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BILLS DIGEST

7 February 2005, no. 104 , 2004–05, ISSN 1328-8091

Superannuation Supervisory Levy Imposition Amendment Bill 2004

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Law and Bills Digest Section

Contents

Authorised Deposit-taking Institutions Supervisory Levy Imposition Amendment Bill 2004 and related Bills

Date Introduced: 9 December 2004

House: House of Representatives

Portfolio: Treasury

Commencement: The Bills commence on Royal Assent

Purpose

The purpose of these Bills is to put in place new arrangements for the collection of levies that are imposed on the financial services sector to fund the Australian Prudential Regulation Authority (APRA) as well as some functions performed by the Australian Securities and Investments Commission (ASIC) and the Australian Taxation Office (ATO).

Background

APRA is the prudential regulator for Australia's banks, credit unions, building societies, life and general insurance companies, reinsurance companies, friendly societies and most of the superannuation industry. APRA is funded primarily from levies collected from the financial institutions that it prudentially supervises. A small part of the money raised through these levies is passed on to ASIC and the ATO to fund specific consumer protection and market integrity functions performed by these regulators.

In October 2002 the Assistant Treasurer announced a review of the levy setting arrangements for APRA (2002 review).[1] The terms of reference for the 2002 review specified that the review was required to examine the arrangements for determining how financial sector levies should be imposed on the financial services sector. The 2002 review therefore considered issues such as industry cross subsidisation, the merits of placing caps on the amount of levy an institution is required to pay, and reporting on the costs of supervision.[2]

The 2002 review, which was chaired by the Department of the Treasury (the Treasury) was a joint project between the Treasury and APRA and was conducted in consultation with ASIC and the ATO.

In April 2003, the Government released for public comment an issues and discussion paper, *Review of Financial Sector Levies,* which examined the current financial services levy setting arrangements as well as options for reform of these arrangements.[3] The review's final report, *Report of the Review of Financial Sector Levies,* was released in October 2003.[4] The Bills implement changes recommended in this report.

Current levy setting arrangements

Wallis Inquiry

The current levy setting arrangements were drawn from recommendations made by the 1997 Financial System Inquiry (Wallis Inquiry). The Wallis Inquiry suggested that 'as a general principle the costs of financial regulation should be borne by those who benefit from it'.[5] The Wallis Inquiry went on to state that:

> The most practicable means is for industry to be levied to meet the cost of regulation incurred by regulatory agencies, with each industry levied in proportion to the agency resources expended on it. The arrangements should involve a mix of direct service fees and annual levies and should distinguish, where possible
>
> - Services provided at the instigation of individual entities, such as authorisation or registrations, for which per-item cost recovery fees are appropriate; and
> - Regulatory activities undertaken at the discretion of the agency and for the general benefit of customers, such as inspections, enforcement and policy development, for which annual industry wide levies are most appropriate
>
> Within the bounds of practicality, levies should be related to broad categories of cost, so that those activities which have a low regulatory cost are not charged effectively to cross subsidise those which have a high regulatory cost.[6]

Legislative implementation

The Government agreed with these broad principles. The Government's response to the inquiry's recommendations was implemented through a series of pieces of legislation passed by Federal Parliament in 1998. The legislation provided that the levies would be raised according to the *Financial Institutions Supervisory Levies Collection Act 1998* and six other Acts applying to the main industry sectors, these Acts being:

- *Authorised Deposit-taking Institutions Supervisory Levy Imposition Act 1998*
- *Authorised Non-operating Holding Companies Supervisory Levy Imposition Act 1998*
- *Life Insurance Supervisory Levy Imposition Act 1998*
- *General Insurance Supervisory Levy Imposition Act 1998*
- *Retirement Savings Account Providers Supervisory Levy Imposition Act 1998*
- *Superannuation Supervisory Levy Imposition Act 1998*.

The levy

Under the legislation, levies on financial services institutions are paid on a sectoral basis. The financial services industry is divided into the following sectors:

- authorised deposit taking institutions
- foreign bank branches
- superannuation funds
- life insurers
- friendly societies
- general insurers
- retirement savings account providers, and
- non-operating holding companies.

A levy rate per dollar of assets is set for each of the sectors by the Treasurer. The levy rate is reviewed on an annual basis. For example, for the 2004-05 financial year, the levy rate on superannuation funds was 4.2%. In the 2003-2004 financial year, the levy rate on superannuation funds was 3.5%.

The levy amount paid by each institution is determined by multiplying the assets of the institution by the sector's levy rate. The amount to be paid is however subject to minimum and maximum amounts.

Minimum and maximum amounts are prescribed for each sector and are set out in the legislation. The institution is not required to pay a levy that is in excess of the maximum amount as set out in the legislation. For example, the maximum amount payable by a superannuation fund in 2004-2005 is $99,000. Nor can the institution pay less than the minimum amounts which are set out in the legislation. For example, the minimum amount payable by a superannuation fund in 2004-2005 is $600.

In the 2003-2004 financial year, the total amount of money paid by the financial services sector under these levy arrangements was approximately $85 million. It is forecast that the amount of money that will be recovered under these levy arrangements will increase to $96 million in the 2004-2005 financial year.[7]

Policy rationale for the current levy setting arrangements

In relation to the policy justification for the sectoral approach to APRA funding, the sectoral model is aimed at achieving a result which sees institutions pay in proportion to the share of the benefits that the sector receives from the system of prudential supervision. It also ensures that each sector pays for the cost that the regulator incurs in supervising that sector.[8]

The use of minimum and maximum amounts reflects the view that there are certain minimum costs incurred in regulating even the smallest institutions but beyond a certain size there is no extra cost in regulating the institution. Imposing a cap also prevents larger institutions funding the costs of prudential regulation and supervision to a far greater extent than would be justified by the share of APRA's expenditure on those institutions.[9]

Other APRA funding arrangements

In addition to these levies, APRA also performs certain services for industry and it charges fees that reflect the cost of providing these services. This therefore also implements the Wallis Inquiry's recommendations.[10]

Previous levy reviews

The most recent review of the levy setting arrangements took place in 1999. The review recommended relatively minor changes to the levy setting process. There was no legislative change following this review.

The Productivity Commission (PC) inquired into cost recovery arrangements within Government agencies. Its report, *Cost Recovery by Government Agencies,* was released in March 2002.

In its report the PC noted that 'notwithstanding its increased significance, cost recovery currently lacks the attributes of good policy – namely, a clear rationale, accountability, transparency, performance assessment and review'.[11]

In response to the PC's report the Government, in December 2002, announced that it would introduce a formal cost recovery policy for Government agencies.[12] The policy takes the form of Department of Finance Guidelines which must be referred to when Commonwealth agencies are reviewing cost recovery arrangements.

2002 review of financial sector levies (2002 review)

The 2002 review of the cost recovery arrangements started with the assumption that funding for the prudential regulation of the financial services industry should be met by a levy on the industry rather than being drawn from consolidated revenue.[13] Therefore the 2002 review did not consider the underlying premise being that industry should fund its own regulation. Nor did it examine whether the current funding arrangements produced the most effective enforcement outcome and whether the level of funding for APRA was set at appropriate levels. In considering this issue, the 2002 review considered a number of related issues including:

- The appropriate cost recovery models, namely
  - 'fee for service' cost recovery arrangements[14]

- cost recovery that relates to the level of assets held by the institution,[15] or
- cost recovery that is imposed on a sectoral basis rather than at an institutional level.[16]

The current levy arrangements, as discussed above, comprise a mix of the second and third methods.

- Should factors other than cost of supervision of an industry sector time (such as the risk to the financial system of certain industry representatives collapsing and vertical equity considerations[17]) be taken into account in setting industry levies?
- Should there be industry cross-subsidisation, both across industry sectors and within industry sectors?
- Should there be levy caps?
- Should there be a minimum levy rate and if so, is it set at too low a level?
- Is the current levy setting, collection and expenditure process sufficiently transparent and accountable?

2002 review recommendations

The 2003 review made the following recommendations in the *Report of the Review of Financial Sector Levies*:

1. The sectoral basis for imposing the levies should be retained. The review considered that this ensures that the nature and risk differences of financial promises are reflected in the levies charged to regulated financial institutions. It also considered that the levy should continue to relate to the assets of the organisation.

2. In relation to particular industry sectors it made a number of specific recommendations:

- Authorised non-operating holding companies (NOHC's) that are outside the Authorised Deposit-taking Institution (ADI) sector be subject to the financial sector levies.
- Levies imposed on Retirement Savings Account (RSA) providers be merged with the levies imposed on the ADI and life insurance sectors, according to the sector of the RSA provider.
- Small APRA funds (SAF's) be separated from other superannuation funds and be levied at a lower minimum rate than other superannuation funds.

3. Cost should be the principal, but not sole, determinant of levy amounts and that systemic risk and vertical equity considerations should also be taken into account. Therefore there should be two distinct components to financial sector levies:

- Component A which relates to the cost of supervision and involves a single levy rate for each of the sectors which will be imposed on the assets of the organisation.
- Component B which relates to the potential system impact and vertical equity considerations. This will be a low rate levy on assets without any maximum levy amount. This component is to raise between 10 and 30 per cent of APRA's levy funding in any one year.

4. The cap on the levy should apply only to the cost based component (Component A) of the new levy structure. That cap should be $1.5 million in 2004-05 with an increase by an indexation factor of the consumer price index plus three percentage points, every year.

5. Minimum levy amounts should continue to apply. Minimum levy amounts should reflect the cost of regulating smaller industry participants. The review did note that in most sectors, the minimum levy amounts do not reflect the actual cost of regulating smaller industry participants. The review considered that 'In most sectors, it is the case that minimum levies of several thousand dollars would be required to meet minimum supervision costs'.[18] However the amount is not clear and 'A more precise estimate of minimum regulatory costs needs to await detailed modelling and industry consultation in the context of the next levy determinations'.[19]

6. APRA, ASIC and the ATO ensure that their reporting of the use of the levy funds satisfies the requirements of the Government's cost recovery policy.

The Bills implement recommendations 2, 3 and 4. The other recommendations are to be implemented administratively.

Main Provisions

As noted above, the *Financial Institutions Supervisory Levy Collection Act 1999* authorises collection of the levies from the six financial sectors, and the six other Acts deal with the imposition of the levy. This legislative arrangement ensures compliance with section 55 of the Constitution.[20] Implementation of the 2002 Review recommendations is also separated into seven different bills to ensure that there is compliance with section 55 of the Constitution.

Financial Institutions Supervisory Levies Collection Amendment Bill 2004

Under the existing levy collection arrangements only 'authorised non-operating holding companies' (authorised NOHCs) in the authorised deposit-taking (ADI) sector of the financial services industry are subject to the provisions of the *Authorised Non-operating Holding Companies Supervisory Levy Imposition Act 1998*.[21] The Report recommended that authorised NOHCs outside the ADI sector be subject to the financial sector levies (recommendation 2).[22]

Item 1 in **Schedule 1** of the Financial Institutions Supervisory Levies Collection Amendment Bill 2004 amends the definition of authorised NOHC in section 7 of the *Financial Institutions Supervisory Levies Collection Act 1998* to include non-operating holding companies subject to the *Banking Act 1959* or the *Insurance Act 1973*.

Item 2 provides that the amendment made by **item 1** apply to levies payable from 1 July 2005.

Authorised Non-operating Holding Companies Supervisory Levy Imposition Amendment Bill 2004

Similarly, **item 1** in **Schedule 1** of the Authorised Non-operating Holding Companies Supervisory Levy Imposition Amendment Bill 2004 amends the definition of 'authorised NOHC' in section 5 of the *Authorised Non-operating Holding Companies Supervisory Levy Imposition Act 1998* to include non-operating holding companies subject to the *Banking Act 1959* or the *Insurance Act 1973*.

Item 2 amends the definition of 'statutory upper limit' in section 5 of the *Authorised Non-operating Holding Companies Supervisory Levy Imposition Act 1998* so that the 'statutory upper limit' for the financial year commencing 1 July 2005 is $1.5 million (recommendation 4).

Item 3 amends subsection 7(1) of the *Authorised Non-operating Holding Companies Supervisory Levy Imposition Act 1998* so that separate levy amounts can be applied to authorised NOHCs that are subject to the *Banking Act 1959* and authorised NOHCs that are subject to the *Insurance Act 1973*.

Item 4 amends subsection 8(1) of the *Authorised Non-operating Holding Companies Supervisory Levy Imposition Act 1998* so that the indexation factor for a financial year is the Consumer Price Index plus 3 per cent (recommendation 4).

Item 5 is a minor technical amendment to subsection 8(3) of the *Authorised Non-operating Holding Companies Supervisory Levy Imposition Act 1998*.

Item 6 provides that the amendments made by **Schedule 1** of the Authorised Non-operating Holding Companies Supervisory Levy Imposition Amendment Bill 2004 apply to levies payable from 1 July 2005.

Superannuation Supervisory Levy Imposition Amendment Bill 2004

Item 1 in **Schedule 1** of the Superannuation Supervisory Levy Imposition Amendment Bill 2004 amends the definition of 'statutory upper limit' in section 5 of the *Superannuation Supervisory Levy Imposition Act 1998* so that the 'statutory upper limit' for the financial year commencing 1 July 2005 is $1.5 million (recommendation 4).

Item 2 amends subsection 7(1) of the *Superannuation Supervisory Levy Imposition Act 1998* so that the levy payable is broken up into two components – a 'restricted levy component' and an 'unrestricted levy component'. **Item 3** amends subsection 7(3) of the *Superannuation Supervisory Levy Imposition Act 1998* so that the Treasurer is required to make determinations in relation to both components of the levy. Together these two amendments will allow the Government to apply recommendation 8 of the Report.

Item 4 amends subsection 7(4) of the *Superannuation Supervisory Levy Imposition Act 1998* so that the 'statutory upper limit' applies only to the restricted levy component (recommendation 4).

Item 5 inserts **proposed subsection 7(4)** which permits the levy determination for different classes of superannuation entities. This will permit the Treasurer to set lower maximum levy amounts for 'Small APRA Funds'.[23]

Item 6 amends subsection 8(1) of the *Superannuation Supervisory Levy Imposition Act 1998* so that the indexation factor for a financial year is the Consumer Price Index plus 3 per cent (recommendation 4).

Item 7 is a minor technical amendment to subsection 8(3) of the *Superannuation Supervisory Levy Imposition Act 1998*.

Item 8 provides that the amendments made by **Schedule 1** of the Superannuation Supervisory Levy Imposition Amendment Bill 2004 apply to levies payable from 1 July 2005.

Retirement Savings Account Providers Supervisory Levy Imposition Amendment Bill 2004

Item 1 in **Schedule 1** of the Retirement Savings Account Providers Supervisory Levy Imposition Amendment Bill 2004 amends the definition of 'statutory upper limit' in section 5 of the *Retirement Savings Account Providers Supervisory Levy Imposition Act 1998* so that the 'statutory upper limit' for the financial year commencing 1 July 2005 is $1.5 million (recommendation 4).

Item 2 amends subsection 7(1) of the *Retirement Savings Account Providers Supervisory Levy Imposition Act 1998* so that the levy payable is broken up into two components – a 'restricted levy component' and an 'unrestricted levy component'. **Item 3** amends subsection 7(3) of the *Retirement Savings Account Providers Supervisory Levy Imposition Act 1998* so that the Treasurer is required to make determinations in relation to both components of the levy. Together these two amendments will allow the Government to apply recommendation 3.

Item 4 amends subsection 7(4) of the *Retirement Savings Account Providers Supervisory Levy Imposition Act 1998* so that the 'statutory upper limit' applies only to the restricted levy component (recommendation 4).

Item 5 amends subsection 8(1) of the *Retirement Savings Account Providers Supervisory Levy Imposition Act 1998* so that the indexation factor for a financial year is the Consumer Price Index plus 3 per cent (recommendation 4).

Item 6 is a minor technical amendment to subsection 8(3) of the *Retirement Savings Account Providers Supervisory Levy Imposition Act 1998*.

Item 7 provides that the amendments made by **Schedule 1** of the Retirement Savings Account Providers Supervisory Levy Imposition Amendment Bill 2004 apply to levies payable from 1 July 2005.

General Insurance Supervisory Levy Imposition Amendment Bill 2004

Item 1 in **Schedule 1** of the General Insurance Supervisory Levy Imposition Amendment Bill 2004 amends the definition of 'statutory upper limit' in section 6 of the *General Insurance Supervisory Levy Imposition Act 1998* so that the 'statutory upper limit' for the financial year commencing 1 July 2005 is $1.5 million (recommendation 4).

Item 2 amends subsection 8(1) of the *General Insurance Supervisory Levy Imposition Act 1998* so that the levy payable is broken up into two components – a 'restricted levy component' and an 'unrestricted levy component'. **Item 3** amends subsection 8(3) of the *General Insurance Supervisory Levy Imposition Act 1998* so that the Treasurer is required to make determinations in relation to both components of the levy. Together these two amendments will allow the Government to apply recommendation 3.

Item 4 amends subsection 8(4) of the *General Insurance Supervisory Levy Imposition Act 1998* so that the 'statutory upper limit' applies only to the restricted levy component (recommendation 4).

Item 5 amends subsection 9(1) of the *General Insurance Supervisory Levy Imposition Act 1998* so that the indexation factor for a financial year is the Consumer Price Index plus 3 per cent (recommendation 4).

Item 6 is a minor technical amendment to subsection 9(3) of the *General Insurance Supervisory Levy Imposition Act 1998*.

Item 7 provides that the amendments made by **Schedule 1** of the General Insurance Supervisory Levy Imposition Amendment Bill 2004 apply to levies payable from 1 July 2005.

Life Insurance Supervisory Levy Imposition Amendment Bill 2004

Item 1 in **Schedule 1** of the Life Insurance Supervisory Levy Imposition Amendment Bill 2004 amends the definition of 'statutory upper limit' in section 5 of the *Life Insurance Supervisory Levy Imposition Act 1998* so that the 'statutory upper limit' for the financial year commencing 1 July 2005 is $1.5 million (recommendation 3).

Item 2 amends subsection 7(1) of the *Life Insurance Supervisory Levy Imposition Act 1998* so that levy payable is broken up into two components – a 'restricted levy component' and an 'unrestricted levy component'. **Item 3** amends subsection 7(3) of the *Life Insurance Supervisory Levy Imposition Act 1998* so that the Treasurer is required to make determinations in relation to both components of the levy. Together these two amendments will allow the Government to apply recommendation 3.

Item 4 amends subsection 7(4) of the *Life Insurance Supervisory Levy Imposition Act 1998* so that the 'statutory upper limit' applies only to the restricted levy component (recommendation 4).

Item 5 amends subsection 8(1) of the *Life Insurance Supervisory Levy Imposition Act 1998* so that the indexation factor for a financial year is the Consumer Price Index plus 3 per cent (recommendation 4).

Item 6 is a minor technical amendment to subsection 8(3) of the *Life Insurance Supervisory Levy Imposition Act 1998*.

Item 7 provides that the amendments made by **Schedule 1** of the Life Insurance Supervisory Levy Imposition Amendment Bill 2004 apply to levies payable from 1 July 2005.

Authorised Deposit-taking Institutions Supervisory Levy Imposition Amendment Bill 2004

Item 1 in **Schedule 1** of the Authorised Deposit-taking Institutions Supervisory Levy Imposition Amendment Bill 2004 amends the definition of 'statutory upper limit' in section 5 of the *Authorised Deposit-taking Institutions Supervisory Levy Imposition Act 1998* so that the 'statutory upper limit' for the financial year commencing 1 July 2005 is $1.5 million (recommendation 4).

Item 2 amends subsection 7(1) of the *Authorised Deposit-taking Institutions Supervisory Levy Imposition Act 1998* so that the levy payable is broken up into two components – a 'restricted levy component' and an 'unrestricted levy component'. **Item 3** amends subsection 7(3) of the *Authorised Deposit-taking Institutions Supervisory Levy Imposition Act 1998* so that the Treasurer is required to make determinations in relation to both components of the levy. Together these two amendments will allow the Government to apply recommendation 3 of the Report.

Item 4 amends subsection 7(4) of the *Authorised Deposit-taking Institutions Supervisory Levy Imposition Act 1998* so that the 'statutory upper limit' applies only to the restricted levy component (recommendation 4).

Item 5 amends subsection 8(1) of the *Authorised Deposit-taking Institutions Supervisory Levy Imposition Act 1998* so that the indexation factor for a financial year is the Consumer Price Index plus 3 per cent (recommendation 4).

Item 6 is a minor technical amendment to subsection 8(3) of the *Authorised Deposit-taking Institutions Supervisory Levy Imposition Act 1998*.

Item 7 provides that the amendments made by **Schedule 1** of the Authorised Deposit-taking Institutions Supervisory Levy Imposition Amendment Bill 2004 apply to levies payable from 1 July 2005.

Concluding Comments

These bills achieve the Government's aim of implementing those recommendations made in the *Report of the Review of Financial Sector Levies* that require legislative change. The 2003 review of financial sector levies was conducted in accordance with the Government's cost recovery policy. The 2003 review considered how the cost burden for providing prudential supervision to the financial services industry should be shared amongst industry participants. The review did not consider broader issues such as whether cost recovery funding is appropriate for the financial services sector, whether the current funding arrangements produce the most effective enforcement outcome and whether the level of funding for APRA is set at appropriate levels. Therefore these Bills do not necessarily ensure that APRA is adequately funded to help prevent major financial collapses such as the HIH collapse.

Endnotes

1 *Review of Financial Sector Levies,* Media Release, Senator the Hon Helen Coonan, Minister for Revenue and the Assistant Treasurer, 29 October 2002, [http://assistant.treasurer.gov.au/atr/content/pressreleases/2002/115.asp].

2 *Review of Financial Sector Levies; Treasury/APRA Issues and Discussion Paper*, p. 2.

3 The Treasury and the Australian Prudential Regulation Authority, *Review of Financial Sector Levies, Treasury/APRA Issues and Discussion Paper*, April 2003, [http://www.treasury.gov.au/documents/587/PDF/FSL.pdf].

4 The Treasury and the Australian Prudential Regulation Authority, *Report of the Review of Financial Sector Levies*, October 2003, [http://fslevies.treasury.gov.au/content/_download/report_final.pdf]

5 Financial System Inquiry Final Report (Wallis Report), March 1997, Australian Government Publishing Service, Canberra, p. 532.

6 Ibid., p. 532

7 *Funding Boosted for Regulators, Medial Release,* Senator the Hon. Helen Coonan, Minister for Revenue and the Assistant Treasurer, 29 June 2004.

8 *Review of Financial Sector Levies; Treasury/APRA Issues and Discussion Paper*, p. 11.

9 *Explanatory Memorandum Authorised Deposit-taking Institutions Supervisory Levy Imposition Bill 1998*, p. 9.

10 *Review of Financial Sector Levies; Treasury/APRA Issues and Discussion Paper*, p. 10.

11 Productivity Commission, *Cost Recovery by Government Agencies, Inquiry Report*, Report No. 15, 16 August 2001, Ausinfo, Canberra, 2001, p. xxxii.

12 *Commonwealth Cost Recovery Policy* Media Release, Senator Nick Minchin, Minister for Finance and Administration, 4 December 2002. This cost recovery policy is located on the Department of Finance website at http://www.finance.gov.au/finframework/docs/Guidelines_-_Regulatory_2_Dec.rtf.

13 *Review of Financial Sector Levies; Treasury/APRA Issues and Discussion Paper*, p. 10.

14 Ibid., p. 11.

15 Ibid., p. 12.

16 Ibid., p. 12.

17 Vertical equity considerations refer to the fact that as a result of the caps that currently apply, levy amounts paid by the largest banks are for example little more than the levies paid by much smaller and less complex ADI's.

18 Department of the Treasury and the Australian Prudential Regulation Authority, *Report of the review of financial sector levies*, Department of the Treasury, Canberra, October 2003, p. 7.

19 Ibid., p. 20

20 Section 55 requires that laws imposing taxation, shall deal with one subject of taxation only.

21 Ibid., p. 5.

22 Ibid., p. 6.

23 A 'Small APRA Fund' is a fund with less than five members, regulated by APRA and whose trustee is an Approved Trustee.

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