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Note: This Digest is an historical Digest, prepared after the Bill received Royal Assent on 27 November 2008. The Bill was passed unamended.

Guarantee Scheme for Large Deposits and Wholesale Funding Appropriation Bill 2008

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Guarantee Scheme for Large Deposits and Wholesale Funding Appropriation Bill 2008

Date introduced: 25 November 2008

House: House of Representatives

Portfolio: Treasury

Commencement: Royal Assent (27 November 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/>.

Purpose

The Bill provides a standing appropriation to pay for any possible claims under the Government's Guarantee Scheme for Large Deposits and Wholesale Funding (the Guarantee Scheme). The Bill also enables the Government to borrow money to pay these claims if the Consolidated Revenue Fund (CRF) contains insufficient funds at the time claims are made.

Terminology

It may assist to explain at the outset that the terms 'large deposit' and 'wholesale funding' are defined in the Explanatory Memorandum for the Bill as follows:

- '*Large deposit*' means deposits 'in excess of \$1 million deposited with an Australian-incorporated ADI [authorised deposit-taking institution] or any deposits with an Australian branch of a foreign bank, which may be covered by the Deed of Guarantee in accordance with Scheme Rules', and
- '*Wholesale funding*' includes 'short-term funding and term funding for up to 60 months provided to financial institutions, such as ADIs, both within Australia and in overseas markets, enabling those institutions to provide credit to businesses and households'.¹

These terms are not defined in the Bill itself.

1. Explanatory Memorandum, Guarantee Scheme for Large Deposits and Wholesale Funding Appropriation Bill 2008, p. 1.

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Background

The Government's position as at 12 October 2008

On 12 October 2008, the Prime Minister, the Hon Kevin Rudd MP, [announced](#) two schemes to guarantee the liabilities of Australia's financial system in the wake of the current global financial crisis: a bank deposit guarantee, and a wholesale funding for banks guarantee.²

The first scheme, known as the Financial Claims Scheme (FCS), was initially designed to cover all deposits held in Australian authorised deposit-taking institutions (ADIs), including banks, building societies, credit unions and Australian subsidiaries of foreign-owned banks.³ The second scheme, the wholesale funding guarantee, was designed to provide security for funding provided to Australian financial institutions by domestic and international sources, by offering a guarantee on wholesale loans to Australian ADIs for a fee.

In announcing the schemes on 12 October 2008, the Prime Minister said:

The Australian financial system is demonstrating its resilience to the international financial market turbulence. Australia's banking institutions remain sound, well-capitalised and profitable with high asset quality.

The Australian financial system is however being affected by global events. Recent developments in the international wholesale funding markets have created acute funding pressures that now pose potential risks to the total supply of finance to the Australian economy.

This has the potential to slow further domestic economic activity.

The G-7 [Group of 7 leading economies] met on 10 October and agreed that the current situation calls for urgent and exceptional action to stabilise financial markets and restore the flow of credit, to support global economic growth.⁴

Specifically in relation to the wholesale funding guarantee, the Prime Minister said:

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2. The Hon Kevin Rudd MP, Prime Minister, 'Global Financial Crisis', *Media release*, 12 October 2008, http://www.pm.gov.au/media/Release/2008/media_release_0534.cfm, accessed on 1 December 2008.
 3. The legislative framework for the FCS is now contained in the *Financial System Legislation Amendment (Financial Claims Scheme and Other Measures) Act 2008*. The FCS commenced on 18 October 2008.
 4. *ibid.* The 'G-7' comprises the USA, Canada, Britain, Germany, France, Italy and Japan.

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The Australian Government will also guarantee wholesale term funding of Australian incorporated banks and other authorised deposit-taking institutions (ADIs).

The Government will offer the guarantee in return for a fee in respect of eligible non-deposit debt obligations of Australian ADIs and foreign subsidiary banks operating in Australia.

It will enable Australian institutions to raise funds overseas in the current tight conditions and will restore confidence in credit markets. The facility will be withdrawn once market conditions have normalised. Details will be finalised in the next few days.⁵

The Prime Minister also said:

The Government is making available to Australian-owned banks, Australian subsidiaries of foreign owned banks, building societies and credit unions a guarantee on eligible wholesale borrowing.

...

Funding covered

The guarantee on wholesale borrowing will be made available to Australian-owned banks, Australian subsidiaries of foreign-owned banks, building societies, and credit unions. It will be available, on application, for new and existing term debt issuance out to 5 years (60 months). The guarantee will be available for eligible debt instruments issued in all major currencies.

The guarantee will not be available to foreign banks, including those with branches in Australia, or entities that are not APRA-authorized deposit-taking institutions. These latter entities are not subject to Australia's prudential regulation regime.

Lenders that are not APRA-regulated will have access to the Government's complementary initiative to invest an additional \$4 billion in residential mortgage-backed securities ...⁶

The Government's position as at 24 October 2008

However, on 24 October 2008, the Government decided to limit the scope of the FCS by implementing a fee schedule for guaranteeing deposits over \$A1 million (that is, for 'large deposits'). Consequently, the wholesale funding guarantee was expanded to include a guarantee for large deposits.

5. *ibid.*

6. *ibid.*

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In [announcing](#) the changes to the parameters of the Guarantee Scheme, and the decision to impose a fee for guaranteeing large deposits, the Treasurer, the Hon Wayne Swan MP said:

Today the Prime Minister and I received advice from the Council of Financial Regulators and, based on the Council's recommendations, the Government has decided that a threshold of \$1 million be implemented, over which a fee will be charged to receive the benefits of the deposit guarantee.

This fee will ensure the deposit and wholesale funding guarantees apply in a consistent manner for larger investments, for which deposits and securities are interchangeable. In particular, it will ensure that the deposit guarantee does not provide disincentives for market participants to operate in short-term money markets.

The fee will apply from 28 November 2008. Up until that date all deposits and wholesale funding eligible for the guarantee arrangements will be guaranteed without charge. After that date, deposits over \$1 million and wholesale funding will only be guaranteed if the relevant fee is paid.⁷

Position of significant interest groups/press commentary

Two industry associations representing ADIs in Australia are broadly supportive of the Guarantee Scheme.

Australian Bankers' Association

In a press release dated 25 November 2008, the Australian Bankers' Association said:

The Australian Bankers' Association welcomes the introduction of Commonwealth legislation supporting the Government's guarantee scheme for large deposits and wholesale funding.⁸

Particularly, David Bell, Chief Executive of the Australian Bankers' Association, said:

The legislation authorises the Government to make payments against its guarantee scheme. While there is no evidence any bank depositors or investors will need to call on the guarantee scheme, the legislation removes potential uncertainty around the timeliness of payment in the event of a claim.

7. The Hon Wayne Swan MP, Treasurer, 'Government Announces Details of Deposit and Wholesale Funding Guarantees', *Media release*, No. 117, 24 October 2008, <http://www.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2008/117.htm&pageID=003&min=wms&Year=&DocType=0>, accessed on 1 December 2008.

8. Australian Bankers' Association, *Government's legislation on guarantee scheme provides additional certainty*, *Media Release*, 25 November 2008, <http://www.bankers.asn.au/default.aspx?ArticleID=1266>, accessed on 27 November 2008.

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It is important the legislation is passed quickly, avoiding delay to the guarantee scheme's scheduled commencement on Friday (28 November 2008). Speed of passage through Parliament is a priority for banks.⁹

Abacus—Australian Mutuals

The group that represents credit unions and mutual building societies in Australia, Abacus—Australian Mutuals, also welcomed the Guarantee Scheme:

Credit unions and mutual building societies have welcomed the move by the Government today to continue its guarantee of credit union, bank and building society retail deposits.¹⁰

However, the Chief Executive Officer of Abacus—Australian Mutuals, Louise Petschler, has expressed some reservations about the Scheme:

While this retail deposit threshold covers the vast majority of household deposits in Australia, we think there are some issues with the model ...

All regulated banking institutions - Australian banks, building societies and credit unions - meet the same regulatory requirements under APRA [the Australian Prudential Regulation Authority, which already regulates those financial institutions eligible to participate in the Guarantee Scheme]. In our view, regulation by APRA offers far better protection than the now frequently criticised international debt rating agencies ...

Those ratings are not relevant for most mutual banking institutions as we do not need to raise debt funding in wholesale markets ...

It's ironic that the safe, mutual part of the banking system, which is not exposed to wholesale market turmoil, looks likely to be charged more than those who are in these markets.¹¹

(Note that these comments were made after the release of the operational and design parameters by the Treasurer on 24 October 2008 but prior to the decision by the Government to introduce the Bill.)

9. *ibid.*

10. Abacus—Australian Mutuals, 'Credit Unions, building societies to review details of deposit guarantee scheme', *Media Release*, 27 October 2008, http://www.abacus.org.au/media_centre/releases/2008/20081024.html, accessed on 27 November 2008.

11. *ibid.*

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Committee consideration

The Senate's Selection of Bills Committee met privately on Wednesday, 26 November 2008. It considered a proposal to refer the Bill to the Senate Standing Committee on Economics, but was unable to reach agreement on whether the Bill should be referred.¹² In the event, the referral became irrelevant when the Bill was read a third time in the Senate later that day.¹³

Position of the Opposition: examples from Hansard

Several members of the Opposition initially criticised the Guarantee Scheme (particularly the way the Government handled its implementation) but supported the passage of the Bill. For example, the Shadow Treasurer, the Hon Julie Bishop MP, in a second reading speech on an unrelated Bill, made the following comments on 25 November 2008:

It has been obvious from the day of its announcement that the consequences of the bank guarantees had not been fully thought through. The consequences might have been unintended but they were certainly foreseeable. Rather, as is typical with the Rudd government, the bank guarantees were from the first all about a political strategy, with no regard for sound economic management. Since the announcement of the bank guarantee policy, the government have been continually playing catch-up to correct a series of unintended but largely foreseeable difficulties arising from their hasty actions. It is for this reason that we will be debating yet another bill later this afternoon, which has been introduced at great haste with little information to provide an appropriations framework for the guarantees.

All these government initiatives have been conspicuous by the absence of rigorous analysis and the coalition is concerned that the same poor approach to public policy will occur with the significant amounts of public money in these three funds. The lack of analysis underpinning a range of government decisions, including the recent economic stimulus, raises concerns that the government will choose projects with little regard to their long-term benefits. These recent government decisions, including the decision to spend half the budget surplus in one hit but without any modelling or research, as Treasury admitted in Senate estimates, have had little analysis. There has

12. Selection of Bills Committee, Report no. 16 of 2008, 26 November 2008, http://www.aph.gov.au/Senate/committee/selectionbills_ctte/reports/2008/rep1608.pdf, accessed on 27 November 2008.

13. Senator Nick Sherry, Minister for Superannuation and Corporate Law, 'Guarantee Scheme for Large Deposits and Wholesale Funding Appropriation Bill 2008: Third Reading', *Debates*, Senate, 26 November 2008, p. 87, <http://www.aph.gov.au/hansard/senate/dailys/ds261108.pdf>, accessed on 27 November 2008.

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been nothing public and there is nothing to show that they will achieve the desired result.¹⁴

In the event, the Bill was read a third time in the House of Representatives later that day.¹⁵

On the issue of the Opposition's refusal to agree to the referral of the Bill to the Senate Standing Committee on Economics, and also on the issue of the Opposition's support for the Bill, Senator Helen Coonan said:

We will be supporting the bill not because we in any way commend the government for the way in which this has been handled but because we accept that all of this delay is causing ongoing uncertainty for financial institutions, for consumers and for the economy more broadly. We accept that this matter should be dealt with urgently and expeditiously. It is why we are responding to the government's request that we deal with it without reference to a committee. Whilst I have a degree of sympathy for Senator Brown's natural curiosity as to how this appalling situation could come about, it is important that I place on the record the opposition's reasons for opposing it being sent to a committee.¹⁶

Position of the Australian Greens

On 26 November 2008, Senator Bob Brown expressed serious reservations about the speed with which the Bill was passing through Parliament, particularly as the Government had earlier denied the need for any legislation to implement the Guarantee Scheme. He moved unsuccessfully for the Bill to be referred to the Senate Economics Committee (see above). Senator Brown particularly emphasised the need for scrutiny of the Bill, given that, in his words:

... it is simply a means of the government guaranteeing the banks when they borrow overseas—and, on the long-shot chance that one of those borrowings fail, the public picks up the tab. When the public picks up the tab, that means money that otherwise might be available under consolidated revenue or through borrowings for hospitals, for schools, for public transport, for security, for the environment or for tackling

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14. The Hon Julie Bishop MP, Shadow Treasurer, 'Nation-Building Funds Bill 2008, Nation-Building Funds (Consequential Amendments) Bill 2008 and COAG Reform Fund Bill 2008: Second Reading', *Debates*, House of Representatives, 25 November 2008, pp. 50–51, <http://www.aph.gov.au/hansard/reps/dailys/dr251108.pdf>, accessed on 3 December 2008.
 15. The Hon Wayne Swan MP, Treasurer, 'Guarantee Scheme for Large Deposits and Wholesale Funding Appropriation Bill 2008: Third Reading', *Debates*, House of Representatives, 25 November 2008, p. 96, <http://www.aph.gov.au/hansard/reps/dailys/dr251108.pdf>, accessed on 3 December 2008.
 16. Senator Helen Coonan, speech following the reading of the Selection of Bills Committee Report No. 16 of 2008, *Debates*, Senate, 26 November 2008, p. 55, <http://www.aph.gov.au/hansard/senate/dailys/ds261108.pdf>, accessed on 27 November 2008.

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climate change will instead go to make up for that defaulting bank loan—which means the defaulting bank. This is legislation which, logically, will encourage more risky borrowing overseas. It is legislation which will increase borrowing overseas and therefore, logically, the potential for default.

... This is socialising the risk of the big banks. It is as simple as that. And it deserved much more scrutiny than we are getting here today.¹⁷

Senator Bob Brown then moved two amendments to the Bill: the first would insert a sunset clause (to the effect that the Act should cease to have effect two years after its commencement), and the second would require the Minister to make a statement to Parliament about any borrowings under **proposed subsection 6(1)** (see Main Provisions section below). Neither motion to amend was successful.¹⁸

Pros and cons of the Guarantee Scheme

The benefits of a large deposit guarantee scheme are derived through increased confidence amongst depositors in the ADIs participating in the scheme. This reduces the probability of a ‘run’ by depositors on an ADI (or ADIs). The extent of this increased confidence is not quantifiable. In an environment where governments around the world were introducing or expanding deposit insurance arrangements in their own countries (as was the case around the beginning of October 2008), Australian financial institutions could have been disadvantaged in obtaining funds from overseas if the Australian Government had not intervened to protect them (although how badly is not known). Thus, some level of deposit insurance and wholesale funding guarantee was necessary to ensure Australian financial institutions were not at a competitive disadvantage in relation to foreign competitors.

There are also significant costs in taking such an approach. As the guarantee scheme is limited to ‘deposits’, investments which are at least to some degree, substitutable for ADI deposits may be considered, in the presence of a deposit guarantee, to be less attractive to investors. This can (and arguably has) led to or worsened a run on some of these ‘deposit substitutes’. This can also make it difficult for other non-financial firms (i.e. any firms that are not involved in the financial sector) to issue new debt.

17. Senator Bob Brown, speech following Senator the Hon Nick Sherry’s motion that debate on the Guarantee Scheme for Large Deposits and Wholesale Funding Appropriation Bill 2008 be adjourned, *Debates*, Senate, 26 November 2008, p. 63, <http://www.aph.gov.au/hansard/senate/dailys/ds261108.pdf>, accessed on 27 November 2008.

18. Senator Bob Brown, ‘Guarantee Scheme for Large Deposits and Wholesale Funding Appropriation Bill 2008: In Committee’, *Debates*, Senate, 26 November 2008, pp. 80–87, <http://www.aph.gov.au/hansard/senate/dailys/ds261108.pdf>, accessed on 27 November 2008.

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In addition, the provision of a guarantee or insurance against losses (in a wide range of situations) can induce market participants to act in a more risky fashion than they otherwise would. This is known as ‘moral hazard’.¹⁹ In practical terms, the Government has essentially allowed ADIs to ‘piggy back’ off Australia’s sovereign credit rating. This means that ADIs will find it easier and cheaper to obtain funds. Also, in knowing that the Government will meet their liabilities in the event of the ADI’s own failure, or the liabilities of failed counter-parties (in the case of wholesale borrowing), ADIs could lend in a less responsible fashion. The costs of moral hazard as a result of the Guarantee are also unquantifiable.

Financial implications

Expenditure only arises if an institution is unable to meet its obligations under the Guarantee. As stated in the Explanatory Memorandum for the Bill:

... the Government is likely to be able to recover any such expenditure through a claim on the relevant institution. The impact on the Government’s budget would depend on the extent of the institution’s default and its ability to meet the Government’s claim.²⁰

The Senate Standing Committee for the Scrutiny of Bills commented on this issue in the context of **clause 5** of the Bill (see quote from the Committee’s report in the Main Provisions section below).

Main provisions

Clause 3 of the Bill defines the terms ‘Deed of Guarantee’ and ‘Scheme Rules’. The term ‘Deed of Guarantee’ is defined as being ‘the Deed of Guarantee in respect of the Australian Government Guarantee Scheme for Large Deposits and Wholesale Funding executed on 20 November 2008, as that Deed is in force from time to time’, and ‘Scheme Rules’ is defined as the Rules identified in the Deed.²¹ The ‘Scheme Rules’ are identified in the Deed of Guarantee as being those published on the website www.guaranteescheme.gov.au.²² The Deed of Guarantee and associated Scheme Rules

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19. See, for example, LM Hooks and KJ Robinson, ‘Deposit Insurance and Moral Hazard: Evidence from Texas Banking in the 1920s’, *The Journal of Economic History*, Vol. 62, No. 3 (Sep. 2002), pp. 833–853, <http://www.jstor.org/stable/pdfplus/3132558.pdf>, accessed on 1 December 2008.
 20. Guarantee Scheme for Large Deposits and Wholesale Funding Appropriation Bill 2008, Explanatory Memorandum, p. 3.
 21. The text of the Deed is available at: <http://www.guaranteescheme.gov.au/deed/pdf/deed-of-guarantee.pdf>, accessed on 4 December 2008.
 22. The Scheme Rules are available at: <http://www.guaranteescheme.gov.au/rules/>, accessed on 4 December 2008.

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were executed by the Treasurer on 20 November 2008.²³ Neither document is a legislative instrument that is subject to disallowance by either House of Parliament.

Clause 4 states that the Act applies ‘both within and outside Australia’, which means that payments may be made to persons inside or outside Australia, and that moneys borrowed to repay claims under Clause 6 of the Bill may be borrowed from inside or outside Australia.

Clause 5 provides a standing appropriation from the CRF for the dual purposes of paying claims under the Deed of Guarantee and repaying any borrowing (and interest due on any borrowing) under proposed section 6.

In relation to **clause 5**, the Senate Standing Committee for the Scrutiny of Bills made the following comments:

The Committee has determined that, as part of its standard procedures for reporting on bills, it should draw Senators’ attention to the presence in bills of standing appropriations. It will do so under provisions 1(a)(iv) and (v) of its terms of reference, which require the Committee to report on whether bills:

- (vi) inappropriately delegate legislative powers; or
- (vii) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

In scrutinising standing appropriations, the Committee looks to the explanatory memorandum for an explanation of the reason for the standing appropriation. In addition, the Committee likes to see:

- some limitation placed on the amount of funds that may be so appropriated; and
- a sunset clause that ensures the appropriation cannot continue indefinitely without any further reference to the Parliament.

In this case, clause 5 limits the purpose for which the appropriated funds can be used and the Treasurer, in his second reading speech, noted that the appropriation is necessary ‘to cover the very unlikely event of a claim on Government under the guarantee’. Further, the bill ‘will ensure that, from 28 November 2008, any claim under the Guarantee Scheme, however unlikely, will be able to be paid in a timely way’.

23. See, for example, The Hon Wayne Swan MP, Treasurer, ‘Guarantee Scheme for Large Deposits and Wholesale Funding Appropriation Bill 2008: Second Reading’, *Debates*, House of Representatives, 25 November 2008, p. 31, <http://www.aph.gov.au/hansard/reps/dailys/dr251108.pdf>, accessed on 3 December 2008.

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In addition, and in line with its comments in relation to the *Financial System Legislation Amendment (Financial Claims Scheme and Other Measures) Act 2008* in *Alert Digest No. 12 of 2008*, the Committee is mindful of the backdrop of economic uncertainty against which this standing appropriation is considered necessary. The Committee also notes that the standing appropriation has already been agreed to by both Houses of Parliament and is, in any case, designed to counteract exceptional circumstances (should they arise).

*In the circumstances, the Committee makes no further comment on this provision.*²⁴

Clause 6 deals with borrowing. **Proposed section 6** contains a discretionary power that will be required if there are insufficient funds in the CRF to pay claims at the time the claims are to be paid. The ‘Minister’ (which term is not defined in the Act but presumably, applying section 19A of the *Acts Interpretation Act 1901* (Cth), means the Treasurer, or Minister for Finance, or some other Minister having responsibility for Commonwealth financial matters) may ‘borrow’ money on behalf of the Commonwealth for the purpose of paying claims under the Deed of Guarantee, but the borrowing period must not exceed 24 months: **proposed subsections 6(1) and (2)**. Borrowing includes raising money or obtaining credit, whether by dealing in securities or otherwise: **proposed subsection 6(3)**.

Concluding comments

The Bill is part of the Government’s response to the global financial crisis and is intended to encourage confidence in the Australian financial system by guaranteeing large investments and wholesale funding in Australian incorporated banks and ADIs.

There was much criticism from the Opposition about the timing and details of the Guarantee Scheme, but ultimately the Bill was read a third time in each house on the same day as it was introduced.

24. Senate Standing Committee for the Scrutiny of Bills, *Alert Digest*, No. 14 of 2008, 3 December 2008, pp. 14–15, <http://www.aph.gov.au/senate/committee/scrutiny/alerts/2008/d14.pdf>, accessed on 4 December 2008.

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