

Big Bank Levy (COVID-19 Health Response) Bill 2021

Explanatory Notes

Big Bank Levy (COVID-19 Health Response) Bill 2021

The short title of the Bill is the *Big Bank Levy (COVID-19 Health Response) Bill 2021* (the Bill).

Policy objectives and the reasons for them

The Bill will enact a 0.05% levy on the five biggest banks operating in Queensland, in order to fund the hospital system adequately to deal with an increase in COVID-19 cases.

Achievement of policy objectives

The Bill achieves its policy objective by imposing a big bank levy of 0.05% on an authorised deposit-taking institution (ADI), for any quarter where they are liable to pay a Commonwealth major bank levy.

In effect, this means banks with more than \$100 billion in licensed entity liabilities: the big banks. It is additional to the federal bank levy of 0.015% per quarter, or 0.06% annually.

It will apply from the first quarter starting immediately after the commencement of the Act.

0.05% of the gross domestic product (GSP) percentage of the applicable liabilities for that quarter will apply: the levy will largely be calculated from the value of the deposits with the bank.

Section 13 sets out that this levy must not be recovered from customers: it must be paid out of profits or other funds of the bank.

Alternative ways of achieving policy objectives

There is no alternative method of achieving the policy objective.

Estimated cost for government implementation

The bill extends the Queensland Commissioner of State Revenue's (the Commissioner's) duties beyond those set out in the *Taxation Administration Act 2001 (Qld)*, to include administering and assessing returns for the big bank levy. At present, this would relate to returns for five corporate

entities¹. Any extra resources required to perform those functions should be drawn from existing funding for the Office of State Revenue, with further consideration given to that office's resourcing in the next state budget.

Consistency with Fundamental Legislative Principles (FLPs)

This legislation engages several fundamental legislative principles.

Whether a Bill has sufficient regard to the institution of Parliament - *Legislative Standards Act 1992, section 4(2)(b)*

Scrutiny of Legislation Committees in Australian parliaments have consistently said that primary legislation should impose tax liability, including setting taxation rates. The Office of the Queensland Parliamentary Counsel's 'Principles of good legislation' guide to 'Clear meaning', published in 2013, says clarity is vital when legislation imposes a new tax, and that if ordinary people are confused by the meaning of taxation law, 'a vital element of due process is violated.'² This bill is extremely clear about the nature and rate of the big bank levy, who will pay it, and the fact that it cannot be recovered from banks' customers.

Until 16 June 2011, the Standing Orders of the Queensland Legislative Assembly stated that 'Only a Minister in accordance with a message from the Governor may introduce an Appropriation Bill or propose the imposition of a tax, rate, duty or impost or increase or alter the incidence of a charge.' (former SO 165(3)). However, as stated by the Clerk of the Parliament in correspondence dated 6 October 2021, under the current rules, 'neither statute or Standing Orders currently prevents a PMB (private member's bill) proposing revenue measures.'

Whether legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review - *Legislative Standards Act 1992, section 4(3)(a)*

Clauses 11(3) and (4) give the Commissioner a discretion to allow an ADI a longer time to lodge a return. This engages fundamental legislative principles about whether rights, liberties or obligations are dependent on administrative power. Given the exercise of this discretion is limited to circumstances where the Commissioner considers it unduly onerous to require lodgement within the usual period, it is sufficiently defined and subject to appropriate review.

¹ Commonwealth Bank, NAB, Macquarie, Westpac, ANZ

² https://www.legislation.qld.gov.au/file/Leg_Info_publications_FLP_Clear_meaning.pdf

**Whether legislation has sufficient regard to the rights and liberties of individuals -
*Legislative Standards Act 1992, section 4(2)(a) - Offences and penalties***

The Bill does not create any new offences, but existing offences and penalties under the *Taxation Administration Act 2001* (Qld) (the TAA) apply. Generally, offences should be adequately defined and the consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences apply. The Bill generally includes notes where an obligation arises under a provision of the TAA, and it is noted that offences in the TAA apply to all revenue laws.

Consultation

The Bill has been expedited in order to ensure Queensland's hospital system can cope with a surge in COVID-19 cases when our state borders re-open. As such, Dr Amy MacMahon MP in preparing it has engaged a number of stakeholders, including:

- Australian Medication Association - Queensland
- Health Consumers Queensland
- Queenslanders with Disability Network
- Aboriginal and Torres Strait Islander Community Health Service Brisbane

Consistency with legislation of other jurisdictions

This bill would complement the *Major Bank Levy Bill 2017* (Cth), in force from 1 July 2017 after being legislated by the Turnbull Coalition government. The Major Bank Levy applies at 0.015% per quarter or 0.06% per annum.

A similar state-based bank levy was proposed by the Weatherill Labor government in South Australia in 2017, applying in similar terms to the federal law, being 0.015% per quarter or 0.06% per annum. However, SA Labor ultimately dumped this proposal before the 2018 election, in response to pressure from conservatives and the big banks.

Notes on provisions

Part 1 Preliminary

Clause 1 Short Title

Clause 1 provides that when enacted, the Bill may be cited as the *Big Bank Levy (COVID-19 Health Response) Act 2021*.

Clause 2 Extraterritorial application of Act

Clause 2 provides that the Act applies both within Queensland, and outside Queensland to the full extent of the extraterritorial legislative power of the Parliament.

Clause 3 Relationship with Taxation Administration Act 2001

Clause 3 states that this Act does not contain all the provisions about the state big bank levy, and lists the provisions dealt with by the *Taxation Administration Act 2001*, including taxation assessments; payments and refunds; imposition of interest and penalty tax; objections and appeals against, or reviews of, assessments of tax; record-keeping obligations of taxpayers; investigative powers, offences, legal proceedings and evidentiary matters; and service of documents.

Clause 4 Dictionary

Clause 4 refers to the dictionary in schedule 1, which defines particular words in the Act.

Part 2 Imposition of liability

Clause 5 Imposition of state big bank levy

Clause 5 operates to impose a state big bank levy, for any quarter where an authorised deposit-taking institution (ADI) carries on, or offers to carry on, any banking business under the *Banking Act 1959* (Cth) in Queensland and is liable to pay the Commonwealth major bank levy.

Clause 6 When liability for State big bank levy arises

Clause 6 states that liability for the levy arises on the return date for lodgement by the ADI of a return for the quarter. Under section 11, the return date will be the day the ADI's Commonwealth return is due.

Clause 7 ADI to pay State big bank levy

Clause 7 states an ADI must pay the levy imposed.

Part 3 Amount of liability

Clause 8 Amount of liability

Clause 8 states the amount of the state big bank levy payable by an ADI in a given quarter is 0.05% of the GSP percentage of the applicable liabilities amount.

The **applicable liabilities amount** is defined by section 5(2) of the *Major Bank Levy Act 2017* (Cth):

The applicable liabilities amount for the quarter in relation to the ADI is the difference between:

- (a) the total liabilities amount for the quarter in relation to the ADI; and
- (b) the sum of the following amounts:
 - (i) the total Additional Tier 1 Capital for the quarter in relation to the ADI, as reported under an applicable reporting standard;
 - (ii) the total amount of deposits held, to the extent that they would be protected by the ADI financial claims scheme, for the quarter in relation to the ADI, as reported under an applicable reporting standard;
 - (iii) an amount equal to the lesser of the derivative assets for the quarter in relation to the ADI and the derivative liabilities for the quarter in relation to the ADI, both as reported under an applicable reporting standard;
 - (iv) the exchange settlement account balance, held with the Reserve Bank of Australia, for the quarter in relation to the ADI, as reported under an applicable reporting standard;
 - (v) [amounts determined by the Minister via a legislative instrument].

The method for working out the **GSP percentage** is set out in clause 10.

Clause 9 Assessment to take into account particular determination

Clause 9 applies if the Commonwealth commissioner makes a determination under the *Taxation Administration Act 1953* (Cth) that changes an ADI's liability for the Commonwealth major bank levy. An assessment under the *Taxation Administration Act 2001* (Qld) of the amount of State big bank levy payable by the ADI must take the Commonwealth determination into account.

Clause 10 Working out GSP percentage

Clause 10 requires the Queensland Commissioner of State Revenue to calculate and publish the gross state product (GSP) percentage each financial year.

Part 4 Returns

Clause 11 Requirement to lodge return

Clause 11 requires an ADI liable to pay a State big bank levy for a given quarter to lodge a return on or before the date their Commonwealth return is due. It must be in the approved form and state the amount of the ADI's liability for the levy that quarter.

The Queensland Commissioner of State Revenue has discretion to extend the timeframe for completion of the return where it would be unduly onerous for the ADI to submit the return on time.

Part 5 Reassessments by commissioner

Clause 12 When commissioner must reassess State big bank levy

Clause 12 states that if the Commonwealth commissioner makes a determination under the *Taxation Administration Act 1953 (Cth)* that changes the ADI's liability for the Commonwealth major bank levy for that quarter, the Queensland Commissioner of State Revenue must make a reassessment under the *Taxation Administration Act 2001 (Qld)*.

Part 6 Miscellaneous

Clause 13 State big bank levy not to be paid by customers

Clause 13 states that an ADI cannot recover the state big bank levy from its customers, and must be paid for from the profits or other funds of the ADI.

Clause 14 Notice of change to liability for Commonwealth major bank levy

Clause 14 states that if the Commonwealth commissioner makes a determination under the Commonwealth *Taxation Administration Act 1953* changing an ADI's liability for the Commonwealth major bank levy for a quarter, the ADI must give the Queensland Commissioner of State Revenue notice of the determination.

Clause 15 Approved forms

Clause 15 empowers the Queensland Commissioner of State Revenue to approve forms for use under this Act.

Clause 16 Regulation-making power

Clause 16 empowers the Governor in Council to make regulations under this Act, and states a regulation may provide for a maximum penalty of not more than 20 penalty units for a contravention of a regulation.

Part 7 Transitional provision

Clause 17 First imposition of State big bank levy

Clause 17 states the State big bank levy will apply to an ADI from the first quarter starting immediately after the commencement.

Part 8 Amendment of Acts

Division 1 Amendment of this Act

Clause 18 Act amended

Clause 18 states this division amends this Act.

Clause 19 Amendment of long title

Clause 19 amends the long title.

Division 2 Amendment of Taxation Administration Act

Clause 20 Act amended

Clause 20 states this division amends the *Taxation Administration Act 2001* (Qld).

Clause 21 Amendment of s 6 (Revenue laws)

Clause 21 inserts a new subsection (10) to section 6 of the *Taxation Administration Act 2001* (Qld), stating the *Big Bank Levy (COVID-19 Health Response) Bill 2021* to be a revenue law.

Schedule 1 contains the Dictionary for the bill.