



**Australian Government**

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Australian Government SME Guarantee Scheme

## **Scheme Rules**

Dated 8 April 2020 (as amended by version update dated 9 June 2020 and effective on and from 8 July 2020 and as further amended by version update dated 29 January 2021 and effective on and from 1 March 2021)

**The Commonwealth of Australia**

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# General terms

## 1 Interpretation

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### 1.1 Commencement

These Scheme Rules commence on the Effective Date.

### 1.2 Context

These Scheme Rules are made in the following context:

- (a) On 22 March 2020, the Prime Minister, the Hon. Scott Morrison MP, and the Treasurer, the Hon. Josh Frydenberg MP, announced the second stage of the Australian Government's economic plan to cushion the economic impact of the coronavirus known as COVID-19 and help build a bridge to recovery. This included announcement of the establishment of the 'Coronavirus SME Guarantee Scheme' which will ultimately support small and medium enterprises to get through the impact of the coronavirus known as COVID-19 (**Coronavirus Pandemic**).
- (b) The 'Coronavirus SME Guarantee Scheme' will enhance lenders' willingness and ability to provide up to \$40 billion in credit to small and medium enterprises, for instance through overdraft facilities, to support the working capital and other cash flow requirements of small and medium enterprises.
- (c) The Commonwealth of Australia (the **Commonwealth**) has executed a Deed of Guarantee which comes into effect on the Effective Date.
- (d) Under the Deed of Guarantee the Commonwealth guarantees Guaranteed Liabilities.
- (e) These Scheme Rules are referred to in the Deed of Guarantee and govern access to protection under the Deed of Guarantee.
- (f) By signing a Participating Lender Agreement, each Participating Lender agrees to these rules and the Deed of Guarantee.

### 1.3 Definitions

Unless a contrary intention appears, in this document these terms have the following meanings:

**ABN** means the eleven-digit identifier issued by the Australian Business Register which is administered by the Australian Taxation Office.

**Act** means the *Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Act 2020* (Cth) and any rules created under its provisions as amended or supplemented from time to time.

**ADI** means an "authorised deposit-taking institution" (including a Foreign ADI) within the meaning of the *Banking Act 1959* (Cth).

**APRA** means the Australian Prudential Regulation Authority.

**APRA Report** means the APRA reporting form required to be provided by each Participating Lender in respect of each Scheme-Backed Loan in accordance with APRA Reporting Standard ARS 920.0 (*Australian Government Small and Medium Enterprise (SME) Guarantee Scheme Phase 1*) as updated or amended from time to time.

**APRA Report Entry** means each entry in respect of a Scheme-Backed Loan made in the APRA Report last provided by the Participating Lender to the Commonwealth in accordance

with the Scheme Documents to evidence the holding of a Scheme-Backed Loan by a Participating Lender.

**APRA Report Entry Form** has the meaning given in Rule 4.3(a).

**Audit** has the meaning given in Rule 6.1(a) (“Audit Requirements”).

**Borrower Hardship** means, in relation to a borrower and a Participating Lender, circumstances of financial or other borrower hardship for the borrower, as recognised under Relevant Law or Lender Policies, that may affect the borrower’s ability to service a relevant Scheme-Backed Loan and where the Participating Lender is required to assist the borrower as part of a forbearance process.

**Business Day** means a day (excluding Saturday and Sunday) on which banks are generally open in Sydney and Melbourne and which in the case of an individual Participating Lender can be amended by the relevant Participating Lender Agreement.

**Business Group** means in relation to a SME, either:

- (a) any group of two or more related bodies corporate as defined in section 50 of the Corporations Act; or
- (b) any group of two or more businesses which are under common management and control or ownership (directly or indirectly).

**Claim** means a valid claim made by a Participating Lender in respect of a Guaranteed Liability in accordance with the Claims Procedures.

**Claim Trigger** means in relation to a Scheme-Backed Loan, an Impairment Event, that occurs on or after the date of the making of an APRA Report Entry in respect of that Scheme-Backed Loan. For the avoidance of doubt, subject to the terms of the Scheme Documents, multiple Claim Triggers may occur with respect to a single Scheme-Backed Loan.

**Claims Procedures** means the procedures set out in Rule 10 (“Claims Procedures”).

**Commencement Date** means, in relation to a Participating Lender, the date so designated in the applicable Participating Lender Agreement entered into between the Commonwealth and that Participating Lender.

**Commonwealth** means the Commonwealth of Australia.

**Constitutional Corporation** means a corporation to which paragraph 51(xx) of the *Commonwealth of Australia Constitution Act* (Cth) applies.

**Coronavirus Pandemic** has the meaning given to it in Rule 1.2(a) (“Context”).

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Cth Rules** means the *Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Rules 2020* (Cth).

**Effective Date** means 8 April 2020.

**Eligibility Criteria** means the requirements for persons to be Eligible Borrowers, loans to be Eligible Loans, in each case, for the purposes of the Scheme.

**Eligible Borrower** has the meaning given in Rule 3.1 (“Eligible Borrowers”).

**Eligible Loan** has the meaning given in Rule 3.2 (“Eligible Loans”).

**Final Claim Date** has the meaning given in Rule 10.1(d) (“When Claims may be made”).

**Financial Year** means each period of 12 months commencing on 1 July in a calendar year and ending on 30 June in the following calendar year.

**Foreign ADI** means a “foreign ADI” within the meaning of the *Banking Act 1959* (Cth).

**Grace Period** means the six (6) month period commencing on and from the Loan Agreement Date.

**Guarantee** means the Deed of Guarantee in respect of the SME Guarantee Scheme made by the Commonwealth in favour of Participating Lenders effective from the Effective Date and as amended, restated and/or supplemented from time to time.

**Guaranteed Liability** has the meaning given to it in the Guarantee.

**Guaranteed Percentage** means fifty percent (50%).

**Impairment Event** means either:

- (a) the recognition of an impairment to a Scheme-Backed Loan by a Participating Lender or the write-off of a Scheme-Backed Loan in accordance with Lender Policies as consistently applied in relation to all unsecured loans to SMEs of the Participating Lender (to the extent applicable); or
- (b) any write down or forgiveness of the amount of any Scheme-Backed Loan in accordance with a decision of the Australian Financial Complaints Authority.

**Information** means all information, regardless of its form (including any form (whether visible or not) of storage from which the information can be reproduced and any form in which the information is embodied or encoded), relating to or developed in connection with the Scheme and the Scheme Documents, including, in the case of an Eligible Borrower, all information provided in any application materials to a Participating Lender and made available to the Commonwealth at any time before, on or after the date of these Rules.

**Lender Policies** means, in relation to a Participating Lender, the policies and procedures of the Participating Lender which apply in the origination, administration and management of Scheme-Backed Loans and which are including, without limitation, any credit lending, responsible lending, collections and arrears management, Borrower Hardship and enforcement policies.

**Loan Agreement Date** means, in relation to an Eligible Loan and a person, the date that person enters into a loan agreement with the relevant Participating Lender for the Eligible Loan (which may not necessarily be the Loan Utilisation Date).

**Loan Limit** means, in relation to an Eligible Loan, the total Outstanding Principal Amount of the loan that is committed (whether conditionally or unconditionally) to be advanced by the Participating Lender to the Eligible Borrower.

**Loan Utilisation Date** means, in relation to an Eligible Loan, the date of the first utilisation.

**Material Policy Change Report** has the meaning given in Rule 5.1(c)(ii) (“Information and reporting requirements”).

**Non-ADI Lender** means each person which is not an ADI which is designated as a Participating Lender under a Participating Lender Agreement.

**Non-ADI Lender Criteria** means the criteria for the approval of a Non-ADI Lender as a Participating Lender as set out from time to time by the Commonwealth specified in Rule 5.1(c) as amended and notified by the Commonwealth on a website or in writing to prospective Participating Lenders from time to time.

**Outstanding Principal Amount** means in respect of any Scheme-Backed Loan on any date, the total outstanding loan principal amount that is owed under the terms of that Scheme-Backed Loan on that date (including any capitalised interest and any fees (including without limitation, break costs) but exclusive of any capitalised enforcement costs).

**Participating Lender** means each person who:

- (a) is either:
  - (i) an ADI or Non-ADI Lender carrying on business in Australia who is either appropriately licensed under all Relevant Laws to engage in the credit activity of providing funding for working capital purposes to SME borrowers in Australia or who is exempt under such Relevant Laws from such licensing requirements; or
  - (ii) in the case of a Non-ADI Lender, who is approved under a Participating Lender Agreement by the Commonwealth as an eligible lender having regard to the Non-ADI Lender Criteria; and
- (b) has entered into a Participating Lender Agreement.

**Participating Lender Agreement** means an agreement between the Commonwealth and each person who agrees to be a “Participating Lender” for the purposes of the Scheme.

**Participating Lender Sub-Limit** means the amount initially set out in the Participating Lender Agreement as the maximum Loan Limit in aggregate of Eligible Loans of that Participating Lender which may become Scheme-Backed Loans under the Scheme at any time (as amended or updated by agreement in writing with the Commonwealth at the request of the Participating Lender in accordance with Rule 4.2(b)).

**Periodic Loan Data** means the information set out in **Error! Reference source not found.** (“Periodic Loan Data”).

**Permitted Transfer** means, in relation to a Scheme-Backed Loan, an assignment or transfer of that Scheme-Backed Loan made in accordance with Rule 9 (“Transfers of Scheme-Backed Loans”).

**Relevant Laws** means all laws relating to the provision of credit, to SME borrowers in Australia (including any other Commonwealth, State or Territory law that covers conduct relating to credit activities (whether or not it also covers other conduct), but only insofar as it covers conduct relating to credit activities with SME borrowers).

**Representative** means:

- (a) in the case of a Securitisation Vehicle, which is a Participating Lender, any third-party ADI or Non-ADI Lender authorised by that Participating Lender to originate Eligible Loans, or to service Scheme-Backed Loans for the Participating Lender (including any back-up servicer).
- (b) in any other case, any back-up servicer, agent or broker appointed to act for a Participating Lender in connection with Eligible Loans and notified to the Commonwealth in accordance with the Scheme Documents.

**Scheme** means the Australian Government’s SME Guarantee Scheme, established by the Commonwealth in accordance with the Act.

**Scheme-Backed Loan** means an Eligible Loan that is made by a Participating Lender in accordance with the Scheme Documents in respect of which the Participating Lender has made an APRA Report Entry.

**Scheme Documents** means:

- (a) these Rules;
- (b) the Guarantee and each APRA Report; and

as between the Commonwealth and a Participating Lender, the Participating Lender Agreement entered into by that Participating Lender.

**Securitisation Vehicle** means a body corporate or trust which solely carries on the business of securitisation or the issuance of covered bonds in Australia for its Representative.

**Security Interest** means an interest in property provided for by a transaction that, in substance, secures payment or performance of an obligation (without regard to the form of the transaction or the identity of the person who has title to the property).

**SME** has the meaning given to “SME Entity” in the Cth Rules.

**SME Declaration** means a declaration made by a borrower to a Participating Lender covering one or more of the matters specified in Rule 3.3 (“Deemed Satisfaction of Eligibility Criteria”). The declaration may be in written, electronic, verbally recorded or other form, as is reasonable in the circumstances of the Coronavirus Pandemic.

**Specified Rate** means, in respect of any overdue amount and for each day that such amount remains unpaid (inclusive of the day on which it is paid), the general interest charge rate as determined in accordance with section 8AAD of the *Taxation Administration Act 1953* (Cth) on the first day the amount becomes overdue (expressed as daily rate).

**Suspension Event**, in relation to a Participating Lender, has the meaning given in the Participating Lender Agreement entered into by that Participating Lender.

#### 1.4 General interpretation

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this document. Unless the contrary intention appears, a reference in this document 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) the “**Rules**”, a “**Rule**” or a “**Schedule**” is a reference to the terms of or a term in, or a schedule to, these Scheme Rules;
- (d) a document (including this document) includes any variation or replacement of or supplement to it;
- (e) 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);
- (f) “**Australian dollars**” or “**\$**” is a reference to the lawful currency of Australia;
- (g) a time of day is a reference to Sydney time;
- (h) the singular includes the plural and vice versa;
- (i) a “**party**” is a reference to the Commonwealth or a Participating Lender (as applicable);
- (j) 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;

- (k) a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (l) the words "**including**", "**for example**" or "**such as**" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (m) a notice or other communication that must be given within a certain period of days, the day on which the notice or communication is given, and the day on which the thing is to happen, are not be counted in calculating that period; and

a notice, report or other communication being provided in writing includes that notice, report or other communication being provided in an electronic form.

## **2 The Scheme**

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### **2.1 Scheme limit**

APRA Report Entries shall not be accepted from Participating Lenders in respect of Scheme-Backed Loans which exceed their Participating Lender Sub-Limit.

### **2.2 Scheme-Backed Loans**

- (a) Scheme-Backed Loans may only be:
  - (i) offered by a Participating Lender or its Representatives; and
  - (ii) made by a Participating Lender.

A person that is not at the relevant time appointed as a Participating Lender (or who is not a Representative of a Participating Lender) is not authorised by the Commonwealth to give any information or make any representation in connection with the Scheme or the Scheme Documents or the affairs of the Commonwealth.

- (b) Matters relating to the offer and administration of Scheme-Backed Loans by Participating Lenders may be set out under each Participating Lender Agreement and otherwise notified in writing by the Commonwealth to each Participating Lender in respect of Eligible Loans entered into after the date of any such notification.

### **2.3 The Guarantee**

Matters relating to the application of the Guarantee to Scheme-Backed Loans are subject to, and are governed by, the terms of the Guarantee.

## **3 Eligibility Criteria**

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### **3.1 Eligible Borrowers**

To be an **Eligible Borrower** under the Scheme, a person must, as at any Loan Agreement Date:

- (a) have an ABN; and
- (b) be an SME which is an existing or new customer of the Participating Lender.

### **3.2 Eligible Loans**

To be an **Eligible Loan** under the Scheme, a loan may take any form (including one or more overdrafts, working capital, term and revolving facilities) other than a credit card facility and must:

- (a) be a new loan (rather than an extension or increase of an existing loan) made by a Participating Lender which is a Constitutional Corporation directly to an Eligible Borrower under a written agreement;
- (b) not be secured by any Security Interest in favour of a Participating Lender other than:
  - (i) personal guarantees; or
  - (ii) any Security Interest securing all monies owed by the Eligible Borrower to the Participating Lender provided the Participating Lender undertakes not to enforce its Security Interest in respect of any amounts due under a Scheme-Backed Loan;
- (c) be payable only in Australian dollars;
- (d) be:
  - (i) for business purposes of the SME only; and
  - (ii) applied to support current and upcoming cash flow needs (including working capital, liquidity and operating expenditure);
- (e) not be used to refinance any existing financial indebtedness of the Eligible Borrower or any member of its Business Group with the Participating Lender or any third party lender, except as expressly permitted by Rule 8 (“Repayment of Scheme-Backed Loans”);
- (f) be approved and unconditional (subject only to any standard market practice conditions precedent to utilisation) by 30 September 2020;
- (g) have a maximum term ending on a date on or before the first to occur of:
  - (i) the date falling 3 years after the Loan Utilisation Date; or
  - (ii) the date 3 years and 3 months from the Loan Agreement Date;
- (h) be priced taking into account the benefit of the Guarantee, and any other relevant factors from time to time, as determined by the Participating Lender (provided that it is always priced consistently with the remainder of any unsecured SME loan portfolio of the Participating Lender save for the effect of the Guarantee);
- (i) have a Loan Limit (excluding fees (whether accrued or capitalised) and other amounts which may be capitalised after the Loan Agreement Date) that does not exceed \$250,000 when aggregated with the Loan Limits (excluding fees (whether accrued or capitalised) and other amounts which may be capitalised after the Loan Agreement Date) of all other Scheme-Backed Loans to the Eligible Borrower with the same ABN from any Participating Lender;
- (j) not provide for any fees to be payable in respect of committed but undrawn amounts under the loan;
- (k) provide for no payments during the Grace Period (with interest (if any), fees or other amounts payable or otherwise falling due in the Grace Period being capitalised in accordance with the terms of the agreement); and
- (l) have a Loan Agreement Date on or after 23 March 2020.

### 3.3 Deemed Satisfaction of Eligibility Criteria

The criteria for any Eligible Loan specified in the following Rules may each be conclusively evidenced by a SME Declaration obtained by the Participating Lender:

- (a) Rule 3.2(d), concerning loan purpose;
- (b) Rule 3.2(e), concerning existing financial indebtedness, but only in respect of financial indebtedness with any third party lender; and
- (c) Rule 3.2(i), concerning aggregate Loan Limits of all Scheme-Backed Loans.

provided the Participating Lender acts in good faith.

This Rule 3.3 does not limit the rights, power and discretions of the Commonwealth under the Guarantee or at law.

## **4 Sub-Limits and APRA Report Entries**

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### **4.1 Allocation of Participating Lender Sub-Limits**

- (a) Participating Lender Sub-Limits are allocated to each Participating Lender in the applicable Participating Lender Agreement and any changes relating to such allocations, will be as agreed in writing between the parties.
- (b) The Commonwealth will allocate Participating Lender Sub-Limits in its absolute discretion. In relation to ADIs, the Commonwealth will have regard to any recommendations made by APRA regarding prudent business portfolio lending growth rates or any other matters.

### **4.2 Additional allocations**

- (a) If, the Commonwealth gives notice that more Participating Lender Sub-Limits are to be made available to Participating Lenders, any Participating Lender may initiate a request for additional Participating Lender Sub-Limits by written notice to the Commonwealth.
- (b) An additional allocation of Participating Lender Sub-Limits:
  - (i) entitles the Participating Lender to the additional Participating Lender Sub-Limit for a specified period from the day the allocation is confirmed in writing by the Commonwealth;
  - (ii) in all circumstances:
    - (A) may only be made where the Participating Lender has taken reasonable steps to establish that it will utilise the additional allocation; and
    - (B) must not be made by the Participating Lender and, if made, must be immediately withdrawn by the Participating Lender where there is no reasonable expectation that an Eligible Loans will be made in relation to the additional allocation.

### **4.3 APRA Report Entries**

- (a) A Participating Lender must submit an APRA Report Entry in respect of each Eligible Loan made, or to be made, by it in the APRA Report to obtain a benefit under the Guarantee in respect of a Scheme-Backed Loan. For the avoidance of doubt, the making of an APRA Report Entry is not a pre-condition for the Guarantee to apply with respect to a Scheme-Backed Loan provided that an APRA Report Entry is made in respect of such Eligible Loan in good faith within 6 months of the Loan Agreement Date and before any Claim is made.
- (b) An APRA Report Entry may only be made in respect of Eligible Loans.

- (c) If, at any time after an APRA Report Entry has been made in respect of an Eligible Loan, the Participating Lender becomes aware, or has reason to suspect, that such APRA Report Entry is manifestly incorrect (including where the Participating Lender's awareness or suspicion has arisen owing to a notice given to it by the Commonwealth or any other person), the Participating Lender must diligently investigate the relevant circumstances and notify the Commonwealth by resubmitting a corrected APRA Report Entry before any Claim is made in respect of the Scheme-Backed Loan.

#### **4.4 General provisions for APRA Report Entries**

- (a) If an APRA Report Entry:
  - (i) is manifestly incomplete or incorrect;
  - (ii) in the Commonwealth's opinion, acting reasonably, includes manifestly inaccurate, misleading or inconsistent Information; or
  - (iii) is made in circumstances where either:
    - (A) the then applicable Participating Lender Sub-Limit less the value of APRA Report Entries already made in respect of that Participating Lender and the same Eligible Borrower, is less than the Loan Limit on the Eligible Loan in the APRA Report Entry by that Participating Lender; or
    - (B) there is no entitlement for the Participating Lender to submit an APRA Report Entry in respect of the proposed Eligible Loan under the Scheme Documents,

the Commonwealth will notify the Participating Lender accordingly and the Participating Lender will have the opportunity to correct, complete or otherwise amend the APRA Report Entry Form.
- (b) The Commonwealth does not owe any duty or other obligation to a Participating Lender or any other person to review or inspect an APRA Report Entry to ensure it satisfies the Eligibility Criteria. The making of an APRA Report does not relieve a Participating Lender from, nor alter or affect, its responsibilities under the Scheme Documents.
- (c) Each APRA Report Entry evidences the guarantee by the Commonwealth under the Scheme of the Scheme-Backed Loan to which the APRA Report Entry relates, subject to the Scheme Documents including without limitation clause 4.1.2 of the Guarantee.

#### **4.5 Details in APRA Report Entry**

Subject to the requirements set by APRA in relation to an APRA Report, each APRA Report Entry will include the details contained in Schedule 1 ("Required Information") or Schedule 2 ("Periodic Loan Data") (as applicable), subject to minor amendments that may be made by the Commonwealth when finalising the form of APRA Report.

## **5 Reporting**

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### **5.1 Information and reporting requirements**

The Participating Lender (including for the avoidance of doubt, any Non-ADI Lender) must:

- (a) ensure it complies in all respects with the requirements of the APRA Report and any other reporting standard issued by the APRA in connection with the Scheme;
- (b) provide information reasonably requested by the Commonwealth regarding Scheme-Backed Loans, provided the Commonwealth will:

- (i) consult with the Participating Lender in relation to any such request; and
  - (ii) not prior to 1 April 2021 request information where it would require the Participating Lender to divert resources from responding to the Coronavirus Pandemic;
- (c) in relation to Non-ADI Lenders:
- (i) if requested on or before entry into the Participating Lender Agreement, copies of each Lender Policy then in force, its financial statements, group structure, licences and registrations under Relevant laws, funding arrangements and if requested by the Commonwealth, a legal opinion in relation to entry into the Scheme for review and approval by the Commonwealth; and
  - (ii) details of any material changes to be made by it to information provided in paragraph (i) above a **(Material Policy Change Report)** before any such change becomes effective;
- (d) copies of Audit reports prepared in accordance with Rule 6 (“Audit”).

## 5.2 Erroneous information

If the Participating Lender becomes aware of a material error in any of the Information, documents or materials provided by it to the Commonwealth, it shall notify the Commonwealth of the erroneous information (and provide the corrected information to the Commonwealth) as soon as reasonably practicable.

## 6 Audit

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### 6.1 Audit Requirements

- (a) While not contemplated by the Commonwealth at the date of these Scheme Rules, a Participating Lender must if requested by the Commonwealth and following reasonable consultation with the Commonwealth, procure that either an external audit (or, if specified by the Commonwealth, its internal audit team) carries out an audit (**Audit**) of the activities of the Participating Lender under the Scheme.
- (b) The Commonwealth must:
- (i) consult with the Participating Lender in relation to any proposed Audit; and
  - (ii) not prior to 1 April 2021 request an Audit where it would require the Participating Lender to divert resources from responding to the Coronavirus Pandemic;
- (c) Each Audit must:
- (i) test a reasonable statistical sample of Scheme-Backed Loans to provide confidence that:
    - (A) the Eligibility Criteria were satisfied at the date of the last APRA Report Entry and continue to be complied with (including, for the avoidance of doubt, by virtue of Rule 3.3 (“Deemed Satisfaction of Eligibility Criteria”)); and
    - (B) the requirements of Rule 5 (“Reporting”) have been complied with; and
- (d) No later than 20 Business Days after the request referred to in Rule 6.1(a), or such longer period as allowed by the Commonwealth, the Participating Lender must submit a written report to the Commonwealth describing (in reasonable detail) the findings of

the Audit, the audit process undertaken and the evidence upon which the findings are based.

## **6.2 General**

- (a) Any Audit will be based on such audit questions as the Commonwealth may consider to be appropriate.
- (b) Any Audit may be carried out by the Commonwealth, or the Australian National Audit Office or any of their agents, advisors or representatives from time to time.
- (c) If an Audit discloses a significant number of instances of non-compliance (of any of the kinds specified in Rule 4.4(a)):
  - (i) the Commonwealth (or any person acting on behalf of the Commonwealth) may produce a written report to the Participating Lender following that Audit; and/or
  - (ii) the Commonwealth may (in its absolute discretion) act in accordance with clause 8 ("Suspension Events") of the relevant Participating Lender Agreement.

## **7 Scheme Administration**

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- (a) The Commonwealth may, acting reasonably and in consultation with the Participating Lenders or the respective Representatives, establish protocols for administering the Scheme (and notify these to each Participating Lender).
- (b) The Commonwealth may in its discretion make available to each Participating Lender details of:
  - (i) the maximum amount of Scheme-Backed Loans that are then available to be guaranteed under the Scheme by the Commonwealth;
  - (ii) the aggregate balances Participating Lender Sub-Limits that have been allocated to date;
  - (iii) the aggregate balances of APRA Report Entries that have been received to date; and
  - (iv) the number and aggregate balances of Scheme-Backed Loans which are the subject of APRA Report Entries in the name of that Participating Lender in each relevant Financial Year.
- (c) The Commonwealth may have additional information published on a website (or if developed, a scheme portal), including but not limited to:
  - (i) the name of the Participating Lenders; and
  - (ii) any amendment or supplement to the Scheme Documents.
- (d) In accessing any website information provided by the Commonwealth each Participating Lender:
  - (i) is entirely responsible for:
    - (A) managing its own users;
    - (B) any and all actions and activities that occur under any of its user names and passwords;

- (C) maintaining the confidentiality of each of its user names and passwords; and
  - (D) taking reasonable steps to ensure any document uploaded to the Commonwealth on a website is legible and free from any computer virus; and
- (ii) agrees not to use the any website wrongfully or illegally,
- and the Commonwealth is entitled to rely on any act, activity or omission that occurs under a username and password of a Participating Lender.
- (e) To the fullest extent permitted by law, the Commonwealth will not be liable to any person for any loss or damages (including, without limitation, direct or indirect, special, incidental or consequential damages, losses, costs or expenses) arising in connection with:
- (i) the website used to administer the Scheme;
  - (ii) any failure of, or the performance or any error, omission, interruption, defect, delay in operation or transmission, computer virus or line or system failure relating to, any website used to administer the Scheme.
- even if the Commonwealth is advised of the possibility of such damages, losses, costs or expenses.
- (f) To avoid doubt, all declarations, confirmations, representations and warranties made by the Participating Lender on or through a website or other information submitted under the administration protocols (if any) are made to the Commonwealth for the purposes of these Scheme Rules.

## **8 Repayment of Scheme-Backed Loans**

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### **8.1 Prohibition on Variations, Restructures, Refinancings and Repayments of Scheme-Backed Loans**

Unless the circumstances in Rule 8.2 (“Permitted Variations, Restructures, Refinancings and Repayments of Scheme Backed Loans”) or Rule 8.4 (“Refinancing of other Loans”) arise, any existing Scheme-Backed Loan which is:

- (a) varied or restructured such that it:
  - (i) no longer meets the requirements for an Eligible Loan; or
  - (ii) is varied to exceed the Loan Limit; or
- (b) repaid, refinanced or otherwise discharged,

will, to the extent that any of the above occur, cease to be a Scheme-Backed Loan .

### **8.2 Permitted Variations, Restructures, Refinancings and Repayments of Scheme-Backed Loans**

The following events are permitted for the purposes of Rule 8.1 (“Prohibition on Variations, Restructures, Refinancings and Repayments of Scheme Backed Loans”):

- (a) a restructure or variation by agreement between the Participating Lender and the Eligible Borrower which:
  - (i) is undertaken no more than 3 years and 3 months after the Loan Agreement Date;

- (ii) is undertaken, at least in part, to support an Eligible Borrower experiencing financial or payment difficulty, including where relevant Borrower Hardship;
  - (iii) results in an outcome where the Eligibility Criteria would have been met had such restructure been in place on the date of the last APRA Report Entry; and
- (b) a conversion no more than 3 years and 3 months after the initial Loan Agreement Date of the product type provided by the Participating Lender to an Eligible Borrower from one Scheme-Backed Loan to a different form of new Scheme-Backed Loan, so long as the Eligibility Criteria continue to be met in relation to all Scheme-Backed Loans between the Participating Lender and the same Eligible Borrower when considered in totality<sup>1</sup>.

### 8.3 Loan Limits and APRA Report Entries in connection with Variations, Restructures, Refinancings and Repayments of Scheme Backed Loans

- (a) In the case of a Scheme-Backed Loan under which repayments may by its terms be redrawn (a **Revolving Facility**), the APRA Report Entry will continue in respect of the Loan Limit for that Scheme-Backed Loan from the Loan Agreement Date to the date (**Termination Date**) not more than 3 years and 3 months after the Loan Agreement Date in respect of the drawn amount from time to time.
- (b) The amount of any Scheme-Backed Loan which is repaid or otherwise discharged or cancelled (including in accordance with this Rule 8):
- (i) must be notified in the subsequent APRA Report for a Participating Lender; and
  - (ii) will be added back to the available Participating Lender Sub-Limit for that Participating Lender.

### 8.4 Refinancing of other Loans

A Scheme-Backed Loan that is used to refinance:

- (a) a new loan; or
- (b) an increase to any other loan,

is permitted if the new loan or increase is for a purpose consistent with Rule 3.2(d) and is entered into on or after 23 March 2020 but before 23 June 2020.

## 9 Transfers of Scheme-Backed Loans

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### 9.1 Permitted Transfers

A Scheme-Backed Loan (and any rights, obligations or interests in it or in the mortgage securing it) may only be assigned, made subject to a Security Interest by a Participating Lender or a Securitisation Vehicle, or transferred by a Participating Lender to another person where:

- (a) the Commonwealth has given its prior written consent; or
- (b) the assignment or granting of a Security Interest (as applicable) is to a Securitisation Vehicle whereby funding is raised directly or indirectly on the equitable assignment or granting of security over any rights in respect of the Eligible Loan provided the conditions in Rule 9.2 are satisfied; or

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<sup>1</sup> For example, a six month initial overdraft facility or other product, followed by a replacement P&I facility can in principle meet the Eligibility Criteria.



- (c) the transfer is made pursuant to the *Financial Sector (Business Transfer and Group Restructure) Act 1999* (Cth),

provided that no assignment or transfer shall be permitted at any time to any entity or undertaking which carries on the primary business of debt collection in respect of non-performing loans.

## 9.2 Securitisation arrangements

Any Scheme-Backed Loan may be transferred or assigned to an approved Securitisation Vehicle consented to by the Department of Treasury (such consent not to be unreasonably withheld) provided in all circumstances the Department of Treasury may consider, at its discretion and as at the date the request for the consent is made:

- (a) whether a Participating Lender which is not a Securitisation Vehicle will continue to be the lender of record and whether it or a Representative will service the Scheme Backed Loan;
- (b) whether the treatment of that Scheme-Backed Loan by the Participating Lender or such other person differs from the treatment of other loans by that Securitisation Vehicle; and
- (c) whether the internal assurance functions of the Participating Lender and the Commonwealth have full access to the information and documentation relating to the Scheme-Backed Loan in order to assess compliance by the Participating Lender with its obligations under the Scheme.

## 10 Claims Procedures

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### 10.1 When Claims may be made

Subject to Rule 10.4 (“Reconciliation of Claim payments”), a valid **Claim** is made by a Participating Lender in respect of any Guaranteed Liability if:

- (a) a Claim Trigger has occurred in respect of the relevant Scheme-Backed Loan;
- (b) the Claim Trigger has been notified to the Commonwealth in writing and such notification includes details of:
  - (i) the amount of the relevant Guaranteed Liability; and
  - (ii) each APRA Report Entry to which the Claim Trigger relates;
- (c) the Claim is for an amount that is not greater than the Guaranteed Liability for each applicable APRA Report Entry;
- (d) the Claim is made on or before 30 September 2024 (**Final Claim Date**); and
- (e) the Participating Lender provides any information on reasonable request by the Commonwealth establishing that on the date of the last APRA Report Entry, the Eligibility Criteria were satisfied. The Commonwealth will consult with the Participating Lender in making any such request and will prior to 1 April 2021 use all reasonable endeavours to minimise the uses of resources in competition with the Participating Lender’s response to the Coronavirus Pandemic.

### 10.2 Accounts and remittances for Claims

No later than six (6) Months after the Final Claim Date each Participating Lender shall submit to the Commonwealth an account detailing:

- (a) the sum of the following (**C**):

- (i) each Claim made by the Participating Lender and the total amount of such Claims less any payments in respect of such Claims received by the Participating Lender to date; plus
- (ii) the sum of the amounts calculated pursuant to Rules 10.4(f) and 10.4(g); and
- (b) the sum of the amounts calculated pursuant to Rules 10.4(d) and 10.4(e) (**CB**); and
- (c) a calculation of the net amount payable by a party (**N**), where:

$$\mathbf{N = C - CB}$$

such that N is:

- (i) greater than zero, an amount equal to N is payable by the Commonwealth to the Participating Lender; or
- (ii) less than zero, an amount equal to the absolute value of N is payable by the Participating Lender to the Commonwealth.

### 10.3 Payments in respect of valid Claims

- (a) All amounts determined, at the relevant time, to be payable under Rule 10.2 (“Accounts and remittances of Claims”) shall be paid by the relevant party to the other on the date 20 Business Days following the receipt of the account referred in Rule 10.2 (“Accounts and remittances of Claims”) (**Payment Date**) subject to the following:
  - (i) if, in relation to any Claim, the Commonwealth is not satisfied that the requirements of this Rule 10 have been met or are not satisfied as to the determination of any amounts recovered, they may notify the Participating Lender of such fact, in which event the Claim shall be a disputed Claim;
  - (ii) if the Commonwealth notifies the Participating Lender of a disputed Claim on or before the 3<sup>rd</sup> Business Day before the Payment Date, the amount payable shall (if payable by the Commonwealth) be adjusted to the amount which the Commonwealth considers to be payable and (if payable by the Participating Lender) shall remain as calculated by the Participating Lender;
  - (iii) for the avoidance of doubt, nothing in these Rules prevents the Commonwealth notifying the Participating Lender of a disputed Claim under Rule 10.3(a)(i) after payment in relation to the Claim has been made; and
  - (iv) if any party notifies the other in respect of any amount payable by one party to the other under Rule 10.2 (“Accounts and remittances for Claims”) is determined to be different from that actually paid, the parties shall use reasonable endeavours to negotiate in good faith to determine the amount payable and the payment shall be adjusted by the amount agreed between the parties accordingly.
- (b) All payments under this Rule 10.3 by one party to the other shall be made by or on behalf of the paying party to such bank account as the receiving party shall have notified in writing to the paying party on or before the Commencement Date relating to the Participating Lender (or, in the event of a change, notified not less than 5 Business Days before the date on which the relevant payment is due).
- (c) If either party fails to make a payment due by Payment Date, such party shall be liable to pay interest to the other party on the outstanding amount at the Specified Rate for the time being.

#### 10.4 Reconciliation of Claim payments

If:

- (a) following a Claim, an amount is recovered by a Participating Lender (other than under the Guarantee) in respect of the Scheme-Backed Loan to which the Claim relates (including from a third party guarantor) and any of that amount remains after deduction for the following amounts in order:
  - (i) firstly, enforcement costs in respect of that amount;
  - (ii) secondly, the amount of any payments clawed back or set aside under any laws relating to the insolvency or bankruptcy of an Eligible Borrower;
  - (iii) thirdly, amounts applied in discharge of financial indebtedness, otherwise than under a Scheme-Backed Loan, for which it holds a Security Interest; and
  - (iv) fourthly, amounts applied in discharge of unsecured financial indebtedness, otherwise than under a Scheme-Backed Loan, due to the Participating Lender, when applied on a *pari-passu* basis with all Scheme-Backed Loans; andthe remaining amount is:
  - (v) greater than the remaining book value applied in determining the Guaranteed Liability for the purposes of the Guarantee (**Excess Amount**); or
  - (vi) less than the remaining book value applied in determining the Guaranteed Liability for the purposes of the Guarantee (**Deficiency Amount**); or
- (b) prior to a Participating Lender submitting the accounting under Rule 10.2 any payment made by an Eligible Borrower to a Participating Lender under an Eligible Loan is clawed back from the Participating Lender under any laws relating to the insolvency or bankruptcy of that Eligible Borrower, except to the extent already deducted by the Participating Lender in accordance with Rule 10.4(a)(ii) (**Void Amounts**); or
- (c) the Participating Lender or the Commonwealth becomes aware that the Scheme-Backed Loan to which a Claim relates was entered into, or actions or omissions in relation to the Scheme Documents were taken or not taken in respect thereof, as a consequence of any fraudulent or criminal act (including, without limitation, fraudulent misrepresentation) on the part of the Participating Lender, its Representative, officers, employees or agents or any other person acting on behalf of the Participating Lender, in each case as finally determined by a court, an arbitrator or any relevant regulatory authority in Australia,

then that Participating Lender must include in the account provided pursuant to Rule 10.2 ("Accounts and remittances for Claims"):

- (d) an amount equal to the Guaranteed Percentage of the Excess Amount (if any); plus
- (e) an amount paid by the Commonwealth in respect of any Claim pursuant to paragraph (c); less
- (f) an amount equal to the Guaranteed Percentage of any Void Amount; less
- (g) an amount equal to the Guaranteed Percentage of the Deficiency Amount (if any).

and in the case of paragraph (c) above, must reimburse the Commonwealth in full the amount paid by the Commonwealth in respect of the Claim.

## **11 Changes to these Scheme Rules**

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### **11.1 Changes to these Rules by the Commonwealth**

The Commonwealth may, at any time and in its absolute discretion, amend or supplement these Rules by publishing such amendment or supplement on a website or by notice in writing (and the Commonwealth will endeavour to notify each Participating Lender in writing of the publication), provided that such amendment or supplement does not:

- (a) reduce the Commonwealth's obligations to a Participating Lender under the Guarantee or any Scheme-Backed Loan in a manner which is prejudicial to the interests of the Participating Lender without the Participating Lender's prior written consent; or
- (b) have retrospective effect (unless it is to correct a manifest or proven error or an omission of a wholly technical nature and the correction is not (in the Commonwealth's opinion) prejudicial to the rights or interests of the Participating Lender under the Guarantee or subsisting Scheme-Backed Loan).

The Commonwealth shall use reasonable endeavours to consult (in such manner as the Commonwealth sees fit) with the Participating Lenders before making any such amendment or supplement, unless the Commonwealth determines that the proposed amendment or supplement should be implemented as a matter of urgency or for purposes of compliance by the Commonwealth with the requirements of the Act.

### **11.2 Date amendment or supplement becomes effective**

Except where the prior written consent of the Participating Lender is required, an amendment or supplement made in accordance with this Rule 11 does not take effect until the expiry of a period of 20 Business Days following the day on which notice of the amendment or supplement is first notified by the Commonwealth.

### **11.3 Modifications**

The Commonwealth may (in its absolute discretion, and with the written agreement of the Participating Lender), without amending or supplementing these Rules generally, modify the application of these Rules in relation to a particular matter, circumstance or thing, provided in all cases that such modification does not contravene the Act.

## **12 Notices in relation to the Scheme Documents**

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All notices, certificates, claims, demands, consents, approvals, waivers and other communications required to be provided in connection with a Scheme Document:

- (a) must be in the form and delivered as required by the Scheme Document; or
- (b) if the Scheme Document does not include such provisions:
  - (i) must:
    - (A) be made in writing;
    - (B) delivered by hand, prepaid post or email to the address (as appropriate) as notified to the sender by the recipient from time to time;
    - (C) signed or submitted by or sent from the email account of a duly authorised officer of the sender; and
    - (D) marked for attention in the way notified to the sender by the recipient from time to time; and

- (ii) will take effect from the time they are received unless a later time is specified in them, where:
- (A) if submitted, published or otherwise notified, are taken to be received on the date they are so submitted, published or made available;
  - (B) if sent by post, are taken to be received five (5) Business Days after posting (or seven (7) Business Days after posting if sent across international boundaries);
  - (C) if sent by email, are taken to be received when the email is dispatched by the sender to each of the email addresses specified by the recipient, unless, for each of the addresses, the sender receives an automatic notification that the email has not been received (other than an out of office greeting for the named addressee) and it receives the notification before 2 hours after dispatch; or
  - (D) if given by hand, are taken to be received at the time of delivery,
- and, in all cases, if they are received after 5.00pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day.

## **13 General**

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### **13.1 Participating Lender indemnity**

A Participating Lender indemnifies the Commonwealth for any breach by such Participating Lender of the terms of the Scheme Documents attributable to fraud or criminality on the part of that Participating Lender, its Representative, officers, employees or agents or any other person acting on behalf of the Participating Lender, in each case as finally determined by a court, an arbitrator or any relevant regulatory authority in Australia.

### **13.2 Governing law and jurisdiction**

- (a) These Rules are governed by the laws of New South Wales.
- (b) The courts having jurisdiction in New South Wales have non-exclusive jurisdiction to settle any dispute arising out of or in connection with these Rules.
- (c) Notwithstanding Rule 13.2(b), the Commonwealth shall not be prevented from taking proceedings relating to a relevant dispute in any other courts with jurisdiction. To the extent allowed by law, the Commonwealth may take concurrent proceedings in any number of jurisdictions.

### **13.3 Compliance with laws**

Nothing in these Rules requires the Commonwealth to contravene the Act nor any other law in the performance and compliance by it of its obligations under the Scheme Documents.