



## First Home Saver Account Providers Supervisory Levy Imposition Bill 2008

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## First Home Saver Account Providers Supervisory Levy Imposition Bill 2008

**Date introduced:** 4 September 2008

**House:** House of Representatives

**Portfolio:** Treasury

**Commencement:** 1 July 2009

**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/>.

### Purpose

The Bill imposes a levy in relation to the provision of first home saver accounts (FHSAs).

### Background

The First Home Savers Accounts (FHSA) initiative was a commitment made by the Australian Labor Party during the 2007 election campaign to assist first home buyers to save for a deposit for a home. The background to the initiative is set out in detail in the Bills Digest for the First Home Savers Accounts Bill 2008.<sup>1</sup> The *First Home Saver Accounts Act 2008* (FHSA Act) received Royal Assent on 25 June and commenced on 26 June 2008. The term 'FHSA' is defined in section 8 of the FHSA Act as follows:

An individual's account, life policy or beneficial interest in a trust is an **FHSA** (short for first home saver account) if:

- (a) it is described as an FHSA; and
- (b) it is opened or issued on or after 1 October 2008 (or a later day (if any) specified in the regulations); and
- (c) it is:

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1. Matthew Thomas, Diane Spooner and Adrian Makeham-Kirchner, 'First Home Saver Accounts Bill 2008', *Bills Digest*, no. 138, Parliamentary Library, Canberra, 2007–08, <http://www.aph.gov.au/library/pubs/bd/2007-08/08bd138.pdf>, accessed on 8 September 2008.

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- (i) an account to which an [Authorised Deposit-taking Institution] accepts, or has accepted, contributions; or
- (ii) a life policy issued by a life insurance company; or
- (iii) a beneficial interest in a trust constituted by a deed, the trustee of which holds an authorisation as an FHSA provider.

The current Bill creates ‘an Act to impose a levy in relation to the provision of first home saver accounts’.<sup>2</sup> More specifically, according to the Explanatory Memorandum, the Bill ‘introduces a framework for imposing a levy on FHSA providers to provide funding for the Australian Prudential Regulation Authority (APRA) to carry out its supervision of financial institutions which offer FHSAs’.<sup>3</sup>

### Committee consideration

On 4 September 2008, the Senate Selection of Bills Committee resolved to recommend that the current Bill should not be referred to any committee.<sup>4</sup>

## Financial implications

According to the Explanatory Memorandum, the Bill ‘is designed to recover the cost of APRA’s supervision of FHSA providers and therefore has no net financial impact’. This accords with the Australian Government cost recovery guidelines, which state that agencies ‘should set charges to recover all the costs of products or services where it is efficient to do so’ and that any charges ‘should reflect the costs of providing the product or service and should generally be imposed on a fee-for-service basis or, where efficient, as a levy’.<sup>5</sup>

## Main provisions

**Clause 3** of the Bill states that the Act binds the Crown in each of its capacities. This means that the Crown, including the executive government of the Commonwealth, States and Territories, is not immune from the operation of the Act.

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2. Long title, First Home Saver Account Providers Supervisory Levy Imposition Bill 2008.
  3. First Home Saver Account Providers Supervisory Levy Imposition Bill 2008, Explanatory Memorandum, p. 8.
  4. Selection of Bills Committee, Report No. 10 of 2008, 4 September 2008, p. 3, [http://www.aph.gov.au/senate/committee/selectionbills\\_ctte/reports/2008/rep1008.pdf](http://www.aph.gov.au/senate/committee/selectionbills_ctte/reports/2008/rep1008.pdf), accessed on 15 September 2008.
  5. See Finance Circular No. 2005/09, [http://www.finance.gov.au/publications/finance-circulars/2005/docs/FC\\_2005.09.pdf](http://www.finance.gov.au/publications/finance-circulars/2005/docs/FC_2005.09.pdf), accessed on 15 September 2009.

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**Clause 4** provides that the Act extends to ‘every external Territory’. The phrase ‘External Territory’ is defined in paragraph 17(pd) of the *Acts Interpretation Act 1901* to mean ‘a Territory, not being an internal Territory, for the government of which as a Territory provision is made by any Act’. The term ‘Internal Territory’ is defined in paragraph 18(pe) to mean ‘the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory’. Ordinarily a Commonwealth Act does not apply to every ‘external Territory’, unless Parliament states that the Act is to apply to such a territory.<sup>6</sup>

**Clause 5** contains definitions of various terms and abbreviations used in the proposed Act. Many of the terms are defined to have the same meaning as in the FHSA Act.

**Clause 6** imposes a levy in accordance with subsection 8(7) of the *Financial Institutions Supervisory Levies Collection Act 1998* (Financial Supervisory Levies Act). That subsection does not currently exist; it is the subject of a proposed amendment to the Financial Supervisory Levies Act contained in item 5 of Schedule 3 to the First Home Saver Accounts (Further Provisions) Amendment Bill 2008. Item 5 adds the following provision to section 8:

*Leviable FHSA entities*

- (7) A body corporate or trustee that is a leviable FHSA entity at any time during a financial year that ends after the commencement of the *First Home Saver Account Providers Supervisory Levy Imposition Act 2008* is liable to pay a levy imposed in respect of that financial year.

**Clause 7** sets out the amount of levy payable by a ‘leviable FHSA entity’ (as defined in clause 5 of the Bill). The amount of levy is the sum of the ‘restricted levy component’ and the ‘unrestricted levy component’ for the financial year. The term ‘restricted levy component’ is defined in **proposed subsection 7(2)**, and the term ‘unrestricted levy component’ is defined in **proposed subsection 7(3)**. **Proposed subsection 7(5)** states that the Treasurer must, by legislative instrument, determine certain amounts and percentages. Any determination made by the Treasurer under **proposed subsection 7(5)** would be subject to the tabling and disallowance procedures set out in the *Legislative Instruments Act 2003*.

**Proposed subsections 7(6)–(9)** provide further detail on how the matters which are the subject of the Treasurer’s determination are to be worked out. While the Minister may set different levies for a trustee of a trust; or an authorised deposit-taking institution (ADI) or a life insurance company, all FHSA providers will be subject to a levy under the proposed

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6. See paragraph 17(a) of the *Acts Interpretation Act 1901*, which states: ‘(a) **Australia** or the **Commonwealth** means the Commonwealth of Australia and, when used in a geographical sense, includes the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands, but does not include any other external Territory’.

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Act. In the case of a FHSA trustee, the ‘leviable FHSA entity’s asset value’ is calculated on the basis of the total value of the assets of the FHSA trusts provided by the trust; in the case of an ADI or life insurance company, the asset value is calculated on the basis of all FHSAs provided by the entity: **proposed subsection 7(7)**.

**Clause 8** sets out how the ‘indexation factor’ for a financial year is to be calculated, and specifies what index numbers are to be used (eg Consumer Price Index) or disregarded.

## Concluding comments

The Bill simply establishes the administrative framework for the collection of levies to fund APRA’s role in the supervision of FHSAs. As noted in the Explanatory Memorandum, the framework contained in the Bill is modelled on the framework for providers of retirement savings accounts.<sup>7</sup>

The Bill does not set the actual amount of the levies but only provides a formula for their calculation. The Treasurer must later determine the actual amounts and percentages to be used in the formula, with such figures to be contained in a disallowable legislative instrument.

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7. First Home Saver Account Providers Supervisory Levy Imposition Bill 2008, Explanatory Memorandum, p. 25 at [3.5].

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