2008

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

FINANCIAL CLAIMS SCHEME (ADIs) LEVY BILL 2008

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Treasurer, the Hon Wayne Swan MP)

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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

Abbreviation	***Definition***
ADI	Authorised deposit-taking institution
APRA	Australian Prudential Regulation Authority

General outline and financial impact

Financial Claims Scheme

The Financial Claims Scheme (ADIs) Levy Bill (the Bill) provides for the imposition of a levy on authorised deposit-taking institutions (ADIs) in the event of the activation of the financial claims scheme in relation to the failure of an ADI (whether a bank, a building society or a credit union) and the costs of the scheme exceeding the amounts paid to APRA in the winding up of the ADI.

It is part of a package of three Bills introducing a Financial Claims Scheme and other measures to further enhance the stability of Australia's financial system. The other Bills in the package are the Financial Claims Scheme (General Insurers) Levy Bill 2008, which provides for the imposition of a similar levy on general insurers, and the Financial System (Financial Claims Scheme and Other Measures) Bill 2008, which provides for the major features of the Financial Claims Scheme and other measures in the package.

The Financial Claims Scheme is designed to provide depositors with an ADI and eligible policyholders with an APRA-regulated general insurer with timely access to at least some of their funds in certain circumstances relating to the failure of the financial institution.

APRA's costs, in meeting entitlements under the scheme and in administering it, will be met in the first instance by the Commonwealth. However, these costs will be recouped in the liquidation of the failed ADI or general insurer. In the event of a shortfall, this can be supplemented by industry levies. Levies will not be considered unless APRA's costs in relation to the scheme exceed the amounts it receives through the liquidation. For a levy to be imposed, a Regulation must first be made.

Date of effect: Sections 1 and 2 and anything in the Act not mentioned in this paragraph commences on the day on which the Act receives the Royal Assent. Sections 3 to 6 commence on the later of the start of the day on which the Act receives the Royal Assent and the commencement of Schedule 1 to the *Financial System Legislation Amendment (Financial Claims Scheme and Other Measures) Act 2008*. However, these sections do not commence at all if Schedule 1 to that Act does not commence.

Proposal announced: The Treasurer announced on 2 June 2008 that the Australian Government would introduce a package of measures to further enhance the stability of the Australian financial system, including establishing a Financial Claims Scheme. The Treasurer's announcement indicated that if APRA was unable to recover the full costs of the scheme in the liquidation, relevant financial institutions could be levied to recover the costs of the scheme.

Financial impact: There are no net costs of the package over time. In the event of a failure, the significant up-front costs to the Commonwealth of the scheme can be recouped in the liquidation of the failed ADI, with any shortfall able to be met through the imposition of the levy provided for in the Bill.

Compliance cost impact: Low. This Bill will not have a significant compliance cost impact.

Summary of regulation impact statement

Regulation impact on business

Impact: The levy element of the Financial Claims Scheme will not have a significant regulatory impact on business or individuals. Where the scheme is activated, imposition of a levy is able to help ensure that the advance provided by the Commonwealth can be fully recovered with no net impact on taxpayers.

Chapter 1
Levy on industry

Comparison of key features of new law and current law

New law	*Current law*
Regulations may impose levies, following the activation of the Financial Claims Scheme in relation to the failure of an ADI, on liabilities of a class of ADIs to their depositors.	
The Regulations also set out how the amount of levy is determined, subject to the levy amount not exceeding 0.5 per cent of those liabilities of the ADI.	
The objective is that the total amount of levy equal the excess of the cost of the Financial Claims Scheme for the failed ADI over the amounts paid to APRA in the liquidation of the ADI.	
Before Regulations imposing the levy are made, the Minister must be satisfied they will help achieve this objective.	

Detailed explanation of new law

1.1 APRA's costs, both in meeting entitlements under the scheme in relation to an ADI and in administering it, will be met in the first instance by the Commonwealth. However, these costs will be recouped in the liquidation of the ADI. In the event of a shortfall, the proceeds of liquidation can be supplemented by an industry levy. A levy will not be considered unless APRA's costs in relation to the scheme exceed the amounts it receives through the liquidation. For a levy to be imposed, a Regulation must first be made.

1.2 The Bill defines **APRA's financial claims scheme costs** for an ADI. These costs have three basic elements: entitlements of depositors with the ADI; APRA's costs in administering the scheme, exercising and performing its powers and functions in relation to the ADI; and the costs of any borrowing APRA may make with the Finance Minister's approval under section 54E of the *Australian Prudential Regulation Authority Act 1998* (the purpose of this borrowing would be to assist the Commonwealth to fund the amounts appropriated on activation of the Financial Claims Scheme) ***[section 3]***.

1.3 The levy is intended to raise funds equal to the excess of the costs of the Financial Claims Scheme over the sum of amounts paid to APRA by the ADI in connection with Division 2AA of the Part II of the *Banking Act 1959* or in the winding up of the ADI ***[section 6]***.

1.4 Regulations imposing or affecting the amount of the levy can be made only after the Minister is satisfied that the regulation will help achieve that objective ***[section 6]***. This does not prevent the Minister also taking into consideration any other factors, such as the stability of the financial system, implications for risk taking or the efficiency of collection.

1.5 Where the Financial Claims Scheme has been activated in relation to a particular ADI, Regulations may be made imposing a levy on the liabilities of a class of ADIs to their depositors in a financial year or other 12 month accounting period ***[section 4]***.

1.6 Given that imposition of a levy only arises when funds from the winding up of the ADI are insufficient to meet APRA's financial scheme costs, it would not make sense to try to levy that ADI. The Bill specifies that the class of ADIs levied must exclude all ADIs in respect of which the scheme has been activated ***[section 4]***.

1.7 The amount of levy cannot be more than 0.5 per cent of an ADI's liabilities to its depositors. This helps limit the potential impact of a very large ADI failure on levied ADIs ***[section 5]***.

1.8 Within this constraint, Regulations will set out how the amount of the levy is worked out and may prescribe different ways of doing this for ADIs in different classes. The Regulations may specify that the levy is to be a flat percentage rate of liabilities to depositors or may specify other parameters such as a minimum or maximum levy amount. This degree of flexibility allows the levy structure to take into account the particular circumstances in which a levy is imposed, including in relation to levied ADIs. The Regulations may also set out different ways of working out liabilities to depositors for ADIs in different classes ***[section 5]***.

Application and transitional provisions

1.9 Sections 3 to 6 commence on the later of the start of the day on which the Act receives the Royal Assent and the commencement of Schedule 1 to the *Financial System Legislation Amendment (Financial Claims Scheme and Other Measures) Act 2008*. However, these sections do not commence at all if Schedule 1 to that Act does not commence.