



Corporations (National Guarantee Fund Levies) Amendment Bill 2007

Sharon Scully
Law and Bills Digest Section

Contents

Purpose.....	2
Background.....	2
The Bill.....	3
Stakeholder reactions to the Bill	3
Pros and cons.....	3
Main provisions	4
Concluding comments	4

Corporations (National Guarantee Fund Levies) Amendment Bill 2007

Date introduced: 21 June 2007

House: House of Representatives

Portfolio: Treasury

Commencement: 28 days after royal assent.

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 amendment in this Bill proposes to impose a cap on levies for the benefit of the National Guarantee Fund (the NGF), which are payable in a financial year.

This amendment is supported by an amendment in the Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Bill 2007, which proposes to direct readers to the cap on levies.

Background

Under the *Corporations Act 2001* (Corporations Act), financial market operators such as the Australian Stock Exchange (ASX), must have compensation arrangements, which are adequate to protect retail clients (defined in sections 761G and 761GA of the Corporations Act).¹

The NGF is administered by the Securities Exchanges Guarantee Corporation (the SEGC),² which is a subsidiary of the ASX, and provides this compensation for ASX.³

The SEGC may impose levies on the market operator and participants if the amount in the NGF is less than the minimum amount provided in section 889I of the Corporations Act.⁴ Currently, these levy requirements are uncapped.

1 *Corporations Act 2001* Pt 7.5 Divs 2 and 3.

2 *ibid.*, section 889C.

3 *ibid.*, section 889B.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

The *Corporations (National Guarantee Fund Levies) Act 2001* contains provisions for the imposition and amounts of these levies.

The Bill

On 21 June 2007, the Bill was introduced into the House of Representatives by the Parliamentary Secretary to the Treasurer, the Hon. Mr Chris Pearce, MP and was referred to the Senate Standing Committee on Economics (the Committee) for inquiry and report.⁵

Stakeholder reactions to the Bill

Submissions to the Committee's inquiry were made by:⁶

- the Australian Financial Markets Association (AFMA), and
- the Australian Stock exchange (ASX).

Both organisations supported the proposed amendments in the Bill.⁷

However, it is noted that there are no submissions from consumer groups.

Pros and cons

Capping liabilities for levies in relation to the NGF ensures that market participants would no longer have unlimited exposure to pay levies into the NGF.

There is also the suggestion that placing a cap on these levies may remove obstacles on institutions, such as banks, participating directly in ASX markets (these institutions currently participate through subsidiaries).

In addition, protection for investors is said to remain largely unaffected.⁸

4 *ibid.*, sections 889J and 889K.

5 Senate Standing Committee on Economics, *Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Bill 2007 and Corporations (National Guarantee Fund Levies) Amendment Bill 2007*, report to the Senate, 1 August 2007.

6 See *ibid.*, p. 15 and Appendix 1. See also AFMA, *Submission to the Senate Standing Committee on Economics*, 9 July 2007 at: http://www.aph.gov.au/senate/committee/economics_ctte/finsec_dmf_corps/submissions/sub4.pdf; ASX, *Submission to the Senate Standing Committee on Economics*, 12 July 2007 at http://www.aph.gov.au/senate/committee/economics_ctte/finsec_dmf_corps/submissions/sub8.pdf

7 See Senate Standing Committee on Economics, *op cit*, p. 15; AFMA, *op cit*; ASX, *op cit*.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

However, this begs the question of what happens in the event that the total amount payable in relation to claims exceeds the minimum amount available in the NGF at the time.

Would capping liabilities for levies have the potential to result in a situation where there are inadequate funds available as compensation?

Main provisions

Item 1 of Schedule 1 of this Bill proposes to insert a new provision into **section 5** of the Corporations (National Guarantee Fund Levies) Act – **subsection 5(4)**.

Subsection 5(4) proposes that levy amounts (and methods of determining levy amounts) that are specified in determinations referred to in **subsection 889J(1)** of the Corporations Act are capped to the extent that the total amount of levies payable to the SEGC in a financial year does not exceed the NGF's minimum amount (pursuant to section 889I of the Corporations Act), which is in force at the time the determinations are made.

Concluding comments

This amendment would allow for greater clarity in relation to market participants' liability to pay levies for the purposes of the NGF and it is argued that it does not appear to derogate from investor protection in the short term.

However, capping liability to pay levies does create a situation where the NGF may only be at the minimum amount provided by legislation, which may not allow for sufficient funds in the event of a particularly large claim or series of large claims.

8 AFMA, op cit.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

© Copyright Commonwealth of Australia 2007

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this publication may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior written consent of the Department of Parliamentary Services, other than by senators and members of the Australian Parliament in the course of their official duties.

This brief has been prepared to support the work of the Australian Parliament using information available at the time of production. The views expressed do not reflect an official position of the Parliamentary Library, nor do they constitute professional legal opinion.

Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2442.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.