



Commonwealth Inscribed Stock Amendment Bill 2009

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Commonwealth Inscribed Stock Amendment Bill 2009

Date introduced: 4 February 2009

House: House of Representatives

Portfolio: Treasury

Commencement: On 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

To enable the Treasurer, at his/her discretion, to declare ‘special circumstances’ and increase the limit on the Commonwealth’s standing borrowing authority to the Treasurer from its current limit of \$75 billion to a total of \$200 billion.

Background

The Commonwealth Government currently has a standing authority to issue up to \$75 billion¹ worth of Commonwealth Government Securities (also known as government bonds) at face value.

Commonwealth Government Securities can currently take the form of either Treasury Notes² or Treasury Bonds.³ New securities are auctioned by the Australian Office of Financial Management for a particular ‘coupon’ or ‘face’ value. As at 31 December 2008,

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1. Commonwealth Inscribed Stock Act 1911, section 5.
 2. Short-term maturity securities, used to finance mismatches between the Commonwealth’s outlays and revenue streams within the year that cannot be met by changes in the AOFM’s holdings of term deposits within the Reserve Bank of Australia. The interest on a Treasury note is the difference between the issue value and the ‘par’ or ‘face’ value.
 3. Medium- to long-term maturity securities that carry an annual rate of interest fixed over the life of the security, payable in six monthly instalments on the face value of the security.

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there was \$57.8 billion of Australian-dollar denominated debt on issue (various maturities) and \$7.9 million of foreign currency denominated debt on issue.⁴

The existing legislation specifies that an amount up to \$75 billion (section 5) can be issued. This Bill would allow the Treasurer to declare ‘special circumstances’ and increase the limit by \$125 billion to a total of \$200 billion. As the Bill is written, it allows the Treasurer a great deal of discretion in raising the limit. Essentially, the Treasurer must only be satisfied that there are special circumstances that would justify increasing the limit. The declaration by the Treasurer would not be a legislative instrument (**proposed subsection 5A(6)**) nor would it be subject to judicial review under the *Administrative Decisions (Judicial Review) Act 1977* (the ADJR Act) (**proposed subsection 5A(7)**). The declaration of special circumstances could theoretically be left in place forever and there are no criteria listed for its revocation. It should be noted that the Treasurer cannot declare special circumstances while a previous declaration is in force.

The Senate Scrutiny of Bills Committee noted the declaration’s exclusion from the ADJR Act but made no further comment, simply leaving ‘for the Senate as a whole the question of whether the level of parliamentary scrutiny is sufficient in the circumstances.’⁵

Mr Nigel Ray (Executive Director, Fiscal Group, Treasury), in response to questioning at the Senate Committee inquiry into the Bill, has stated that the increase in the borrowing limit would (roughly) finance the initiatives announced in the *Nation Building and Jobs Plan*⁶ over the forward estimates period, along with meeting other recent Government commitments, such as the equity injection for the special purpose vehicle for commercial property:

Senator RYAN—Are you saying that extra borrowing will be required to actually finance all these deficits or there would be change left over?

Mr Ray—The cumulative deficits I think are \$118 billion, or something around that. There are additional financing requirements, including, for example, to inject equity into the special purpose vehicle for commercial property. There are a number of other, if you like, below the line financing transactions that are around.

4 Data from Australian Office of Financial Management. Accessed from: <http://www.aofm.gov.au/content/borrowing/commonwealth/QuarterlyData/december2008.asp> on 9 February 2009.

5. Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 2 of 2009*, pp. 9–10, <http://www.aph.gov.au/Senate/committee/scrutiny/alerts/2009/d02.pdf> accessed 10 February 2009.

6 For detailed information on the *Nation Building and Jobs Plan*, see: http://www.budget.gov.au/2008-09/content/uefo/download/Combined_UEFO.pdf (pp. 9–26).

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Senator RYAN—But, in shorthand, you see the loan facility of \$200 billion that is being sought from the parliament, raising the requirement, being fully utilised by the announcements in this package and other announcements that have been made to this point—or almost fully utilised; maybe not to the exact ultimate?

Mr Ray—The way that the arithmetic works is that the cumulative deficits are about \$118 billion. There are other gross financing needs that the government has, because of various things it has announced. As things stand, the additional \$125 billion would fund all of those needs.

Senator RYAN—And we have how much outstanding at the moment?

Mr Ray—We have \$58½ billion of Commonwealth government securities on issue now—roughly.⁷

Committee consideration

The Bill has been referred to the Senate Standing Committee on Finance and Public Administration for inquiry and report by 10 February. Details of the inquiry are at http://www.aph.gov.au/Senate/committee/fapa_ctte/stimulus_package/index.htm.

Pros and cons

The existing provisions specify an upper limit of \$75 billion whereas the current Bill is allows the Treasurer considerable flexibility in responding to adverse economic circumstances. The Treasurer is given ultimate discretion over the Commonwealth standing authority to borrow the additional \$125 billion (up to \$200 billion). The decision to increase borrowings is not subject to direct review by the legislature nor as an administrative decision under the ADJR Act.

Financial implications

As stated in the Explanatory Memorandum for this Bill, interest paid on any securities issued will have a negative impact on the fiscal and underlying cash balances.

Main provisions

Schedule 1 -Amendment of the *Commonwealth Inscribed Stock Act 1911*

Item 1 contains the sole amendment to the Act made by the Bill, **new section 5A**.

As previously mentioned, under **new section 5A** the Treasurer need only be ‘satisfied that there are special circumstances that would justify increasing’ the current \$75 billion limit

7 Hansard, Senate Standing Committee on Finance and Administration, Thursday 5 February 2009, p. 31.

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in order to make a declaration that increases that limit to \$200 billion. The meaning of ‘special circumstances’ is not defined. The declaration must be Gazetted (there is no requirement for specific reasons to be given in the declaration), and then tabled within 15 sitting days of Gazettal: **new subsection 5A(2)**. However, it is not a legislative instrument (and thus not disallowable by Parliament): **new subsection 5A(6)**. Nor can it be challenged in the courts under the ADJR Act: **new subsection 5A(7)**.

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