



Australian Government

Australian Government SME Recovery Loan Scheme
**Amending Deed (SME Recovery Loan
Scheme Guarantee)**

Dated 15 December 2021 and effective on and from the 2022 Scheme Expansion Date

The Commonwealth of Australia

Details

Date

This Amending Deed (SME Recovery Loan Scheme Guarantee) ("**Deed**") is dated 15 December 2021.

Parties

This 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

This Deed is made in the following context:

- A. The Guarantor established the SME Recovery Loan Scheme (**Scheme**), an Australian Government initiative to support the flow of credit to SMEs.

- B. Under the Scheme, the Guarantor has provided guarantees to the Beneficiaries from the Effective Date, as set out in the Deed of Guarantee to support SME lending by Participating Lenders in accordance with the SME Recovery Loan Scheme Rules.

- C. In recognition of the continued economic impacts of the Coronavirus Pandemic, on and from the 2021 Scheme Expansion Date, the Guarantor amended the Scheme Rules to extend the Scheme to provide support to all SMEs adversely economically affected by the Coronavirus Pandemic.

- D. On 13 December 2021, in recognition of the continued economic impacts of the Coronavirus Pandemic, including the Delta variant and the World Health Organisation's recent declaration of the Omicron strain as a variant of concern, the Guarantor announced that the Scheme would be expanded to support Scheme-Backed Loans approved between 1 January 2022 and 30 June 2022 to provide further support to SMEs in dealing with the economic impacts of the Coronavirus Pandemic. These amendments are to be reflected in the Further Amended Scheme Rules.

- E. The amendments to the Deed of Guarantee in this Deed confirm that the Guarantee applies to Scheme-Backed Loans made in accordance with the Further Amended Scheme Rules.

General Terms

1 Interpretation

Unless the contrary intention appears, in this Deed terms have the meaning given to them in the Deed of Guarantee (including by way of incorporation), and otherwise the following meanings:

Deed of Guarantee means the Deed of Guarantee dated 30 April 2021 in respect of the SME Recovery Loan Scheme made by the Guarantor in favour of the Beneficiaries (as amended by the Amending Deed dated 16 September 2021 and effective from the 2021 Scheme Expansion Date).

Further Amended Scheme Rules means the SME Recovery Loan Scheme Rules in respect of the Scheme as amended by the Guarantor on the date of this Deed under and in accordance with Rule 11.2 of the SME Recovery Loan Scheme Rules.

2 Amendment

On and from the 2022 Scheme Expansion Date, the Deed of Guarantee is amended in accordance with the amendments set out in Schedule 1 (where changes appear in underlined text (to show new text) and ~~strike-out text~~ (to show deleted text)):

3 Confirmation

3.1 Confirmation

The Guarantor confirms that, except as provided for in paragraph D (“Context”) and clause 2 (“Amendment”) of this Deed, no other amendments are to be made to the Scheme Documents.

3.2 Scheme Document

This Deed is a Scheme Document for the purposes of the Further Amended Scheme Rules.


4 Governing law

The law in force in New South Wales governs this document. Each party submits to the non-exclusive jurisdiction of the courts of that place.

EXECUTED as a Deed Poll

Signing page

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



Signature of signatory authorised to grant the guarantee in respect of JobKeeper Scheme-Backed Loans, COVID Scheme-Backed Loans and 2022 SMERLS Loans under section 5 of the *Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Act 2020* (Cth)

JAMES DAVID KELLY
Print name

In the presence of:



Signature of witness

JANNING MAREE HORNER
Name of witness


Signature of signatory authorised to grant the guarantee in respect of Recent Flood Scheme- Backed Loans under section 60 of the *Public Governance, Performance and Accountability Act 2013* (Cth)

JAMES DAVID KELLY
Print name

In the presence of:


Signature of witness

JANNING MAREE HORNER
Name of witness

SCHEDULE 1 – Amendments to SME Recovery Loan Guarantee

Parties

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

This Deed is made in the following context:

- A. The Guarantor has announced the establishment of the SME Recovery Loan Scheme (**Scheme**), an Australian Government initiative to support the flow of credit to SMEs.
- B. Under the Scheme, the Guarantor will provide guarantees to the Beneficiaries in accordance with this Deed to support SME lending by Participating Lenders in accordance with the SME Recovery Loan Scheme Rules, being, in relation to JobKeeper Scheme Backed Loans, COVID Scheme-Backed Loans and 2022 SMERLS Loans a guarantee granted under section 5(2) of the *Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Act 2020* (Cth) and separately in relation to Recent Flood Scheme Backed Loans, a guarantee granted under section 60 of the *Public Governance, Performance and Accountability Act 2013* (Cth).
- C. The guarantees provided by the Guarantor under this Deed are subject to the following terms and conditions.

General terms

1 Interpretation

1.1 Definitions

1.1.1 Unless the contrary intention appears, in this Deed terms have the meaning given to them in the SME Recovery Loan 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 ~~JobKeeper~~ Scheme-Backed Loan, ~~a Recent Flood Scheme-Backed Loan or a COVID Scheme-Backed Loan as the case may be~~, the amount calculated using the following formula:

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

where:

Guaranteed Percentage is either (as applicable):

- (i) if the Scheme-Backed Loan is a 2021 SMERLS Loan, the Guaranteed 2021 Percentage; or
- (ii) if the Scheme-Backed Loan is a 2022 SMERLS Loan, the Guaranteed 2022 Percentage;

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 that the Outstanding Principal Amount:

- (i) is limited to a maximum amount of \$5,000,000 plus any capitalised or accrued interest (or amount in the nature of interest) and any fees, charges or other amounts payable (including without limitation, break costs but excluding any capitalised enforcement costs) up to the date of the relevant Claim Trigger; and
- (ii) does not include any interest (or amount in the nature of interest) or fees, charges or other amounts payable that are capitalised or accrued beyond 3 months after the end of the term of the Scheme-Backed Loan; and

B is the remaining book value in the accounts (excluding the guarantee under this Deed) of the Participating Lender of the Scheme-Backed Loan after the Claim Trigger in respect of that Scheme Backed-Loan.

SME Recovery Loan Scheme Rules means the "Australian Government SME Recovery Loan Scheme – Scheme Rules" published by the Guarantor (as in force from time to time).

1.2 General interpretation

1.1.2 Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this Deed.

1.1.3 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.

1.4 Guidance on construction of Deed

1.1.4 As far as possible, all provisions of this Deed will be construed so as not to be void or otherwise unenforceable.

1.1.5 If anything in this Deed is void or otherwise unenforceable then it will be severed and the rest of the Deed remains in force.

1.1.6 This Deed is binding and effective though not executed by the Beneficiaries.

2 Guarantee in respect of JobKeeper Scheme-Backed Loans and COVID Scheme-Backed Loans

- 2.1.1 Subject to the terms of this Deed, if in respect of a JobKeeper Scheme Backed Loan or a COVID 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 JobKeeper Scheme-Backed Loan or that COVID 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 4.1.1 ("Claims"), pay to the Beneficiary an amount equal to the Guaranteed Liability in respect of that JobKeeper Scheme-Backed Loan or that COVID 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 JobKeeper Scheme-Backed Loan or COVID Scheme-Backed Loan; and
 - (b) required to be repaid by the Beneficiary to the Guarantor in accordance with Rule 10.5 ("Reconciliation of Claim payments") of the SME Recovery Loan Scheme Rules.

3 Guarantee in respect of Recent Flood Scheme-Backed Loans

- 3.1.1 Subject to the terms of this Deed, if in respect of a Recent Flood 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 Recent Flood Scheme-Backed Loan.
- 3.1.2 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 4.1.1 ("Claims"), pay to the Beneficiary an amount equal to the Guaranteed Liability in respect of that Recent Flood Scheme-Backed Loan.
- 3.1.3 In determining the amount of any payment to be made in order to satisfy its obligations under this clause 3, 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 Recent Flood Scheme-Backed Loan; and
 - (b) required to be repaid by the Beneficiary to the Guarantor in accordance with Rule 10.5 ("Reconciliation of Claim payments") of the SME Recovery Loan Scheme Rules.

3A Guarantee in respect of 2022 SMERLS Loans

- 3A.1.1 Subject to the terms of this Deed, if in respect of a 2022 SMERLS Loan a Claim Trigger occurs, the Guarantor irrevocably guarantees to that Beneficiary the payment of an amount equal to the Guaranteed Liability for that 2022 SMERLS Loan.
- 3A.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 4.1.1 ("Claims"), pay to the Beneficiary an amount equal to the Guaranteed Liability in respect of that 2022 SMERLS Loan.

3A.1.3 In determining the amount of any payment to be made in order to satisfy its obligations under this clause 3A, 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 2022 SMERLS Loan; and
- (b) required to be repaid by the Beneficiary to the Guarantor in accordance with Rule 10.5 (“Reconciliation of Claim payments”) of the SME Recovery Loan Scheme Rules.

4 Claims

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

5 APRA Report and reliance on APRA Report Entries

5.1.1 Each Beneficiary must submit (and resubmit, as applicable) an APRA Report Entry in accordance with the SME Recovery Loan Scheme Rules.

5.1.2 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 SME Recovery Loan Scheme Rules, in which case notice must be given to the Guarantor 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 6 (“Benefit and duration of Guarantee”) of this Deed;
- (c) it is varied in accordance with the SME Recovery Loan Scheme Rules; or
- (d) the variation is otherwise agreed in writing by the Guarantor and the relevant Beneficiary.

5.1.3 Any variation of an APRA Report Entry must be in accordance with:

- (a) the SME Recovery Loan Scheme Rules;
- (b) requirements set out by APRA; and
- (c) this clause 5.

6 Benefit and duration of Guarantee

6.1.1 Subject to this clause 6, this Deed shall inure to the benefit of each Beneficiary and its assignees with the prior consent of the Guarantor (such consent not to be unreasonably withheld) under a Permitted Transfer.

6.1.2 An APRA Report Entry will expire, and the guarantee in respect of the relevant 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 (except where the variation, refinancing, restructuring or

repayment is permitted by Rule 8 ("Repayment of Scheme-Backed Loans") of the SME Recovery Loan Scheme Rules);

- (b) the date the assignment or transfer of the Scheme-Backed Loan (or any rights, obligations or interests in it) occurs, where that assignment or transfer is not a Permitted Transfer;
 - (c) the Final Claim Date; and
 - (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.
- 6.1.3 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).
- 6.1.4 If, after an Interest Rate Grace Period, a Beneficiary charges or endeavours to charge an interest rate which is greater than the Interest Rate Cap in respect of a Scheme-Backed Loan:
- (a) the relevant APRA Report Entry will expire; and
 - (b) the guarantee in respect of the relevant Scheme-Backed Loan described in that APRA Report will be released in full without further action or notice, on and from the date the Interest Rate Cap is exceeded.
- 6.1.5 In circumstances where clause 6.1.4 arises, if a Beneficiary has not charged an interest rate greater than the Interest Rate Cap in respect of other Scheme-Backed Loans provided by it, then the APRA Report Entries in respect of those other Scheme-Backed Loans will not expire and the benefit of the guarantee under this Deed will continue in relation to those Scheme-Backed Loans.

7 Limitations on the Guarantor's liability

- 7.1.1 The Guarantor will not be liable under this Deed or otherwise:
- (a) in respect of any Guaranteed Liability if the Guarantor has not received a Claim by a Beneficiary that is made in accordance with the SME Recovery Loan 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 clauses 6.1.2, 6.1.3 (to the extent a Claim has been released in part) or 6.1.4 ("Benefit and duration of Guarantee").

8 Preservation of Rights

- 8.1.1 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.

9 Amendment and termination

- 9.1.1 The Guarantor may amend the terms of this Deed at any time at its discretion by written notice of at least 10 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.

9.1.2 Subject to clause 9.1.3, 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 30 Business Days to the Beneficiaries,

(the **Termination Date**).

9.1.3 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 6.1.2 or clause 6.1.4 ("Benefit and duration of Guarantee").

10 Notices

10.1.1 Any notice or other communication under this Deed must be in accordance with the SME Recovery Loan Scheme Rules.

11 Governing law

11.1.1 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.