



**Australian Government**

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Australian Government SME Guarantee Scheme

# **Scheme Guarantee**

Dated 8 April 2020

**The Commonwealth of Australia**

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# Contents

<b>Details</b>	<b>1</b>
<b>General terms</b>	<b>2</b>
<b>1 Interpretation</b>	<b>2</b>
1.1 Definitions	2
1.2 General interpretation	2
1.3 Effective Date	3
<b>2 Guarantee</b>	<b>3</b>
<b>3 Claims</b>	<b>3</b>
<b>4 APRA Report and reliance on APRA Report Entries</b>	<b>3</b>
<b>5 Benefit and duration of Guarantee</b>	<b>4</b>
<b>6 Limitations on the Guarantor's liability</b>	<b>4</b>
<b>7 Preservation of Rights</b>	<b>4</b>
<b>8 Amendment and termination</b>	<b>4</b>
<b>9 Notices</b>	<b>5</b>
<b>10 Governing law</b>	<b>5</b>
<b>Signing page</b>	<b>6</b>

# Details

## Date

This Deed of Guarantee is dated the 8th day of April 2020.

## Parties

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This Deed of Guarantee (**Deed**) is made by:

1. **THE COMMONWEALTH OF AUSTRALIA** (the **Guarantor**)  
**IN FAVOUR OF**
2. **THE BENEFICIARIES** being Participating Lenders to whom the Guaranteed Liabilities are from time to time owed (the **Beneficiaries**).

## Context

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This Deed is made in the following context:

- A. The Guarantor has announced an SME Guarantee Scheme (**Scheme**), an Australian Government initiative to be established in accordance with the Act.
- B. Under the Scheme, the Guarantor will provide a guarantee to the Beneficiaries in accordance with this Deed to support SME lending by Participating Lenders in accordance with the rules for the Scheme Rules.
- C. The guarantee provided by the Guarantor under this Deed is subject to the following terms and conditions.

# General terms

## 1 Interpretation

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### 1.1 Definitions

1.1.1 Unless the contrary intention appears, in this Deed terms have the meaning given to them in the Scheme Rules and otherwise the following meanings:

**Beneficiary** means a Participating Lender to whom a Guaranteed Liability from time to time is owed.

**Guaranteed Liability** Means, in respect of a Scheme-Backed Loan, the amount calculated using the following formula:

$$\text{Guaranteed Percentage} \times (A - B)$$

where:

**A** is the Outstanding Principal Amount of the Scheme-Backed Loan, on the date of a Claim Trigger in respect of that Scheme-Backed Loan for an Eligible Borrower, provided for this purpose (i) the Outstanding Principal Amount is limited to a maximum amount of \$250,000 plus any capitalised or accrued interest and any fees (including without limitation, break costs but excluding capitalised enforcement costs) up to the date of the relevant Claim Trigger; and (ii) it shall not include any interest or fees that are capitalised or accrued after 31 December 2023; and

**B** is the remaining book value in the accounts of the Participating Lender of the Scheme-Backed Loan after the Claim Trigger in respect of that Scheme Backed-Loan.

**Scheme Rules** means the “Australian Government SME Guarantee Scheme - Scheme Rules” published by the Guarantor (as in force from time to time).

### 1.2 General interpretation

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this Deed. Unless the contrary intention appears, a reference in this Deed to:

- (a) a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (b) anything (including an amount) is a reference to the whole and each part of it;
- (c) document (including this Deed) includes any variation or replacement of or supplement to it;
- (d) a “**law**” includes common law, principles of equity, decree and any statute or other law made by any parliament (and statutes or other law made by parliament includes any regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it);
- (e) a time of day is a reference to Sydney time;
- (f) the singular includes the plural and vice versa;
- (g) a “**person**” includes an individual, corporation, company, firm, tribunal, undertaking, association, organisation, partnership, joint venture, trust, limited liability company,

unincorporated organisation or government or any agency, instrumentality or political subdivision thereof; in each case whether or not being a separate legal entity;

- (h) a particular person includes a reference to the person's executors, administrators, successors, permitted substitutes (including persons taking by novation) and permitted assigns;
- (i) the word "**including**" when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (j) a notice that must be given within a certain period of days, the day on which the notice is given, and the day on which the thing is to happen, are not to be counted in calculating that period; and
- (k) a notice, report or other communication being provided in writing includes that notice, report or other communication being provided in an electronic form.

### **1.3 Effective Date**

This Deed comes into effect on the Effective Date.

## **2 Guarantee**

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- 2.1.1 Subject to the terms of this Deed, if in respect of a Scheme-Backed Loan a Claim Trigger occurs, the Guarantor irrevocably guarantees to that Beneficiary the payment of an amount equal to the Guaranteed Liability for that Scheme-Backed Loan.
- 2.1.2 The Guarantor undertakes in favour of the Beneficiaries that the Guarantor shall, upon receipt of a Beneficiary's written claim made in accordance with clause 3, pay to the Beneficiary an amount equal to the Guaranteed Liability in respect of that Scheme-Backed Loan.
- 2.1.3 In determining the amount of any payment to be made in order to satisfy its obligations under this clause 2, the Guarantor will be entitled to take into account, set off against, and deduct from, its proposed payment any amounts:
  - (a) already paid by the Guarantor to the relevant Beneficiary in respect of the particular Scheme-Backed Loan; and
  - (b) required to be repaid by the Beneficiary to the Guarantor in accordance with Rule 10.4 ("Reconciliation of Claim Payments") of the Scheme Rules.
- 2.1.4 This Deed is binding and effective though not executed by the Beneficiaries.

## **3 Claims**

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- 3.1.1 A claim by a Beneficiary for payment under this Deed must be in accordance with the Claims Procedures.

## **4 APRA Report and reliance on APRA Report Entries**

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- 4.1.1 Each Participating Lender must submit (and resubmit, as applicable) an APRA Report Entry in accordance with the Scheme Rules.
- 4.1.2 An APRA Report Entry cannot be varied or cancelled once included in an APRA Report unless:
  - (a) the relevant Scheme-Backed Loan is the subject of a Permitted Transfer under the Scheme Rules in which case notice must be given to the Commonwealth of such Permitted Transfer and updates included in each APRA Report thereafter in respect of that APRA Report Entry;
  - (b) the guarantee in respect of the Scheme-Backed Loan is released in accordance with clause 5.1.2 of this Deed;

- (c) it is varied in accordance with the Scheme Rules; or
- (d) the variation is otherwise agreed in writing by the Guarantor and the relevant Beneficiary.

4.1.3 Any variation of an APRA Report Entry will be in accordance with the Scheme Rules, and requirements set out by APRA and this clause 4.

## **5 Benefit and duration of Guarantee**

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5.1.1 Subject to clause 5.1.2, this Deed shall inure to the benefit of each Beneficiary and its assignees with the prior consent of the Commonwealth (such consent not to be unreasonably withheld) under a Permitted Transfer.

5.1.2 An APRA Report Entry will expire, and the guarantee in respect of the Scheme-Backed Loan described in that APRA Report will be released in full without further action or notice, on the earliest of:

- (a) the date the Scheme-Backed Loan is varied, refinanced, restructured, repaid or otherwise discharged (subject to Rule 8 of the Scheme Rules, including the exceptions in that Rule);
- (b) the date of the assignment or transfer of the Scheme-Backed Loan (or any rights, obligations or interests in it) occurs and that assignment or transfer is not a Permitted Transfer; and
- (c) the Final Claim Date;
- (d) the date the Beneficiary ceases to include an APRA Report Entry in respect of that Scheme-Backed Loan in the APRA report or otherwise notifies the Guarantor in writing that the guarantee, in respect of that Scheme-Backed Loan may be released in full.

5.1.3 On the date a Beneficiary notifies the Guarantor in writing that the Guarantee, in respect of a Scheme-Backed Loan, may be released in part, without further action or notice the Guarantee in respect of that Scheme-Backed Loan will be released in part (in the amount notified by the Beneficiary).

## **6 Limitations on the Guarantor's liability**

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6.1.1 The Guarantor will not be liable under this Deed or otherwise:

- (a) in respect of any default and associated Guaranteed Liability if the Guarantor has not received a Claim by a Beneficiary that is made in accordance with the Scheme Rules; or
- (b) in respect of any Claim by a Beneficiary for, or in connection with, a Guaranteed Liability that is the subject of a release of the guarantee under this Deed in accordance with clause 5.1.2.

## **7 Preservation of Rights**

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7.1.1 The obligations of the Guarantor under this Deed are continuing obligations despite any settlement of a claim in respect of a specific Guaranteed Liability and all rights in respect of any such payment at law are preserved.

## **8 Amendment and termination**

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8.1.1 The Guarantor may amend the terms of this Deed at any time at its discretion by written notice of at least 20 Business Days to the Beneficiaries provided that (except insofar as such amendment is required by law) such amendment does not reduce the Guarantor's obligations to the Beneficiaries in a manner which is prejudicial to the interests of the Beneficiaries in respect of any subsisting Guaranteed Liability.

8.1.2 Subject to clause 8.1.3, this Deed continues until the earlier of:

- (a) the date of expiry or termination of the Scheme; and
- (b) the date the Guarantor terminates this Deed by written notice of at least sixty (60) Business Days to the Beneficiaries,

(the **Termination Date**).

8.1.3 If an APRA Report Entry is made before the Termination Date, the guarantee under this Deed in respect of the Guaranteed Liability relevant to that APRA Report Entry will continue to be valid after the Termination Date in accordance with the terms of this Deed until such time as the relevant Guaranteed Liability is released in accordance with clause 5.1.2.

## **9 Notices**

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9.1.1 Any notice or other communication under this Deed shall be given in accordance with the Scheme Rules.

## **10 Governing law**

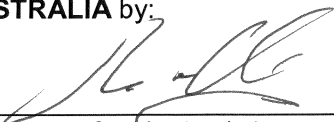
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10.1.1 This Deed is governed by, and shall be construed in accordance with, and any matter related to it is to be governed by, the laws of New South Wales.

Executed as a Deed Poll.

## Signing page

Signed, sealed and delivered for and on behalf of the **COMMONWEALTH OF AUSTRALIA** by:

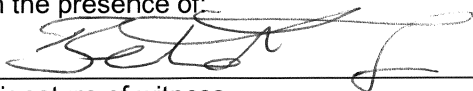


Signature of authorised signatory

JAMES KELLY

Print name

In the presence of:



Signature of witness

Belinda Smith.

Name of witness