designed without consultation, and is predicated on highly illiberal grounds.²

The FSU [Financial Sector Union] supports a fairer and more progressive tax system, however focusing on a single industry to address short term fiscal deficit does not strengthen the government's ability to provide the high-quality public services and social security that Australians want, need and deserve.³

2.3 Unsurprisingly, the five banks affected by the levy also objected to its introduction. While smaller banks, under the \$100 billion liability threshold, support the levy's introduction believing it will increase competition in the banking sector:

COBA [Customer Owned Banking Association] welcomes the levy as a modest step towards reducing the unfair funding cost advantage enjoyed by the major banks as a result of the implicit guarantee provided by taxpayers due to the perception that the major banks are 'too big to fail'.⁴

...[ME Bank] strongly support[s] the levy as an important initiative that will have some positive impact on banking competition.⁵

...[Suncorp] welcome[s] any initiative which helps to improve competitive neutrality in the banking sector, and believe[s] that the proposal in the Bill as currently before the Senate has the potential to support a more level playing field.⁶

1 Centre for Independent Studies, *Submission 12*, p. 2.

2 Institute of Public Affairs, *Submission 13*, p. 1.

3 Financial Sector Union of Australia, *Submission 15*, p. 2.

4 COBA, *Submission 9*, p. 2.

5 ME Bank, *Submission 2*, [p. 3].

6 Suncorp, *Submission 20*, p. 1.

2.4 ING Direct, the only foreign owned bank that took up the committee's invitation to provide a submission, supports initiatives—such as the levy—which 'promote competition in what is acknowledged as a highly concentrated Australian banking market'.⁷

2.5 The Australian Bankers Association (ABA)—representing the major banks, regional banks, foreign banks and customer-owned banks—noted that the interests of its members were not aligned regarding the introduction of the levy. However, the ABA voiced concerns that:

- Consultation for the bank levy was rushed and inadequate.
- The legislation leaves open the possibility that the base will be broadened and the rate increased by future governments.
- The levy cannot be 'absorbed'—it will be borne by savers, borrowers, shareholders, employees, suppliers or a combination of all.
- The imposition of a new levy on institutions that are profitable and successful sets a worrying precedent for other successful Australian businesses.⁸

Potential to achieve the stated outcomes

2.6 Some stakeholders noted that the measure was aimed at addressing multiple objectives which did not appear to be reflected in the policy development process or legislation itself. The CBA reflected these concerns:

If the levy is to address competition in the financial services sector, the best course of action would be to await the outcome of the Productivity Commission Inquiry into Competition in the Australian Financial System. If the levy has been introduced to assist with Budget repair, the Bill should include a sunset clause for when the Budget returns to surplus. If the rationale for the introduction of the levy is that banks should make a contribution for the 'implicit guarantee', this would run counter to the findings of the government's own Financial System Inquiry. If the policy objective of the levy is to complement prudential reforms, then options are available to support the stability of the system which do not seem to have been considered, such as differential rates of the levy applying to short and long term debt, as applies in the United Kingdom (UK).⁹

Revenue estimates

2.7 Stakeholders also raised concerns about whether the levy will raise the estimated \$6.2 billion in revenue as outlined in the budget papers. Many of these concerns related to the release of the Treasury modelling underlying the budget estimates.

7 ING Direct, *Submission 21*, [p. 2].

8 ABA, *Submission 6*, p. 1.

9 CBA, *Submission 7*, p. 1.

2.8 The ABA noted that:

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.¹⁰

2.9 When questioned at the hearing, the ABA commented that:

It would be much easier for the banks to provide more full and thoughtful commentary back to the Government and to Treasury if they were party to the modelling...the banks have made market disclosures on the basis of their own estimates of what is likely to be raised by the levy, and there is a significant discrepancy between their estimates and those that the government have identified for this measure.¹¹

2.10 Treasury dismissed the banks' claim stating that the internal government modelling was never promised or supplied to the banks.¹²

Competition concerns and regulatory oversight

2.11 As noted above, a number of the smaller banks indicated that the introduction of the levy could lead to better outcomes for consumers. However, there were concerns that the effect on competition may only be small, particularly given the banks are yet to decide whether to increase the cost of retail products. The Customer Owned Banking Association considered that:

We think it [the levy] will have a small positive impact on competition but it is certainly not enough on its own to influence competition in the way that we would like to see banking competition promoted within the Australian banking market.¹³

2.12 Stakeholders also warned that the cost of the levy may be borne by customers through higher mortgage rates. The Business Council of Australia considered that lending rates must increase for competition outcomes to be achieved:

The bank levy can only benefit untaxed banks if costs and market prices (lending rates) of taxed banks increase, and the costs of untaxed banks do not rise in line with those of taxed banks. If lending rates of taxed banks do not increase then untaxed banks cannot benefit...¹⁴

2.13 Recognising the potential for the levy to be passed on to consumers, the Treasurer announced on 9 May 2017, the establishment of an Australian Competition and Consumer Commission (ACCC) inquiry into residential mortgage pricing:

10 ABA, *Submission 6*, p. 3.

11 Ms Anna Bligh, Australian Bankers Association, *Committee Hansard*, 16 June 2017, p. 5.

12 Mr John Lonsdale, Treasury, *Committee Hansard*, 16 June 2017, p. 73.

13 Mr Mark Degotardi, Customer Owned Banking Association, *Committee Hansard*, 16 June 2017, p. 60.

14 Business Council of Australia, *Submission 19*, p. 3.

The ACCC inquiry will illuminate how the banks respond to the introduction of the levy and give all Australians the information they need to get a better deal elsewhere from any of the more than 100 other banks, credit unions and building societies, as well as other non-bank competitors.¹⁵

2.14 In undertaking this work, the ACCC noted that:

The discipline of exposing conduct and making it public, we think, is likely to be successful in terms of putting a real incentive on banks to seek to maintain or improve their name.¹⁶

Effect on the prudential regulation system and resilience

2.15 Some stakeholders were not convinced that the levy would strengthen the prudential regulation system and promote stability. The Centre for Independent Studies argued that the proposed levy will result in risk being mispriced which, in turn, would reduce bank resilience.¹⁷

2.16 The Business Council of Australia also questioned whether the levy would contribute to an 'unquestionably strong' financial system:

...the design of the levy creates a disincentive to hold high quality and longer term borrowings. These are critical for building liquidity buffers and withstanding any crisis—contrary to the government's stated aim.¹⁸

2.17 NAB argued that the inclusion of funding for high quality liquid assets and double counting of internal intercompany balances in the calculation of the levy payment creates a system-wide disincentive to further improve liquidity buffers.¹⁹

2.18 Further, NAB highlighted the potential risk in the function of certain institutional banking markets:

Including wholesale banking activities, such as repurchase agreements, collateral for derivatives and interbank cash flows in the levy liability calculation has the potential to reduce liquidity in those markets...

In addition...the application of the levy to only five Australian banks could see important institutional banking activities such as custodian services, derivatives, trade finance, repurchase agreements and corporate lending migrate to global institutional competitors. As illustrated in the GFC, these banks have typically looked to rapidly exit the Australian market in times of stress which, if repeated, could have broad economic consequences.²⁰

15 The Hon. Scott Morrison (Treasurer), Major Bank Levy Bill 2017—Second Reading Speech, *House of Representatives Hansard*, 30 May 2017, p. 3.

16 Mr Marcus Bezzi, ACCC, *Committee Hansard*, 16 June 2017, p. 64.

17 Centre for Independent Studies, *Submission 12*, p. 3.

18 Business Council of Australia, *Submission 19*, p. 3.

19 NAB, *Submission 5*, p. 2.

20 NAB, *Submission 5*, p. 2.

2.19 The Australian Prudential Regulation Authority (APRA) does not believe the levy will affect the stability of the financial system:

APRA does not consider six basis points on the portion of large bank liabilities to be a material consideration when you are thinking of overall financial strength and stability.

...

Again, taking six basis points is, in our view, not very material in terms of the overall earnings profile and capital strength.²¹

2.20 The CBA also considered that the bank levy would not affect stability of the financial system:

It certainly reduces the potential accumulation of capital or the pace of the accumulation of capital so this is not necessarily aligned with some of the policy objectives of strengthening the system but it does not, in the grand scheme of things, undermine the system.²²

Scope of the levy

Inclusion of Macquarie Group

2.21 Macquarie Group argued that, in the context of domestic retail competition, it is not a 'major bank' as it has less than 2 per cent share in domestic mortgages, less than 2.5 per cent in deposits, less than 2 per cent of Total Australian Lending and Advances and less than 1.5 per cent of the credit card market. It is a price taker in the retail products that it offers and that its return on equity has averaged approximately 10 per cent for the last five years.²³

2.22 Macquarie Group concluded that the application of the major bank levy:

...will place it at a competitive disadvantage in offshore markets and may lead to it no longer being able to compete in some products.²⁴

2.23 At the hearing, Macquarie Group summarised their position:

...we would like to express our surprise that the levy is applying to Macquarie Bank, given our size and the benefit we bring to domestic competition and the role we play in bringing export income into the Australian economy. Whilst we recognise and respect the government's right to introduce laws and impose taxes for the good of all Australians, we are concerned that the impact of the major bank levy on Macquarie Group is not fully understood and that unintended consequences may result.²⁵

21 Mr Pat Brennan, APRA, *Committee Hansard*, 16 June 2017, p. 68.

22 Mr Paolo Tonucci, CBA, *Committee Hansard*, 16 June 2017, p. 13.

23 Macquarie Bank, *Submission 8*, pp. 2-3.

24 Macquarie Bank, *Submission 8*, p. 4.

25 Mr Nicholas Moore, Macquarie Group, *Committee Hansard*, 16 June 2017, p. 20.

2.24 Bendigo and Adelaide Bank contested the position put forward by the Macquarie Group highlighting that they do get benefits from having a favourable credit rating, being able to apply an advanced regulatory model and being able to apply lower capital:

Macquarie is a very successful business. They are very good at changing direction as the market changes. Even though they may say they are not a strong retail bank today—and, in fact, through the GFC they did not have much of a retail business at all—who knows what they are going to be tomorrow. I would be looking at whether or not they are advantaged in some way at the moment and using that.²⁶

Capturing the economic rent from 'too big to fail' status

2.25 The ABA raised fairness concerns about targeting only five banks:

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 institutions they choose to bank with or invest in.²⁷

2.26 However, many of the smaller banks considered it entirely appropriate to only impose the levy on large banking institutions that receive a funding cost advantage because of their status as 'too big to fail' and the implicit government guarantee associated with this status. For example, Suncorp highlighted that:

S&P [rating agency] has consistently stated that it values the Australian Government's implicit support as being worth a two-notch uplift, and that the credit ratings of these institutions are therefore two notches higher than they would be in the absence of this support.

More recently, the scale of this advantage has become even greater. Last month, S&P lowered the credit rating of 23 financial institutions, but left the credit ratings of the major banks and Macquarie unchanged...this means the two-notch upgrade that was previously enjoyed by the major banks has now been increased to three notches.²⁸

2.27 Similarly, ME Bank considered that a levy should be imposed on those banks that are receiving financial benefits from being classified as systemically important:

We respectfully submit however that the competitive intention of the legislation would be improved by amending section 4(3), levy threshold to fully reflect the benefit and linking the application of the levy to those banks designated by APRA as systemically important.²⁹

2.28 At the hearing, ME Bank elaborated:

...we should accurately calculate the benefit that is being accrued and all agree so we can stop having that philosophical debate and actually have a

26 Mr Mike Hirst, Bendigo and Adelaide Bank, *Committee Hansard*, 16 June 2017, p. 50.

27 ABA, *Submission 6*, p. 4.

28 Suncorp, *Submission 20*, pp. 1-2.

29 ME Bank, *Submission 2*, [p. 3].

facts based discussion, and then I think that benefit should go back to its rightful owner over time, and I believe that is the taxpayer, but it should be done in such a way that would not impact on having an unquestionably strong banking system in this country, which is in everyone's best interest. That would be my core philosophy.³⁰

2.29 However, much of the market power and associated financial benefits that these banks—and their customers, shareholders and employees—enjoy is derived from their more favourable credit ratings which, in turn, are supported by the government through the prudential regulatory system. Bendigo and Adelaide Bank concluded that:

The major banks' contribution to budget repair will simply shore up the unearned benefit they currently receive.³¹

Foreign banks and international operations

2.30 Stakeholders raised concerns about the competitiveness of their international operations, particularly when foreign branches are included but foreign subsidiaries are excluded.³² ANZ commented that the levy in its current form:

...is declining to tax activities that occur within its borders but is taxing activities that occur outside them.³³

2.31 At the hearing, ANZ also noted that:

When we look at...the policy reasons that have been stated for the levy, we do not think that any of those policy reasons are inconsistent with the foreign banks being included.³⁴

2.32 The major banks advocated for an extension of the levy to very large foreign banks operating in Australia. For example, CBA contended that:

Our experience is that the segments in which the foreign banks operate are highly competitive and often sensitive to changes in the cost of borrowing. In light of the current low interest rate environment, where Australian bank margins have been under pressure and overall competition heightened, we believe the imposition of the levy only on the major banks will give foreign banks a pricing advantage in these segments. This would be in addition to the competitive advantage foreign banks already have from less conservative regulatory requirements, and therefore carry substantially less capital than their Australian peers...³⁵

30 Mr Jamie McPhee, ME Bank, *Committee Hansard*, 16 June 2017, p. 55.

31 Bendigo and Adelaide Bank, *Submission 3*, [p. 3].

32 See, for example, ABA, *Submission 6* and Macquarie Bank, *Submission 8*.

33 ANZ, *Submission 4*, p. 1.

34 Ms Michelle Jablko, ANZ, *Committee Hansard*, 16 June 2017, p. 38.

35 CBA, *Submission 7*, p. 2.

2.33 Westpac provided examples in two market segments—trade finance and repurchase agreements—which would be directly affected by the imposition of the bank levy. Specifically in relation to trade finance, Westpac commented that:

Trade finance is a market that is international, so it can be provided either onshore or offshore. If you have different players with different funding costs it may impact where the business goes, because customers will move their business for six basis points.³⁶

2.34 Similarly, NAB noted that:

In wholesale markets in Australia and offshore, the main market participants are the five impacted banks and global international banks. Excluding these international banks will result in a clear disadvantage for the impacted Australian banks when competing against global competitors in these markets...³⁷

2.35 The CBA provided some insight into the effect of six-basis point levy on the government bond market:

The government bond market is obviously associated with the repo market that provides much of the immediate liquidity and funding to the system. Six basis points in the government market can be the difference between profitability and loss making. This is one of the areas which we think is most affected by the inconsistency in the treatment of large foreign banks and the domestic banks.³⁸

2.36 Westpac argued that not extending the levy to foreign bank operations:

...places Australian banks at a competitive disadvantage in these key markets. This will likely result in businesses transferring from the Australian Banks to the foreign banks, and as a result, it may even deplete the tax base for the levy. In effect, Australians will be subsidising foreign bank shareholders.³⁹

2.37 A number of the affected banks argued that liabilities associated with their foreign activities should be excluded from the levy. For example, Macquarie Bank noted that:

Foreign subsidiaries are excluded from the definition of liabilities for the purposes of calculating the levy payable. This exclusion should be extended to foreign branches to achieve consistency and ensure the foreign operations of Australia banks remain globally competitive.⁴⁰

2.38 Similarly, ANZ commented that:

36 Mr Peter King, Westpac, *Committee Hansard*, 16 June 2017, p. 30.

37 NAB, *Submission 5*, p. 2.

38 Mr Paolo Tonucci, CBA, *Committee Hansard*, 16 June 2017, p. 14.

39 Westpac, *Submission 1*, p. 2.

40 Macquarie Bank, *Submission 8*, pp. 4-5.

By applying to Australian bank liabilities in our offshore branches, the levy will also increase the costs of Australian banks to seek to compete overseas...The levy has the potential to make our services more expensive and less competitive.⁴¹

2.39 In addition, concerns were raised about the potential for double taxation of international activities, further eroding the competitiveness of Australian banks operating in international markets. ANZ stated that:

...in applying to our offshore activities, the levy enlivens the risk of double taxation.⁴²

2.40 ANZ considered that many of the competitiveness issues arising from foreign banks could be addressed by:

...ensuring the levy applies consistently to all Australian-based activities, regardless of whether they are carried out by domestic or foreign major banks, while leaving offshore activities to be taxed according to foreign laws only.⁴³

2.41 NAB noted that including foreign banks in the proposed levy would be consistent with the operation of the bank levy in the UK.⁴⁴ NAB also proposed a two stage approach to determining whether the levy should be applied to foreign banks:

You could start on eligibility by looking at their global balance sheets, so you would generally pick up those large global players, and then supplement that by having some lower threshold for their Australian operations. In that sense, you could make sure you are picking up the global players, but you would also exclude those that are really small operators in Australia. If you get that combination of the two, I think that would be a way to effectively pick up the global players that are competing with us in these wholesale markets.⁴⁵

Other concerns about the operation of the levy

Applicable liabilities

2.42 A number of affected banks raised concerns about the potential unintended consequences for certain liabilities.

2.43 Macquarie Bank advocated for consistency in the treatment of 'non-funding' liabilities; some of which have been excluded from the bills, whereas a number of others have not—such as client segregate funds; derivative margin related balances;

41 ANZ, *Submission 4*, p. 2.

42 ANZ, *Submission 4*, p. 2.

43 ANZ, *Submission 4*, p. 3.

44 NAB, *Submission 5*, p. 2.

45 Mr Gary Lennon, NAB, *Committee Hansard*, 16 June 2017, p. 44.

trade timing differences; employee, maintenance and other provisions; and, intercompany funding arrangements and other accounting gross-ups.⁴⁶

2.44 ANZ and NAB were concerned that there may be a risk of double taxation where the same liabilities are taxed twice as a result of corporate structures.⁴⁷ For example, NAB explained that:

As the levy is in the legislation, there are certain elements that pick up accounting-type balances as liabilities rather than true funding. That is one example [internal residential mortgage-backed securities], and intercompany balances are another example—or just standard provisions for a tax. You actually have the situation where we are paying a tax on our provision for tax, which seems somewhat odd.⁴⁸

Ministerial discretion

2.45 The degree of ministerial discretion in the application of the levy was a concern for some stakeholders, particularly in relation to:

- *Section 5: Amount of the Levy*—provides the Minister with the power to add additional liability items to the list of exclusions;
- *Section 6: Working out amounts for a quarter*—provides the Minister with the power to determine which liabilities are to be calculated as daily averages; and
- *Section 8: Minister may determine methods of working out amounts*—provides the Minister with scope to alter the operation of the levy via an 'instrument' (new regulation).⁴⁹

2.46 The ABA noted that:

The drafting of the legislation provides the Treasurer with significant scope to alter the coverage of the bank levy in the future.⁵⁰

2.47 Macquarie Bank considered that ministerial discretion 'creates uncertainty as to the future application of the levy and should be removed'.⁵¹

2.48 NAB was concerned that the discretionary powers could:

...allow the executive to make considerable changes to the incidence of the levy without further consultation with the impacted ADIs. NAB recommends that there should be sufficient consultation with the industry and the Council of Financial Regulators, on any future ministerial

46 Macquarie Bank, *Submission 8*, p. 5.

47 ANZ, *Submission 4*, p. 5; NAB, *Submission 5*, p. 2.

48 Mr Gary Lennon, NAB, *Committee Hansard*, 16 June 2017, p. 41.

49 ABA, *Submission 6*, p. 2.

50 ABA, *Submission 6*, p. 2.

51 Macquarie Bank, *Submission 8*, p. 5.

determinations. This consultation is required to ensure there are no further unintended consequences from changes to the levy mechanism.⁵²

2.49 When questioned about the ministerial discretion provisions, Treasury indicated that:

The reason for the legislative instrument making power, essentially, is to deal with issues that go to a level of detail that is preferable not to have in the law itself. It also gives flexibility to react quickly if a change is needed quickly.⁵³

Discontinuing the levy once the budget reaches surplus

2.50 Given that the main stated objective of the levy is to repair the budget, some stakeholders advocated for its discontinuation when the budget is in surplus.⁵⁴

2.51 For example, the ABA commented that:

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 that the levy does not serve as an ongoing revenue raising measure.⁵⁵

2.52 Similarly, the Business Council of Australia noted that:

If the object of the levy is to assist with budget repair, it should be introduced with a sunset clause, rather than become an ongoing revenue raising measure.⁵⁶

2.53 The NAB argued that:

A sunset clause would also have the effect of requiring a review of the tax's design features, impact on financial markets and suitability of retention. The haste with which this legislation is being enacted means the risks of unintended consequences are significant and larger than usual.⁵⁷

2.54 Some smaller banks did not agree that a sunset clause should be included if the objective of the legislation was to improve competition. The Customer Owned Banking Association considered that:

Certainly if you remove this [levy] then that lessens that competitive benefit so...why would you do that? To pre-empt all that and to put a sunset clause saying five years or whatever the time frame is just does not make much

52 NAB, *Submission 5*, p. 3.

53 Mr Anthony Regan, *Treasury Committee Hansard*, 16 June 2017, p. 73.

54 See, for example, ANZ, *Submission 4*; Westpac, *Submission 1*; NAB, *Submission 5*.

55 ABA, *Submission 6*, p. 2.

56 Business Council of Australia, *Submission 19*, p. 3.

57 NAB, *Submission 5*, p. 2.

sense when so much more work needs to be done in the competitive arena.⁵⁸

Review of legislation

2.55 A review of the design and effectiveness of the levy was proposed by various stakeholders. The Business Council of Australia was concerned that the levy could undermine other regulatory objectives and policies. As such, it advocated for a fully independent and transparent post-implementation review of the levy after three years to assess what impact the policy has had, including against its state objectives.⁵⁹

2.56 The NAB commented that:

The haste with which this legislation is being enacted means the risks of unintended consequences are significant and larger than usual...NAB also believes a post implementation review should be conducted into the levy within 18 months of it being effective to fully assess its impact.⁶⁰

2.57 The CBA considered that a review of the levy should be undertaken within two years of its legislation, and this should include an analysis of the efficiency of the levy in terms of its stated objectives and the distortions it creates.⁶¹

Suspension of the levy in times of stress

2.58 A number of stakeholders advocated for the suspension of the levy in circumstances where an authorised deposit-taking institution was in stress. For example, Westpac argued that:

The Levy is imposed on the liabilities of an ADI, and its design appears to assume that banks are at all times profitable...

The Government should have the ability to suspend payment if paying the Levy would place undue stress on the ADI. This will assist with the financial viability of the affected ADI and the stability of the banking sector in times of economic downturn.⁶²

2.59 Similarly, NAB believed that the legislation should explicitly include a provision for the levy to be waived or suspended in circumstances of financial stress.⁶³

Committee view

2.60 The committee considers the design of the levy adequately reflects an appropriate transfer to the broader community, of some of the financial benefits gained by the affected banks due to their more favourable credit ratings.

58 Mr Mark Degotardi, Customer Owned Banking Association, *Committee Hansard*, 16 June 2017, p. 59.

59 Business Council of Australia, *Submission 19*, p. 3.

60 NAB, *Submission 5*, p. 2.

61 CBA, *Submission 7*, p. 3.

62 Westpac, *Submission 1*, p. 4.

63 NAB, *Submission 5*, p. 3.

2.61 The committee acknowledges the issues highlighted by the five affected banks. Whether these issues materialise and have their suggested impact only time will tell. Nonetheless it's worth noting that the majority of European bank levies including the United Kingdom example have now been in operation for more than half a decade without any significant market issues or calamity.

2.62 On the basis of the evidence provided, the committee considers that the proposed levy will contribute to the budget repair process, assist in making retail banking services more competitive, and will not undermine the stability of the financial system.

2.63 Noting that the process for policy development and legislative passage has been somewhat truncated, the committee considers that it would be appropriate to undertake a review of the legislation in a minimum of two years to examine the efficacy of the levy, the effect on competition and the need for the levy to continue in perpetuity.

2.64 The committee notes the extensive work Treasury has undertaken in developing this legislation however, the committee considers that Treasury needs to undertake closer examination of the technical issues raised through the inquiry to determine if legislative changes are required to avoid unintended consequences such as double taxation and/or narrow the liability base.

2.65 In addition, the committee requests that Treasury clarify why Australian banks should be at a competitive disadvantage to their foreign peers, both domestically and internationally. Further, the committee would appreciate Treasury supplying an explanation as to why Macquarie Bank is subject to the levy while foreign based competitors are not.

2.66 Finally, the committee considers that, as the levy is based on liabilities, not profits, application of the levy should be suspended by the Treasurer, on the advice of APRA, in extreme financial or economic circumstances.

Recommendation 1

2.67 The committee recommends a review be conducted by the Senate Economics Legislation Committee in a minimum of two years to examine:

- **the efficacy of the policy in fulfilling its stated objectives;**
- **the effect on competition in the Australian banking market; and**
- **whether the levy is required in perpetuity, including the need for a further review at the time the stated objective of the levy is achieved; that is when the budget has been 'repaired'.**

Recommendation 2

2.68 The committee recommends that Treasury closely examine issues relating to the technical aspects of the bills to determine if changes are required to avoid double taxation and/or to narrow the liability base.

Recommendation 3

2.69 The committee recommends that Treasury provide greater explanation as to the rationale for the method of liability calculation which presently excludes foreign banks, and specifically provide an explanation as to why Macquarie Bank is subject to the levy while foreign based competitors are not.

Recommendation 4

2.70 The committee recommends that the legislation be amended so that the Treasurer may, on the advice of APRA, suspend the application of the levy to any or all Authorised Deposit-taking Institutions in extreme financial or economic circumstances.

Recommendation 5

2.71 Subject to consideration of the other recommendations, the committee recommends that the bills be passed.

Senator Jane Hume
Chair