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First Home Saver Accounts Bill 2008

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First Home Saver Accounts Bill 2008

Date introduced: 28 May 2008

House: House of Representatives

Portfolio: Treasury

Commencement: On the day after it receives Royal Assent. In practical terms, First Home Saver Accounts would be able to be opened or issued on or after 1 October 2008.

Links: The relevant links to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at http://www.aph.gov.au/bills/. When Bills have been passed they can be found at ComLaw, which is at http://www.comlaw.gov.au/.

Purposes

The purposes of this Bill are to introduce a new principal Act to provide for the establishment of first home saver accounts (FHSA), provide for the payment of the government contribution to these accounts, and govern the accounts operation and prudential regulation.

Background

Basis of policy commitment

The Bill implements a commitment made by the government during the 2007 election campaign to assist first home buyers to save a deposit for their first home.

Some indicators suggest that home loan affordability in Australia is currently at a record low. Moreover, some have it that home loan affordability will decline still further in the immediate future in response to further inflation and to interest rate increases imposed by the Reserve Bank and individual lenders.[1] March quarter 2008 data show an overall national decline of affordability—the ratio of median family income to average loan repayments—in the past year of 8.7 per cent. The proportion of median family income required to meet average home loan repayments (of $2,070 per month) across Australia is currently 38 per cent, an increase of 8.3 per cent over that of March 2007.

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1. Real Estate Institute of Australia and Deposit Power, *Housing Affordability Report, Joint Quarterly Survey No. 94*, March Quarter 2008.

The situation with regard to rental affordability is equally dire. In the year to March 2008, the proportion of median weekly family income required to meet median weekly rent has risen by 8.3 per cent to 24.7 per cent of median family income across Australia.

In this context of declining home loan and rental affordability, and with the weighted average median house price across Australia's capital cities standing at $424 400 at the end of the June quarter 2007, many would-be first home buyers are experiencing difficulty in saving a deposit. This is partly reflected in the declining rate of first home buyer participation in the housing market.

Over the March quarter 2008, there was a decline of two per cent in the share of first home buyers as a percentage of total housing finance commitments. The proportion of first home buyers was 16.4 per cent in comparison with an average of 20.0 per cent over the 16 year period since July 1991.[2]

In the 2007 election campaign, the government made a range of commitments to improve housing affordability in Australia, including a pledge to set up low-tax accounts to assist first home buyers to save a deposit for a home. The details of the proposed first home saver accounts were initially sketched out in a fact sheet.

On 8 February 2008, the government released a discussion paper outlining the proposed arrangements for the accounts and sought submissions on this paper as a part of the consultation process. On 13 May 2008, Treasurer Wayne Swan announced the outcome of the government's consideration of the issues raised in the submissions. In response to the submissions, the government:

- dropped the salary sacrifice arrangements, through which first home buyers could have made contributions to their accounts
- deferred the commencement of the policy until 1 October 2008 to enable account providers more time to develop products
- removed the $1,000 upfront contribution and the link to residency to open an account
- replaced the $10 000 annual contributions cap with an overall account balance cap of $75 000 (indexed to average weekly ordinary time earnings), after which no further personal contributions can be made
- replaced the tiered system of government co-contributions—which indexed government co-contribution amounts to account holders' marginal tax rates—with a flat 17 per cent government contribution
- clarified that the four year withdrawal rule is calculated on a financial year basis, rather than from the day on which the account is opened, and

2. ibid.

- simplified the product disclosure requirements and provided for a 14-day cooling-off period for potential first home saver account holders.[3]

The government maintained the taxation incentives associated with the accounts—with investment earnings taxed at 15 per cent and withdrawals tax free, so long as they are used to purchase a first home to live in.

The government noted that a number of further issues raised during the consultation process were considered, 'but not proceeded with as they would have resulted in a significantly higher cost to revenue, changed the nature of the accounts or added complexity for the consumer'.[4]

Position of significant interest groups/press commentary

On the whole, commentary to date has been supportive of the FHSA. Most approve of the proposed scheme on the grounds that it should both assist first home owners to breach the deposit gap and save for a home, and help to develop and encourage a culture of savings in Australia.[5] Indeed, in an editorial earlier this year *The Advertiser* argued that State and Territory Governments would do well to follow the Australian Government's lead and introduce equally attractive tax breaks to encourage and assist struggling families out of the rental market and into their own homes.[6] That said, a number of concerns have been raised regarding aspects of the scheme. These concerns have mostly to do with elements of the FHSA that are likely to limit its appeal and take-up.

Impact of the FHSA on the housing market

Some commentators have expressed concerns that the FHSA may contribute to a further worsening of the state of the housing market.

Because the FHSA is a demand-side policy that would, were the Bill to be passed, give first home owners more money to spend in an already tight market, some fear that the accounts could further increase house prices and thereby exacerbate the financial stresses

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3. The Hon. Wayne Swan, Treasurer, First Home Saver Accounts – Outcomes of Consultation, 13 May 2008.

4. ibid.

5. In their support of the FHSAs' providing individuals with clear incentives to save, some commentators contrast the scheme with the first home owner's grant which, being a free hand out of cash to first home buyers, does not encourage saving or financial prudence. Indeed, Bailey has accused the first home buyer's grant of having pushed housing prices up in the past and of having 'lin[ed] the pockets of developers'. See K. Bailey, 'Saving scheme could open door', *Herald Sun*, 25 February 2008.

6. Editorial, 'Give aspiring home owners a break', *The Advertiser*, 5 February 2008.

to which many would-be home buyers are currently subject.[7] It should be noted that requiring home buyers to save over a minimum four year period is likely to have a dampening effect on inflation in the short- to medium-term as consumption falls and saving rises. However, when this period elapses, the likely influx of first home buyers could generate unwelcome short-term instability in the housing market.[8] The only means to counter such threats is through supply-side measures that increase the stock of housing and, thereby, improve overall housing affordability. This can be achieved through policies that, for example, make available further land for housing and that streamline processes that constrain the supply of land and housing.

The government's proposed $512 million Housing Affordability Fund and the establishment of a National Housing Supply Council are measures that are calculated to help to achieve this.[9] If implemented, the Housing Affordability Fund—while not targeted at first home buyers—will assist local governments to reduce the cost of water, sewerage, transport and other services for new housing development, as well as reducing costs associated with planning and approval. These cost savings are to be passed on to home buyers in newly developing areas. Some commentators have argued that the Housing Affordability Fund will help first home buyers 'to some extent' by making land cheaper.[10]

However, the fact that the FHSA are, with the assistance of the Housing Affordability Fund, likely to encourage first home owners to enter newly developing areas is a source of concern to some commentators. Such a move, they argue, is likely to have negative impacts on young first home buyers and the residential property market.[11] For example,

7. Sussan Ley, Shadow Minister for Housing, 'Second reading debate: First Home Saver Accounts Bill 2008', House of Representatives, *Debates*, 29 May 2008; Sussan Ley (Shadow Minister for Housing) *Labour no first home saviour*, media release, 2 June 2008; Trowbridge Deloitte, Submission No. 52, *First Home Saver Accounts – Outline of proposed arrangements*, 7 March 2008; The National Institute of Accountants, Submission No. 35, *First Home Saver Accounts – Outline of proposed arrangements*, March 2008.

8. A. Stebbing and B. Spies-Butcher, Submission No. 44, *First Home Saver Accounts – Outline of proposed arrangements*, March 2008.

9. On 11 June 2008 the government released a technical paper that outlines the proposed design of the Housing Affordability Fund and the suggested process for selecting suitable projects. The government has invited submissions on the proposal from state, territory and local governments, industry and other stakeholders. The consultation paper is at http://www.facsia.gov.au/internet/facsinternet.nsf/vIA/housing/$file/haf_consultation_paper.pdf.

10. M. Armstrong and D. Johnston, 'Middle ground provides housing hope', *The Age*, 29 November 2007.

11. ibid.

according to Armstrong and Johnston,[12] many young people see their first home as a lifestyle choice rather than as an investment second only to superannuation as a potential source of wealth. This fact, when combined with the assistance provided by the FHSA and the Housing Affordability Fund, could encourage new home buyers to buy in newly developing, outlying areas. Such moves would, Armstrong and Johnston argue, be likely to weaken the property market in these locations (where they claim supply is relatively high and demand low among investors as opposed to first home buyers) and to result in first home owners finding it difficult to accumulate equity fast enough to outstrip the rates of interest being paid on their mortgages.

This, Armstrong and Johnston claim, is an issue for first home buyers and not for governments. As Armstrong and Johnston see it, first home buyers would be better off purchasing smaller properties in the middle suburbs. This would improve their ability to build equity through capital growth and break up first home buyer enclaves in outlying areas. While Armstrong and Johnston may be correct in their assessments, it should be noted that in the current residential property market, the availability of homes in middle suburbs is likely to be limited, and these homes, even where modestly sized, are likely to be too expensive for many first home buyers.[13] One proposed means of freeing up housing for first home buyers in middle and inner suburbs would be to change the current income and asset tests that provide a disincentive to older people to downsize their homes and release additional homes for younger people.[14]

Equity and eligibility/access concerns

A number of commentators have expressed reservations with regard to the equity of the FHSA and its eligibility criteria. Some feel that the entry criteria are unnecessarily restrictive and that this could exclude from the scheme many of those people who need assistance most.

Entry criteria

Some have argued that the assistance available through the scheme should be made available to any person who does not currently own their own home and not just to people who have not previously owned a home. These commentators observe that many people may, through a variety of circumstances, have lost their home and find themselves in a position similar to that of a first home buyer: wanting to enter the housing market with

12. Mark Armstrong and David Johnston are directors of Property Planning Australia, an organisation that provides property advice and financial assistance.

13. M. Armstrong and D. Johnston, op. cit.

14. Trowbridge Deloitte, op. cit.

limited funds.[15] Were FHSA eligibility to be assets tested, this could potentially address such equity concerns. Assets test-based eligibility could also deal with the argument from some quarters that there should be tighter targeting for high income earners under the scheme. It has been noted that some individuals accessing the scheme may have investment properties (rather than houses in which they have previously lived) or inherited real estate, and have little need of the scheme's benefits.[16]

Some would like to see the minimum entry age of 18 years removed, so as to encourage maximum use of the FHSA and to promote savings discipline as early as possible, including among school leavers and new employees.[17]

In debate over the Bill, Shadow Minister for Housing, Sussan Ley expressed some reservations with regard to the equity of the FHSA and their eligibility criteria. The government is to provide a co-contribution of 17 per cent on the first $5,000 contributed annually for all account holders. This amounts to a maximum government contribution of $850 per annum. However, given that household expenses, and especially rental costs, are currently so high, many individuals and households on low incomes are likely to struggle to save such an amount. Indeed, some individuals and households may experience difficulty in meeting the $1,000 contribution amount required for four financial years under the proposed scheme, an amount that would realise a government co-contribution of $150. As a result, low income earners will gain far lower government co-contributions than will those on higher incomes.

Nevertheless, it should be noted that the FHSA are now more equitable in this respect than they were in their initial guise. Under the proposed system as it was described in the First Home Saver Accounts Outline of proposed arrangements discussion paper, the government co-contribution would have been tied to the account holder's income tax rate. This would have resulted in those paying a higher rate of tax receiving a higher co-

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15. S. Wright, Submission No. 56, *First Home Saver Accounts – Outline of proposed arrangements*, March 2008; CPA Australia, Submission No. 14, *First Home Saver Accounts – Outline of proposed arrangements*, 7 March 2008; Friendly Societies of Australia, Submission No. 19, *First Home Saver Accounts – Outline of proposed arrangements*, 7 March 2008.

16. A. Stebbing and B. Spies-Butcher, op. cit.

17. Industry Super Network, Industry Funds Forum, Australian Institute of Superannuation Trustees, Submission No. 23, *First Home Saver Accounts – Outline of proposed arrangements*, March 2008; Master Builders Australia, Submission No. 29, *First Home Saver Accounts – Outline of proposed arrangements*, March 2008; Institute of Actuaries of Australia, Submission No. 24, *First Home Saver Accounts – Outline of proposed arrangements*, 14 March 2008. Both CPA Australia and Friendly Societies of Australia have proposed a minimum age of 16.

contribution rate than those on lower incomes and paying less of their income in tax.[18] In response to criticisms,[19] the government introduced a flat 17 per cent rate, under which, theoretically, high and low income earners can gain an equal amount of government money from the accounts. The government also imposed an overall account balance cap of $75 000 on all FHSA to limit the amount that can be saved in the accounts and ensure that 'the assistance provided to first home buyers is targeted appropriately'.[20]

While the government has addressed the inequity of the scheme where it comes to government co-contributions, it is still possible for high income earners to gain greater benefits from the scheme than might low income earners. This is due to the FHSA taxation incentive arrangements, which tax investment earnings at a flat rate of 15 per cent. Because some low income earners pay less than 15 per cent marginal income tax in any case, the accounts would be of no benefit to them in this regard. High income earners who are on tax rates of 40 or 45 per cent, on the other hand, would stand to benefit substantially from this arrangement. As the *Canberra Times*' Economics Editor, Peter Martin, sees it, this renders the scheme 'untenably unfair'.[21] Like Martin, Trowbridge Deloitte note that the ability to earn investment income taxed at 15 per cent benefits those on higher incomes. However, they go on to suggest that that this would only be a benefit to those who are not repaying their loans, and it is, in any case, one that is already available to such people, particularly wealthier investors.[22]

Another point worthy of mention is that because individuals are able to contribute the balance of their FHSA to superannuation at any time, this raises the possibility that some wealthier participants could use the scheme as a means to gain extra government contributions towards their superannuation. Should the Bill be passed and the FHSA introduced, this aspect of the scheme would need to be monitored.

The opposition has also expressed concerns that because the accounts belong to individuals, and do not consider the home ownership status of these individuals' spouses,

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18. See for example A. Stebbing and B. Spies-Butcher, op. cit.

19. See for example Brotherhood of St Laurence, Submission No. 6, *First Home Saver Accounts – Outline of proposed arrangements,* 7 March 2008; Choice, Submission No. 8, *First Home Saver Accounts – Outline of proposed arrangements,* 13 March 2008; Consumer Action Law Centre, Submission No. 12, *First Home Saver Accounts – Outline of proposed arrangements,* 11 March 2008.

20. Explanatory Memorandum, First Home Saver Accounts Bill 2008, p. 29. In imposing this cap, the government has had to balance the need to ensure the scheme's equity with the need to ensure that the total possible account balance is close to the average amount required by financial institutions for a deposit on a median priced house.

21. P. Martin, 'How Swan got it wrong', *Canberra Times*, 20 May 2008.

22. Trowbridge Deloitte, op. cit.

there is scope for people who are not 'the struggling first home buyer' the bill is trying to assist to gain tax-payer funded assistance.[23] Generally speaking, their concern is that the FHSA could be used by some people who are not struggling as a measure for tax planning purposes, rather than as primarily a means to purchase a first home. Potentially, an individual's spouse could own a home in which that individual is living, start up an FHSA, purchase a house, live in it for the period stipulated as part of the FHSA criteria, and then rent the property.[24] Alternatively, the couple could live in the 'first' home purchased using the assistance of the FHSA, and rent out the property owned by the spouse. The couple could, moreover, gain two lots of government assistance in the process, both via the First Home Owner's Grant and the FHSA.

While there is certainly scope for abuse of the FHSA in this respect, arguably alternative arrangements whereby an individual's eligibility to open an account are affected by the eligibility of their spouse, are unfair (see above).[25]

Exit criteria – four year minimum term

Perhaps the most consistent criticism of the FHSA is that the scheme's withdrawal provisions are too restrictive; it is not possible to withdraw the account monies before the four year point and, if they are withdrawn, they must be transferred to superannuation. For one thing, as the FHSA criteria currently stand, this renders the scheme only appropriate for those would-be first home owners who start saving at around the time of the scheme's commencement.[26] People who have already started saving and who intend purchasing their first home in the next four years are likely to be discouraged from participating in and benefiting from the scheme.[27] Moreover, some people who 'enter the scheme in good faith but find that they need to withdraw early (perhaps because they find themselves in a

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23. In this respect, FHSA eligibility criteria differ from those of the First Home Owner Grant (an unmeans-tested grant to first home buyers provided by the states and territories), which is affected by the eligibility of an individual's partner.

24. The National Institute of Accountants has argued that eligibility should be based on occupancy of the residence for 12 months rather than six months, as proposed. This shorter time period would, they argue, reduce the potential for people to use the property for investment purposes, rather than as a home. National Institute of Accountants, op. cit.

25. See Property Council of Australia, Submission No. 39, *First Home Saver Accounts – Outline of proposed arrangements*, 14 March 2008.

26. Towers Perrin, Submission No. 51, First Home Saver Accounts – Outline of proposed arrangements, 7 March 2008.

27. S. Wright, op. cit.; Towers Perrin, op. cit.; A. Stebbing and B. Spies-Butcher, op. cit.; A. Akimov, Submission No. 3, *First Home Saver Accounts – Outline of proposed arrangements*, March 2008.

position to purchase their ideal, and affordable home) will be penalised'.[28] Following similar lines it has been argued that participants would be disadvantaged in relation to others who are not participating in the scheme in that they are not able to take advantage of potential troughs in the residential property market without exiting the scheme, transferring their FHSA savings to superannuation and borrowing sufficient funds for a home deposit from elsewhere.[29]

Various solutions have been proposed to perceived problems associated with the withdrawal provisions.

Some argue that 'early savers' who may be discouraged from investing in the scheme should be given 'credit' towards the satisfaction of the four year minimum contribution term.[30] Others propose that government contributions to the account could be based on an escalating scale, peaking after four years, so as to encourage both the use of the scheme and long term disciplined savings.[31] Some commentators feel that the FHSA criteria should be amended to allow for the withdrawal of funds at any time, so long as this is for the purchase of a first home.[32] Others agree that the account balance should be able to be withdrawn early, and specify that this should be with no penalty other than the tax advantage forgone as a result,[33] and/or the government contributions.[34] Another proposed alternative is to make available early the individual's contributions only, with any concessionally taxed interest earnings and government contributions transferred into superannuation.

One other suggested option is to allow account holders to access their FHSA savings after the purchase of a home, so long as the account monies are then used to reduce the mortgage or outstanding housing payments.[35] While this option would enable participants to withdraw from the scheme without incurring a penalty, it is reliant upon participants'

28. W. Wilson, Submission No. 55, First Home Saver Accounts – Outline of proposed arrangements, 7 March 2008.
29. Indigenous Business Australia, Submission No. 22, *First Home Saver Accounts – Outline of proposed arrangements*, 19 March 2008.
30. Towers Perrin, op. cit.
31. Westpac, Submission No. 54, First Home Saver Accounts – Outline of proposed arrangements, 29 February 2008.
32. W. Wilson, op. cit.
33. Sussan Ley, Shadow Minister for Housing, 'Second reading debate: First Home Saver Accounts Bill 2008', House of Representatives, *Debates*, 29 May 2008.
34. Westpac, op. cit.
35. Mercer, Submission No. 32, First Home Saver Accounts – Outline of proposed arrangements, 7 March 2008.

capacity to use other assets for the purchase of a home, thereby defeating, to a degree, the purpose of the scheme.

Generally speaking, it is felt that the need for the FHSA to promote savings demands that *some* disincentives—if not necessarily penalties—be placed upon early withdrawals.

One point worth noting is that the four year minimum term could make the FHSA more enticing to wealthier individuals who do not necessarily need the account funds to purchase a home, and are therefore able to use the account for tax planning purposes.

Minimum contributions

The opposition spokesperson also takes issue with the requirement that personal contributions of at least $1,000 be made in each of at least four financial years in order for payments to be made from an FHSA to purchase a first home.[36] This, she argues, is unnecessarily restrictive, especially where an account holder could have made contributions of significantly more than the $1,000 threshold amount in one or more financial years, but still not qualify for access to FHSA funds as a result of falling below the threshold in a single financial year. The Australian Institute of Superannuation Trustees has similarly argued that the requirement is unnecessary and should be removed.[37]

FHSA returns

Some concerns have been expressed regarding the capacity of FHSA deposits to keep up with growth in residential property prices. NAB Capital notes that if the accounts offer historical term deposit rates or current online account rates, there is the potential for a 'growth gap' to remain between housing price and deposit returns. This, some argue, is especially likely if there is insufficient participation in the scheme and a resultant lack of competition among financial institutions providing accounts.[38] One suggested means of linking FHSA deposit returns to the growth in housing prices, and thereby ensuring that account holders realise a return that keeps pace with housing prices, is linking the FHSA to a residential property price index. In advancing this proposal, NAB Capital notes that

36. Sussan Ley, Shadow Minister for Housing, 'Second reading debate: First Home Saver Accounts Bill 2008', House of Representatives, *Debates*, 29 May 2008.

37. Industry Super Network, Industry Funds Forum, Australian Institute of Superannuation Trustees, op. cit.

38. Sussan Ley, Shadow Minister for Housing, 'Second reading debate: First Home Saver Accounts Bill 2008', House of Representatives, *Debates*, 29 May 2008.

'traditional savings accounts and share market linked accounts either do not give adequate returns and/or move independently to the property market.'[39]

According to the Explanatory Memorandum an account holder is able to request, at any time, that the entire balance of their FHSA be transferred to another provider.[40] As a result, were FHSA gleaning inadequate returns, a sufficiently financially literate account holder could transfer at any time their account balance to another FHSA provider.[41] However, the opposition has expressed fears that few young people possess such financial literacy skills.[42] They suggest that the government should 'promote and enhance financial literacy programs which will assist young Australians [to] learn how to deal with their finances so that people don't continue to find themselves in situations of financial stress that they simply cannot manage'.[43]

Some commentators appear to view the assessment that housing prices will outstrip FHSA returns as unduly pessimistic. For example, Chairman of The Money Managers, Kevin Bailey, has argued that the notion that house prices only rise and that saving for a deposit is futile will be exposed as a fallacy as rising interest rates eventually stymie housing market growth. As he sees it, the key is that the FHSA may need to be used for longer than four years, both in order to accumulate a sufficiently substantial deposit and to wait for housing affordability conditions to improve.[44]

Separate trust structure requirement and non-public offer funds

A number of observers have criticised the requirement that public offer fund trustees who offer FHSA do so under a separate trust structure from their existing superannuation trust.[45] As they see it, this requirement would create significant administrative costs for

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39. NAB Capital, Submission No. 34, First Home Saver Accounts – Outline of proposed arrangements, 10 March 2008.
40. Explanatory Memorandum, First Home Saver Accounts Bill 2008, p. 44.
41. Explanatory Memorandum, First Home Saver Accounts Bill 2008, p. 44.
42. The opposition is not alone in its reservations with regard to young people's financial literacy skills and capacity to manage the proposed accounts. The Property Council of Australia and the Master Builders Australia emphasise the considered need for ongoing awareness and education campaigns as a part of the FHSA arrangements.
43. Sussan Ley (Shadow Minister for Housing) *Labor's response to mortgage stress inadequate*, media release, 18 March 2008.
44. K. Bailey, 'Saving scheme could open door', *Herald Sun*, 25 February 2008.
45. See for example CitiStreet Australia, Submission No. 9, *First Home Saver Accounts – Outline of proposed arrangements*, March 2008; Commonwealth Bank, Submission No. 11, *First Home Saver Accounts – Outline of proposed arrangements*, 10 March 2008; Corporate

trustees, and reduce economies of scale, both on a macro level, by preventing potential FHSA providers from entering the market, and on a micro level, by demanding that the FHSA is managed as a separate sub-fund under different arrangements. Various commentators also disapproved of the restriction that limited FHSA provision to public offer fund trustees. Non-public offer funds, they argued, should also be allowed to offer FHSA,[46] as should self managed superannuation funds.[47] This would, in their view, provide a greater range of options for would-be FHSA holders and thereby ensure maximum take-up of the accounts.

The government has rejected criticisms of the requirement for a separate trust structure. It has done so on the grounds that this condition 'preserves the integrity of Australians' retirement savings by preventing cross-contamination and cross-subsidisation of First Home Saver Accounts by superannuation – where the funds of superannuation members (many of whom will be ineligible to ever open an account) are used to fund the start-up and operating costs of the accounts'.[48] The government deliberately excluded non-public offer funds and self managed superannuation funds from the scheme, because these funds are not subject to prudential regulation by the Australian Prudential Regulation Authority (APRA). It continues to maintain this position. In response, some advocates of self managed superannuation schemes being able to offer FHSA have argued that these funds are subject to a sufficient level of regulation by the Australian Tax Office (ATO).[49]

Significant technical flaws

Two of the key thresholds within the FHSA Bill are to be indexed based on a defined indexation formula. Specifically, subsections 30(3), 30(5), 40(3) and 40(5) provide the reader with the necessary inputs to calculate the indexation factor, from defined index numbers, for both the maximum account value threshold and the maximum value of savings which will receive a government contribution. Subsections 30(5) and 40(5) indicate the relevant variable for the index number is:

Super Association, Submission No. 13, *First Home Saver Accounts – Outline of proposed arrangements*, 4 March 2008.

46. Corporate Super Association, op. cit.

47. Jarrad Collins, Submission No. 10, *First Home Saver Accounts – Outline of proposed arrangements*, 4 March 2008; Dixon Advisory, Submission No. 15, *First Home Saver Accounts – Outline of proposed arrangements*, 5 March 2008; Property Council of Australia, Submission No. 54, *First Home Saver Accounts – Outline of proposed arrangements*, 14 March 2008.

48. The Hon. Wayne Swan, Treasurer, First Home Saver Accounts – Outcomes of Consultation, 13 May 2008.

49. Dixon Advisory, op. cit.

> …the estimate of full-time adult average weekly ordinary time earnings for the middle month of the quarter first published by the Australian Statistician for that month.

The technical issue with this provision is that the Australian Statistician, via the Australian Bureau of Statistics, publishes the relevant index value in three formulations. These are original terms (unadjusted), seasonally adjusted terms (adjusted for seasonal factors) and trend terms (adjusted to represent an underlying trend within the original data). Each of these data will yield a different index, and as such a clarification about which presentation of the data should be applied would be a useful addition to the Bill.

Key issues

Value of the FHSA to first home buyers

The Bill will generate distinct winners and first home buyers (FHB) who will not benefit. The following summarises those FHB who are not expected to benefit, and identifies the benefits to those who are expected to be winners.

Those who will not benefit

Based on public commentary and qualitative analysis, there are distinct population groups who will not benefit from this Bill. Many of these are identified in other areas of this Digest. Those unlikely to benefit from the Bill include:

- FHBs intending to purchase a home before 1 July 2012, which is the beginning of the fifth financial year after the proposed commencement date
- FHBs who are intending to draw on alternative sources for a home deposit (such as family, other layered finance options or inheritances)
- FHBs who simply cannot save, and
- FHBs whose incomes are provided with concessional tax treatments already, although they may still receive some benefit from the government contribution.

Those who will gain benefits

The FHSA scheme will help those FHBs who are not identified as being unlikely to benefit, by boosting savings and interest earnings and lowering the rate of taxation on this form of private savings. This section investigates how these gainers will benefit from the scheme.

The goal of the account proposed by this Bill is a savings amount to assist FHBs to purchase a new home. Accordingly, it is instructive to consider the economic value of the accounts, including the government contributions to the account, to understand the actual assistance being offered to individuals. This section canvasses the easily quantifiable value of the accounts, considers a couple of possible scenarios, and uses the values of the account to hypothesise the value of homes that can be purchased.

From the terms of the legislation there are a few clear parameters that can be identified for the individual account holders. The most obvious parameters, assuming no indexation, include:

- a minimum account balance of $4 000, plus interest and government contributions, as the individual is required to contribute a minimum of $1 000 per annum in order to use the FHSA
- the maximum account value would be $75 000 plus any accrued interest and government contributions, as savings above this level are precluded
- assuming someone wants to maximise the contribution from the government, the minimum rate of monthly savings would be $417 per month over four years. Any additional savings will yield no further direct government support. All of the earnings in the account would be charged a concessional tax rate and the value of the tax concession will depend on the earnings rate of the account
- based on the government contribution rate, and someone achieving the maximum annual contribution threshold of $5 000, the government contribution would be $850. If the saver matched the threshold in each of the four years, the maximum value of the government contribution over four years would be $3 400, and
- the first feasible date for a home to be purchased using a FHSA would 1 July 2012, being the beginning of the fifth financial year from the proposed commencement date.

These points assume no indexation and that the Bill is brought into law in line with the commencement date.

However, the legislation does allow for adjustments to the maximum account value and the government contributions threshold by an index based on the change in December quarter movements in the average weekly full-time ordinary time earnings (AWOTE). Regrettably, there are no reliable forecasts of AWOTE growth to estimate the indexation factor values. However, the Australian Government Budget provides wage price index (WPI) forecasts, which can be used as a proxy for growth in the AWOTE levels. Using the WPI assumptions, Table 1 indicates the expected growth in the value of the maximum account threshold, the government contribution thresholds, and the maximum potential government contribution over the current forecast horizon.

Table 1: ***Threshold expectations (at end of December)***

Item	*2009*	*2010*	*2011*	*2012*
Maximum account value threshold	$75 000	$80 000	$80 000	$85 000
Government contribution threshold	$5 000	$5 000	$5 500	$5 500
Maximum government payment (at 17 per cent)	$ 850	$ 850	$ 935	$ 935
Indexation factor	1	1.041	1.083	1.126

Notes	-the value thresholds are rounded to the nearest $5 000 -the government contribution threshold is rounded to the nearest $500 -the indexation factor is rounded to three decimal places -indexation factor assumes AWOTE will follow wage price index growth
Source	2009 data: FHSA Bill 2008 Indexation: Australian Government, 'Statement 1: Budget Overview', Budget Paper No. 1 2008–09, Commonwealth of Australia, Canberra, 2008, p 1-3.

Based on these data, the amount available to individuals grows from $850 to $935 per year over the forecast years, and the total government contribution would be $3 570. In addition, individuals' savings can be increased by up to $10 000, from $75 000 to $85 000. These data are dependent on the WPI forecasts being realised in terms of AWOTE.

Estimating the total account value in four years

The true value of the account to the holder, when aiming to purchase a property, will depend entirely on how much is saved, the rate of interest, and the timeframe over which the savings are made. This type of detail cannot be known because every individual will have different goals and means. However, the Bill provides sufficient detail to allow the statistics section of the Library to model two scenarios, based on the threshold expectations in Table 1. The two scenarios are:

- an individual who regularly saves just enough to receive the maximum rate of government contributions, and
- an individual who invests an initial amount, and then saves enough to achieve the maximum threshold, in order to achieve the maximum account balance ($85 000) at the end of December 2012.

The first scenario represents the *minimum* savings rate to gain maximum government contributions. The second scenario is akin to the *maximum* savings that the scheme can support. To ensure a measurable benefit is generated, the scenarios are compared to a baseline of the savings patterns, with no government contribution, and a marginal tax rate of 30 per cent (rather than the concessional rate of 15 per cent for FHSA holders). Summary results are presented in Table 2 below.

Table 2 - Scenario results

Option	Unit	Savings	Interest	Govt.	Tax	Deposit
A: Maximum benefit	$	21 750	3 387	3 570	- 486	28 221
contribution	*%*	*77*	*12*	*13*	*-2*	*100*
A baseline: no government	$	21 750	2 992		- 859	23 883
contribution	*%*	*91*	*13*	*0*	*-4*	*100*
Gain/loss to individual	$		395	3 570	374	4 339
B: Max. benefit and threshold	$	64 251	14 872	3 570	-2 167	80 525
contribution	*%*	*80*	*18*	*4*	*-3*	*100*
B baseline: no government	$	64 251	14 326		-4 178	74 398
contribution	*%*	*86*	*19*	*0*	*-6*	*100*
Gain/loss to individual	$		546	3 570	2 012	6 128

Note

- Option A assumes an individual saves enough in each year to achieve the maximum government contribution rate
- Option B assumes that an individual invests a lump sum amount, and a regular savings amount in order to (i) achieve the maximum government contribution and to match the maximum account limit around the time of withdrawing funds from the account to purchase a home.
- Both baselines compare the savings pattern stated, but remove any assistance from the government, being both the FHSA and concessional taxation treatment.
- Gain/loss measures the difference between the option calculation and the baseline calculation, and measures the net effect of the scheme under each option
- Contribution measures the proportion of the deposit that is contributed by each listed source of funding.

Source: Parliamentary Library, Statistics and Mapping Section <>

Under the first scenario, where the saver merely meets a target of achieving the maximum Government contribution each year, the individual will have around $28 200 in August 2012 to contribute to a house purchase. Of this amount $21 750 will have been saved by the individual (77 per cent), nearly $3 400 will have been earned in interest (12 per cent) and the *net* contribution of government (contribution less tax) would be around $3 080 (11 per cent). If the FHSA scheme was not in place, and the saving were the same, this individual would be around $4 340 worse off due to lower after tax interest earnings and no government contributions.

Under the second scenario, where the saver meets a target of achieving the maximum government contribution each year, and invests in order to ensure the account value is at the maximum threshold by 1 January 2013, the individual will have around $80 500 in August 2012 to contribute to a house purchase.

Of this amount $64 250 will have been saved by the individual (80 per cent), with around $43 750 needed to be deposited when the FHSA is first opened. Nearly $14 900 will have been earned in interest (18 per cent) and the net contribution of government (contribution less tax) would be around $1 403 (1 per cent). If the FHSA scheme was not in place, and the saving levels were the same, this individual would be around $6 130 worse off due to lower after tax interest earnings and no government contributions.

Clearly these scenarios are based on assumptions. However, they do provide an indicative range of values for deposits available to FHSA accounts.

What do these values mean in terms of house prices?

Using these scenario results, current data on house prices and some analytical projections it is possible to consider the range of house prices that move into the feasible purchase set for FHBs. This is complicated issue however, because house prices, incomes, and lending criteria all change over time.

To simplify the issue we have projected the current levels of the first home loan using the compound annual growth rate (CAGR) over the most recent 15 year period. This data would provide a quasi 'no change' value to the level of the first home loan. To this we have added the value of the FHSA at the assumed price offer date of July 2012 (settling in August 2012). Table 3 summarises the key results.

Table 3: Funds available to purchase (FHSA plus first home loan)

($'000)	*NSW*	*VIC*	*QLD*	*SA*	*WA*	*TAS*	*NT*	*ACT*	*AUST*
Median HP - Dec 2007	536.8	427.7	376.2	323.0	461.8	312.8	399.4	437.3	441.0
Median HP - June 2012	754.5	606.7	535.3	452.4	742.5	450.8	570.1	601.5	627.7
FHB loan - April 2008	260.8	219.8	238.6	196.9	246.4	157.8	224.6	239.2	237.0
FHB loan - July 2012	357.9	300.9	337.2	276.7	359.6	217.4	308.0	307.6	330.7
Total funds available to purchase a home (loan + FHSA)									
Scenario A	386.1	329.1	365.4	304.9	387.9	245.6	336.2	335.8	359.0
Scenario B	438.4	381.4	417.7	357.2	440.2	297.9	388.5	388.1	411.3

Note: Median house prices (HP) are assumed to grow in a linear fashion at the same rate as the compound annual growth rate for the 15 years to December 2007.
First home buyer (FHB) loan levels are assumed to grow in a linear fashion at the same rate as the compound annual growth rate for the 15 years to April 2008..
Total funds available does not account for other schemes that currently exist including the First Home Owners Grant and various State based stamp duty concession schemes.

Source: House prices: Real Estate Institute of Australia, *Market Facts*
First home loan: ABS, *Housing Finance, Cat. No. 5609.0*
Parliamentary library calculations

Using this technique the range of funds available under scenario A is from $245 600 to $387 900. For those able to save at a higher level, the range of funds available is from

$297 900 to $440 200. In the table we have also used the CAGR method to project future house prices. While these assumptions lead to very linear price growth paths, and other existing schemes are not included in the calculation, it is clear that even with government support the resources available to FHBs are substantially below the median house prices in each capital city. This suggests a continuation of FHBs purchasing 'below median' style properties.

Valuation method assumptions and detailed results

In the main body of the FHSA Bill 2008, a range of results is presented relating to the future value of FHSA accounts. This section summarises the key assumptions, and presents the detailed modelling results. These are primarily in relation to scenario A and B as listed under 'Key Issues'.

FHSA Assumptions

In order to calculate the scheme's effects, the key assumptions include:

- a government contribution rate of 17 per cent to the maximum contribution level
- government contribution threshold levels in line with Table 1 in the body of the text
- maximum account value thresholds in line with Table 2 in the body of the text, and
- a tax rate of 15 per cent on the earnings of the account (excluding contributions which are post tax, and the government contributions).

All of these parameters are in line with provisions of the FHSA Bill. The only additional assumption used for the FHSA is that an account provider does not charge an account keeping fee.

Timing assumptions

When dealing with compound interest calculations the choice of certain timing issues can affect the long run results. In these scenarios the common timing assumptions are:

- an individual opens the FHSA account on 1 November 2008 (allowing time for the market to introduce an account)
- all deposits are made at the beginning of each month, and interest is accrued at the end of the month
- tax returns are submitted such that the tax is finalised, taxation is calculated and the FHSA is paid by 1 August each year
- the first feasible exit date is 1 July 2012, being the first day of the fifth financial year, allowing exactly four financial years to pass from the commencement date, and

- the date that an offer is made is around the same date as the end of the fourth financial year, such that the settlement for the property would fall beyond 1 August 2012, allowing for the final government contribution to be paid.

The only deviation from this timing system is that scenario B aims to achieve the balance of $85 000 which would occur as at 1 January 2013. This does not affect the tables, but is set as a target.

Growth assumptions

In the scenarios and the funds available to purchase calculations, a range of growth assumptions are assumed. Indeed, it is necessary to make assumptions about rates of return to the FHSA holder as well.

Table 4 provides a summary of the assessments of available data, which have lead to the assumptions around growth.

Table 4: Growth rate assumptions

per cent per annum	AUST - High	AUST - Mid	AUST - Low
AWOTE	5.1	4.3	3.6
Deposit interest rates	7.6	6.3	5.1

	NSW	*VIC*	*QLD*	*SA*	*WA*	*TAS*	*NT*	*ACT*	*AUST*
House price growth	7.6	7.8	7.9	7.6	10.7	8.2	8.0	7.1	7.9
First home loan growth	7.5	7.4	8.2	8.0	8.9	7.6	7.5	5.9	7.9

Note: For State data we have used compound annual growth rate (CAGR) calculations for the most recent 15 year periods. This method finds a linear growth rate across time.

AWOTE range data is calculated using disaggregated AWOTE, which summarises weekly incomes by industry group. The highest and lowest CAGRs are used as the high allow points. The CAGR is this calculation is 10 years to February 2008 due to limited data.

Deposit interest rates are drawn from deposit rates available in April 2008 for deposits exceeding $10 000, including term deposits where the term is greater than one year.

Source: House prices: Real Estate Institute of Australia, *Market Facts*

First home loan: ABS, *Housing Finance, Cat. No. 5609.0*

Deposit Rates: Reserve Bank of Australia, *'Retail Deposit and Investment Rates'*, May 2008.

AWOTE: ABS, *Average Weekly Earnings, Cat. No. 6302.0*

For the AWOTE data, we have estimated high and low compound average growth rates (CAGRs),[50] and then found a mid point of those rates. The AWOTE used is industry specific wage CAGRs. The mid point for the 15-year CAGR period is 4.3 per cent, which is remarkably close to the forecasts for WPI in published budget papers. We have left budget paper forecasts in the model as they are forecast across the forward years.

For deposit interest rates we have used a current period average rate. The rate is the middle of the highest and lowest available deposit rate in April 2008 for all deposits of $10 000 or more, and where term deposits are included, with term expiries greater than one year. The rate assumed from this data is 6.33 per cent per annum.

Table 4 also summarises the CAGR growth rates for median house prices and the average first home loan level. These CAGRS are used to project future house price and loan levels to assess the additional value of the FHSA in terms of future purchasing power.

There are limitations to all of these methodologies. Indeed, we have not accounted for expected price inflation, a range of alternative interest rates or performed any serious sensitivity testing. However, the purpose of the assumptions and results is to paint a practical picture of the value of the accounts to FHB.

Results

Table 2 in the FHSA Bill 2008 Bills Digest summarises the net results of the two scenarios, including comparisons to fixed baselines. The next two tables provide a detailed time series of the underlying calculations. Each column is labelled, and the only additional information worth noting relates to deposit rates.

Under scenario A the account holder would need to:

- deposit $1 250 at the opening of the account
- deposit $417 per month from 1 November 2008 until 1 December 2009, and
- deposit $458 dollars per month from 1 January 2010 until they withdraw the funds.

Under scenario B the account holder would need to:

- deposit $43 748 at the opening of the account
- deposit $417 per month from 1 November 2008 until 1 December 2009, and
- deposit $458 dollars per month from 1 January 2010 until they withdraw the funds.

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50. CAGR is used to find the linear rate of growth for a data item between two points in time. In this case we are effectively asking: what is the rate of growth (CAGR) for a data item worth ‘x’ 15 years ago, to be worth an amount ‘y’ today, where we know precisely the values of x and y.

Detailed results – Scenario A

Saving	417	417	458	458	$per month (for max gov)	
Base transfer	1250					
Results to 1 August 2012 - the end of the fourth financial year						
Aggregates	$	21750	3570	3387	486	28221
Composition	%	77%		12%		100%
			Net Govt		3084	11%

Time Series	Base	Saving	Govt Cont	Earnings	Tax	Balance
01-Nov-08	1250	417		9		1675
01-Dec-08	1675	417		11		2103
01-Jan-09	2103	417		13		2533
01-Feb-09	2533	417		16		2965
01-Mar-09	2965	417		18		3400
01-Apr-09	3400	417		20		3837
01-May-09	3837	417		22		4276
01-Jun-09	4276	417		25		4717
01-Jul-09	4717	417		27		5161
01-Aug-09	5161	417	850	34	24	6437
01-Sep-09	6437	417		36		6890
01-Oct-09	6890	417		39		7345
01-Nov-09	7345	417		41		7803
01-Dec-09	7803	417		43		8263
01-Jan-10	8263	458		46		8767
01-Feb-10	8767	458		49		9274
01-Mar-10	9274	458		51		9784
01-Apr-10	9784	458		54		10296
01-May-10	10296	458		57		10811
01-Jun-10	10811	458		59		11329
01-Jul-10	11329	458		62		11850
01-Aug-10	11850	458	850	69	86	13142
01-Sep-10	13142	458		72		13672
01-Oct-10	13672	458		75		14205
01-Nov-10	14205	458		77		14740
01-Dec-10	14740	458		80		15279
01-Jan-11	15279	458		83		15820
01-Feb-11	15820	458		86		16364
01-Mar-11	16364	458		89		16912
01-Apr-11	16912	458		92		17462
01-May-11	17462	458		95		18014
01-Jun-11	18014	458		97		18570
01-Jul-11	18570	458		100		19129
01-Aug-11	19129	458	935	108	152	20478
01-Sep-11	20478	458		110		21047
01-Oct-11	21047	458		113		21619
01-Nov-11	21619	458		116		22194
01-Dec-11	22194	458		119		22771
01-Jan-12	22771	458		123		23352
01-Feb-12	23352	458		126		23936
01-Mar-12	23936	458		129		24523
01-Apr-12	24523	458		132		25113
01-May-12	25113	458		135		25707
01-Jun-12	25707	458		138		26303
01-Jul-12	26303	458		141		26902
01-Aug-12	26902	458	935	149	224	28221
01-Sep-12	28221	458		151		28831
01-Oct-12	28831	458		155		29444
01-Nov-12	29444	458		158		30060
01-Dec-12	30060	458		161		30679
01-Jan-13	30679	458		164		31302

Detailed results – Scenario B

Saving	417	417	458	458	$per month (for max govt)	
Base transfer	47501					
Results to 1 August 2012 - the end of the fourth financial year						
Aggregates	$	64251	3570	14872	2167	80525
Composition	%	80%		18%		100%
			Net Govt		1403	2%

Time Series

	Base	Saving	Govt Cont	Earnings	Tax	Balance
01-Nov-08	43748	417		233		44398
01-Dec-08	44398	417		236		45051
01-Jan-09	45051	417		240		45708
01-Feb-09	45708	417		243		46368
01-Mar-09	46368	417		247		47032
01-Apr-09	47032	417		250		47699
01-May-09	47699	417		254		48370
01-Jun-09	48370	417		257		49044
01-Jul-09	49044	417		261		49722
01-Aug-09	49722	417	850	269	333	50925
01-Sep-09	50925	417		271		51612
01-Oct-09	51612	417		274		52303
01-Nov-09	52303	417		278		52998
01-Dec-09	52998	417		282		53697
01-Jan-10	53697	458		286		54441
01-Feb-10	54441	458		290		55188
01-Mar-10	55188	458		294		55940
01-Apr-10	55940	458		298		56696
01-May-10	56696	458		301		57456
01-Jun-10	57456	458		305		58220
01-Jul-10	58220	458		310		58988
01-Aug-10	58988	458	850	318	519	60096
01-Sep-10	60096	458		319		60873
01-Oct-10	60873	458		324		61655
01-Nov-10	61655	458		328		62441
01-Dec-10	62441	458		332		63231
01-Jan-11	63231	458		336		64026
01-Feb-11	64026	458		340		64824
01-Mar-11	64824	458		344		65627
01-Apr-11	65627	458		349		66434
01-May-11	66434	458		353		67245
01-Jun-11	67245	458		357		68060
01-Jul-11	68060	458		361		68880
01-Aug-11	68880	458	935	371	609	70035
01-Sep-11	70035	458		372		70865
01-Oct-11	70865	458		376		71700
01-Nov-11	71700	458		381		72539
01-Dec-11	72539	458		385		73382
01-Jan-12	73382	458		390		74230
01-Feb-12	74230	458		394		75082
01-Mar-12	75082	458		398		75939
01-Apr-12	75939	458		403		76800
01-May-12	76800	458		408		77666
01-Jun-12	77666	458		412		78537
01-Jul-12	78537	458		417		79412
01-Aug-12	79412	458	935	426	706	80525
01-Sep-12	80525	458		427		81411
01-Oct-12	81411	458		432		82301
01-Nov-12	82301	458		437		83196
01-Dec-12	83196	458		441		84096
01-Jan-13	84096	458		446		85000

Financial implications

According to the Explanatory Memorandum, the amendments in the First Home Saver Accounts Bill 2008, the First Home Saver Accounts (Consequential Amendments) Bill 2008 and Income Tax (First Home Saver Accounts Misuse Tax) Bill 2008 will have a fiscal cost of around $1.2 billion over five years (including administration costs).[51]

Earlier estimates of the cost of the First Home Saver Accounts indicated that the scheme would cost $950 million over four years on a fiscal balance basis and excluding departmental administration costs.[52] In response to comments received during the consultation process, the government subsequently committed additional funding.

Main provisions

Overview

The Bill is divided into 8 Parts. These broadly cover:

- definitions and key concepts, **Parts 1 and 2**
- eligibility of providers and contributors, contribution and payment rules, **Part 3**
- government contributions to FHSA including under- and overpayments, **Part 4**
- administration, **Part 5**
- enforcement procedures, including information gathering and access to premises, **Part 6**
- the prudential provisions, **Part 7**
- miscellaneous matters, **Part 8.**

Not all Parts will be dealt with in this section of the Digest.

Parts 1 and 2: Preliminary provisions, key concepts and definitions, clauses 1-18.

The Commissioner of Taxation will be responsible for the administration of Parts 3, 4, 6, and all of Part 5, apart from division 4 subdivision B (see next paragraph) **(clause 3)**.

The Australian Prudential Regulatory Authority (APRA) will be responsible for Part 5 division 4 subdivision B (which relates to review of decisions of APRA), and Part 7,

51. Explanatory Memorandum, First Home Saver Accounts Bill 2008, p. 7.

52. Australian Government, First Home Saver Accounts - Outline of proposed arrangements, February 2008, p. 35.

subject to certain powers and duties of the Australian Securities and Investments Commission (ASIC) under the *Superannuation Industry (Supervision) Act 1993***(clause 3)**.

Clause 7 gives a simplified outline to the Act which says *in part*:

- the Act will provide for first home saver accounts (FHSA) to be offered by certain financial institutions
- payments from FHSA are subject to conditions such as a requirement to use a payment towards the purchase of a first home
- there will be an FHSA misuse tax under the *Income Tax Assessment Act 1997* if there is a failure to comply with payment conditions or if a person holds an FSHA while ineligible
- the Act will provide for the approval of entities that can be providers, and for the supervision of such entities, but not authorised deposit-taking institutions (ADIs) (which are dealt with under the *Banking Act 1959)*, and life insurance companies (which are supervised under the *Life Insurance Act 1995).*
- FHSA will be subject to concessional treatment in respect of income tax and social security benefits, similar to that of superannuation. These concessional matters will be by amendments to the *Income Tax Assessment Act 1997*, the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986.*

Clause 8 delineates what is a first home owner saver account (FHSA). An FHSA will be an **individual's**:

- Account or
- Life policy or
- Beneficial interest in a trust

It must be described as an FHSA, and opened or issued after 1 October 2008 (or a later specified date in regulations) and must be:

- an account to which an ADI does or will accept deposits (contributions), or
- a life policy issued by a life insurance company or
- a beneficial interest in a trust, the trustee of which is an authorised FHSA provider.

In each case (account, policy or trust), the person must be the sole owner or holder of the particular interest **(clause 9)**.

Clause 15 provides for the eligibility requirements that a person has to meet to be an FHSA holder. These include that a person must be an individual, over 18 and under 65, and never held a qualifying interest in a dwelling in Australia or Norfolk Island at a time when the dwelling was the person's main residence **(paragraphs 15(1)(a)-(c))**.

A **personal FHSA contribution** is defined in **subclause 11(2)** to be a contribution that a person makes, or that is made for the benefit of a person (but not a government contribution). Some payments are excluded from this definition, for example where payments are made by virtue of family law obligations or if they are repayments or recontributions **(subclause 11 (3)).** The second reading speech states that personal contributions can be made by the account holder or a parent or grandparent[53] and the Explanatory Memorandum gives an individual's partner or employer as examples of who can make a contribution for the benefit of the holder of the account.[54]

Clause 12 states that a person will hold a 'qualifying interest in a dwelling' if the person is the sole or joint legal owner of the dwelling, and this can include certain legal and other holdings in a lease or licence, a flat or home unit, an aged care facility or retirement village. A dwelling that is not fixed to land is excluded (this can mean boats and caravans and the like)[55] **(subclause 12(5))**.

Clause 13 says the meaning of 'main residence' has 'its ordinary meaning' though regulations can be made specifying when and when not a dwelling is a main residence. "Dwelling' is not defined in the Bill but the Explanatory Memorandum[56] says that 'dwelling' will also have 'its ordinary meaning' and:

> Includes a unit of accommodation that is fixed to the land such as:
>
> – A house, flat, unit apartment or townhouse; or
>
> – A demountable dwelling or re-locatable home where it is fixed to land.

Clause 18 has general definitions of expressions used throughout the Bill. For example, a **family law obligation** is defined because **clause 31** of the Bill expressly refers to restrictions on payments from FHSA unless these are authorised by law (see further below). A **complying superannuation plan** has the same meaning as in the *Income Tax Assessment Act 1997,* [57] and a **default superannuation plan** has the meaning given in **clause 24** of the Bill.

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53. Hon. Wayne Swan, Treasurer, 'Second reading speech: First Home Saver Accounts Bill 2008', House of Representatives, *Debates,* 28 may 2008.

54. Explanatory Memorandum, paragraph 1.36, p. 15. See also, paragraph 1.30 where it says that there are no restrictions on who can make a contribution, however, all contributions must be made from post-tax amounts.

55. Explanatory Memorandum, paragraph 1.46, p. 17.

56. ibid, paragraph 1.48, p. 17.

57. For further on this see CCH *Australian Master Tax Guide 2008*, paragraph 11-120 at p. 482, but includes for example, a complying superannuation fund, or a public sector superannuation scheme or a complying approved deposit fund.

Part 3: Eligibility, contribution and payment rules clauses 19-35

Eligibility

Clauses 20 and 21 outline circumstances when the eligibility requirements cease to be met and the holder of the FHSA, or the Commissioner of Taxation, provide notice that the requirements are not being satisfied. **Clause 22** permits the FHSA provider to close an inactive FHSA and directs how the balance is to be paid. If the FHSA holder is aged 60 or over the payment can be made to the person if he or she has given a statement to the provider that that is what the holder wants; in all other cases it is made to the particular superannuation interest of the holder, or to the FHSA provider's default superannuation plan **(subclauses 22 (2) and (3))**.[58]

An FHSA will become inactive when:

- The provider receives notice from either the holder or the Commissioner (and has received no revocation of that notice **(paragraphs 23 (1)(a)-(c)**
- A payment is made which must have been made under **clause 32** (for home acquisition) or **clause 33** (when the holder is aged 60 or over), and the *balance* immediately after the payment *is more than nil* (italics added, possible drafting error) **(paragraph 23(2)(c))**[59]
- The holder is 65 years or older **(subclause 23(3))**
- When a holder already had an FHSA account and was required to ensure that the balance of that account would be transferred to the (new) FHSA account **(under paragraph 19(1)(b)(ii))** and this transfer did not occur within 44 days since the new JFSA was opened or issued **(clause 23(4)).**

Contributions

Clause 29 provides that the account balance cap for the 2008-09 financial year is $75 000, to be indexed annually. A breach of the account balance cap will occur at a time the balance of an FHSA exceeds the cap for that financial year subject to certain exceptions **(subsections 28 (2) and (3)).** A breach under **clause 28** does not incur an offence for the FHSA holder.

58. **Clause 24** makes it mandatory for a provider to nominate in writing a complying superannuation plan to be its default plan, and it is an offence carrying 100 penalty points ($11 000) not to do so.

59. The Explanatory Memorandum states in relation to this particular paragraph that the 'FHSA balance is nil' which is what the legislation is attempting to achieve, so there is a drafting error in this paragraph. Explanatory Memorandum, paragraph 1.86 first dot point, p. 26.

Clauses 25, 26 and 27 have limits on contributions in circumstances where the account holder is aged 65 or over, when the FHSA is inactive or when the holder is in breach of the account balance cap. With certain exceptions, the provider will commit an offence in the event of contravention of **subclauses 25(1), 26(1) and 27(1)** incurring a penalty of 100 penalty points ($1 100).[60]

Payments and Restrictions on payments from FHSA Divisions 3-4 Clauses 31-35

A provider can only make payments from an FHSA account in limited circumstances **(clause 31)**. These are primarily when the holder has met all the requirements of **clause 32**, the holder has reached aged 60 under **clause 33,** the payment is a contribution to superannuation under **clause 34** or **subsection 22(2),** or the payment is a voluntary transfer to another FHSA under **clause 35.**

Payments can also be made:

- to return contributions that should not have been accepted **(under subsections 25(2), 26(2) or 27(2))**
- in accordance with consumer protection obligations in the *Corporations Act 2001*
- if the FHSA holder is deceased **(subclause 31(1)(e))**
- to pay fees to the provider
- to meet certain family law obligations
- to repay the Commonwealth in the event of overpayments of Commonwealth contributions.

Clause 128 allows payments out of a FHSA to the trustee in bankruptcy if a holder becomes bankrupt and if it is property divisible within the meaning of section 116 of the *Bankruptcy Act 1966.*

Part 4: Government FHSA contributions clauses 36-51.

Divisions 1-4 of this Part of the Bill govern government FHSA contributions under the scheme. It provides for whether a person is eligible for a government FHSA contribution, how payments are made and what happens when an underpayment or an overpayment occurs.

60. For more details on penalties and exceptions, see Explanatory Memorandum, paragraphs 1.114-1.117 at pp 33–34.

A person is required to have made one or more personal FHSA contributions during the financial year **(paragraph 36(1)(b))** and has to meet certain taxation and residency requirements **(subsections 36 (1)** and **(2)).**

Clause 39 provides for the threshold as follows:

> The ***Government FHSA contribution threshold*** for the 2008-09 financial year is $5 000. This amount is indexed annually.

According to the Explanatory Memorandum[61] this means for that financial year:

> Government contributions are paid on the first $5 000 contributed to an individual's FHSA each year. The amount is indexed annually….

The Commissioner of Taxation must make a determination that a FHSA contribution is payable **(subclause 41(1))** and if the Commissioner does so, the Commissioner must also determine where the contribution is to be paid. There are 4 possibilities under **subsection 41(3)**:

- To an FHSA held by the person
- To a superannuation interest
- To the person, or
- To the person's personal representative.

The payment must be made within a timeframe (60 days after receipt of tax information and an FHSA statement) **(subclause 42(2)).** If the Commissioner pays none of the government contribution on or before that date, interest will be payable on the unpaid amount **(clause 44)**.

Part 5: Administration Clauses 52-76.

This Part contains matters necessary for the administration of the Bill relating to:

- use of tax file numbers and quotation of tax file numbers
- secrecy, being a provision that is a replica of other secrecy provisions[62]
- review of decisions by the Commissioner of Taxation and certain APRA decisions.

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61. Explanatory Memorandum, paragraph 3.16, p. 52.
62. Such as section 53 Superannuation (Government Co-Contribution For Low Income Earners) Act 2003.

Part 6: Enforcement Clauses 77-88

Part 6 gives information gathering powers to the Commissioner **(Clauses 77-78).** A person is not excused from giving a statement to the Commissioner on the ground of self-incrimination, but such a statement cannot be used in evidence in criminal proceedings except in proceedings under clauses 77 and 78, or pursuant to sections 137.1 or 137.2 of the Criminal Code.[63] The Scrutiny of Bills Committee has examined this provision and accepts that there is a reasonable balance between the competing interests of gathering information and protecting individual rights, and has no further comment on it.[64]

The Commissioner can in writing appoint persons to be 'authorised persons' for the purposes of Division 2 of Part 6 for entry of premises to gather information. Entry can be with permission or under a warrant issued by a Magistrate **(subclause 81(1)** and **clause 87.)**

Part 7: Prudential Provisions Clauses 89-125

Chapter 5 of the Explanatory Memorandum gives an outline of the prudential regulatory framework for the FHSA scheme, particularly on the inter-relationship with other legislation such as the *Banking Act 1959*, the *Life Insurance Act 1995* and the *Australian Prudential Regulation Authority Act 1998*. The Explanatory Memorandum's summary from pages 74 and 75 is produced at Appendix A of this Digest.

Part 8: Miscellaneous

Clause 128 requires the Commissioner of Taxation to prepare an annual report on the working of the Act, 'to the extent that the Commissioner has the general administration of this Act'. There is no requirement in the Bill for APRA or ASIC to prepare annual reports, but the Explanatory Memorandum states that they will include information about their administration of FHSA in their own annual reports under existing obligations.[65]

Clause 129 refers to an acquisition otherwise than on just terms in the context of section 51(xxxi) of the Constitution but then provides that the Commonwealth is liable to pay a 'reasonable amount of compensation'. It should be noted that this clause:

- does not specifically apply paragraph 51(xxxi) Constitution to the acquisition
- does not require 'just terms'

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63. These sections concern the giving of false or misleading evidence.

64. Senate Scrutiny of Bills Committee, *Alert Digest 4.08*, June 2008.

65. ibid, paragraph 8.100, p. 155.

- provides that the Commonwealth is liable to pay a 'reasonable amount of compensation', as distinct from 'just terms'.

It should be noted that use of such a provision is becoming commonplace, for example, section 519 of the *Environment Protection and Biodiversity Conservation Act 1999* and in section 60 of the *Northern Territory Emergency Response Act 2007*. However, its meaning is currently before the High Court in respect of the latter Act in the part-heard case, *Wurridjal & Anor v Commonwealth of Australia* (part-heard, unreported). In that case, counsel for the plaintiffs submitted in relation to the provision:[66]

> ..but, we had understood the Commonwealth Parliament was in effect saying that we [the Parliament] abrogate the just terms provision of the Self-Government Act, we will not give you any compensation unless we are constitutionally required to give it because section 51(xxxi) requires it. If section 51(xxxi) requires it we say what we have offered without reasonable compensation is just terms, but if the terms otherwise are not just we will give you reasonable financial compensation.

The case is currently adjourned, with the hearing likely to be after 1 July 2008 (when there will be a change in the Senate) or in September 2008.[67]

Concluding comments

While most agree that there is a need to promote increased private savings in Australia, and to reduce inflation, questions have been raised as to whether or not FHSA are likely to gain the critical mass necessary to contribute to the realisation of either of these goals. This is largely a result of the scheme's being viewed as too restrictive in its eligibility criteria. It has also been argued by some that FHSA are too complicated for consumers and for financial institutions to administer, and that this is likely to reduce the level of take-up.

In terms of their possible impact on assisting more young Australians to purchase their first home, FHSA need to be considered as a part of the broader package of housing affordability measures introduced by all tiers of government. Much of the success or otherwise of the FHSA would depend on the degree to which these other measures prove successful in increasing the supply of housing.

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66. Mr Merkel QC, *Wurridjal & Anor v Commonwealth of Australia*, [2007] HCATrans 630 (1 November 2007).

67. ibid.

Appendix A – summary of new law

.11 The FHSA business of ADIs and life insurance companies will be supervised under the prudential framework in the *Banking Act 1959* and the *Life Insurance Act 1995* respectively.

.12 However, life insurance companies that offer FHSAs as investment-linked contracts will be subject to additional investment management requirements that take into account the purpose and nature of FHSAs.

These requirements are consistent with those that apply to trustees that offer FHSAs.

.13 The FSHA Bill 2008 provides a prudential regulatory framework for FHSA trusts and trustees that are authorised to operate these trusts, rather than regulating them directly under the SIS Act.

.14 Relevant parts of the SIS Act are applied by reference, in accordance with the application provisions, under Division 2 of Part 7 of the FHSA Bill 2008. This Division also excludes any provisions of the SIS Act that are not relevant to FHSA trusts and trustees, and modifies the application of particular provisions of the SIS Act to ensure the regulatory framework applies correctly.

.15 These provisions ensure that FHSA trusts, trustees, and persons who have duties, functions and powers in relation to these entities will be subject to a prudential regulation framework that is consistent with the framework applying to superannuation funds and their trustees, where appropriate, while still reflecting the differences between these two products.

.16 Unlike under the SIS Act framework, APRA will have the power under the FHSA Bill 2008 to make prudential standards in relation to FHSA trusts and trustees, thereby enabling prudential standards to apply consistently to all FHSA providers where this is necessary.

Full and further details and examples are contained in Chapter 5 of the Explanatory Memorandum.[68]

68. Explanatory Memorandum, Chapter 5, p. 74 *et. seq.*

Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2505.