



Commonwealth Guarantees (Charges) Act 1987

No. 10 of 1987

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RESPECT OF SOME BORROWINGS AND RAISINGS OF MONEY**



Commonwealth Guarantees (Charges) Act 1987

No. 10 of 1987

**An Act to permit the imposition of charges for certain
guarantees given by the Commonwealth**

[Assented to 1 April 1987]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title

1. This Act may be cited as the *Commonwealth Guarantees (Charges) Act 1987*.

Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Interpretation

3. (1) In this Act, "securities" includes stocks, debentures, debenture stocks, notes, bonds, promissory notes, bills of exchange and similar instruments or documents.

(2) A reference in this Act to dealing with securities includes a reference to—

- (a) creating, executing, entering into, drawing, making, accepting, endorsing, issuing, discounting, selling, purchasing or re-selling securities;
- (b) creating, selling, purchasing or re-selling rights or options in respect of securities; and
- (c) entering into agreements or other arrangements relating to securities.

(3) For the purposes of the application of this Act to a body (other than the Australian Industry Development Corporation or a body referred to in item 5 or 12 of Part A of the Schedule or item 2, 3 or 4 of Part C of the Schedule)—

- (a) the issue by the body of an instrument acknowledging a debt in consideration of—

- (i) the payment or deposit of money; or
 - (ii) the provision of credit,

otherwise than in relation to a transaction that is in the ordinary course of the day-to-day operations of the body shall be deemed to be a raising by the body, otherwise than by borrowing, of an amount of money equal to the amount of the money paid or deposited or the value of the credit provided, as the case may be; and

- (b) the obtaining of credit by the body otherwise than in relation to a transaction that is in the ordinary course of the day-to-day operations of the body shall be deemed to be a raising by the body, otherwise than by borrowing, of an amount of money equal to the value of the credit so obtained.

(4) For the purposes of the application of this Act to a body referred to in item 5 or 12 of Part A of the Schedule—

- (a) the issue by the body of instruments acknowledging a debt in consideration of the payment or deposit of money or of the provision of credit; or
- (b) the obtaining of credit by the body,

shall, to the extent of the amount of that money or of that credit, as the case may be, be deemed to be a borrowing by the body.

(5) For the purposes of the application of this Act to the Australian Industry Development Corporation or a body referred to in item 2, 3 or 4 of Part C of the Schedule, the taking of deposits of money shall, to the extent of the amount of those deposits, be deemed to be a borrowing by the body.

Application and operation of Act

4. (1) This Act applies to borrowings of money otherwise than from the Commonwealth, and raisings of money otherwise than by borrowing, undertaken on or after 1 July 1986 by a body referred to in the Schedule,

including, without limiting the generality of the foregoing, such a borrowing or raising of money—

- (a) by dealing with securities; or
- (b) made in whole or in part in a currency other than Australian currency.

(2) A determination made pursuant to section 5 or 6 within 3 months after the day on which this Act receives the Royal Assent may be expressed to take effect from a day earlier than the day on which the determination is made, not being a day earlier than 1 July 1986.

(3) The regulations may amend the Schedule (whether by inserting or omitting a body or otherwise) and may make any necessary consequential amendments of any provision of this Act, and any such amendment has effect in respect of a borrowing or raising of money undertaken after the amendment comes into operation.

Charges for Commonwealth guarantees provided pursuant to a law of the Commonwealth

5. (1) Where—

- (a) a body referred to in Part A of the Schedule borrows or raises money and the Treasurer, pursuant to a law of the Commonwealth—
 - (i) enters into a contract, on behalf of the Commonwealth, guaranteeing the repayment or payment of money by the body in connection with the borrowing or raising; or
 - (ii) makes a determination by virtue of which, by force of a law of the Commonwealth, the Commonwealth guarantees the repayment or payment of money by the body in connection with the borrowing or raising; or
- (b) the Australian Industry Development Corporation borrows or raises money and its Chief Executive, pursuant to sub-section 35 (2) of the *Australian Industry Development Corporation Act 1970*, has made a determination by virtue of which, by force of sub-section 35 (1) of that Act, the Commonwealth guarantees the payment of money by the Corporation in connection with the borrowing or raising,

the Treasurer may make a determination in writing (in this section referred to as the “charge determination”) requiring payment of a charge to the Commonwealth for the guarantee.

(2) The charge—

- (a) is payable in respect of the amount borrowed or raised (excluding interest) or, if the charge determination so provides, in respect of such part of that amount as is provided in the charge determination;
- (b) shall be calculated in the manner provided in the charge determination;
- (c) shall not exceed 0.5% per annum of the amount in respect of which the charge is payable;

- (d) is payable at the times and in the manner provided in the charge determination; and
- (e) is recoverable, together with any interest owing under paragraph (4) (b), in a court of competent jurisdiction as a debt due to the Commonwealth.

(3) Without limiting the generality of paragraph (2) (b), the charge determination may provide that the charge shall be calculated on the basis of the amount of the borrowing or raising that is outstanding at such times as are provided in the charge determination.

(4) The charge determination—

- (a) may require a specified officer of the body to provide the Treasurer, at specified times, with a statement certifying—
 - (i) the amount of the charge payable by the body under the charge determination at a specified time;
 - (ii) the amount of the borrowing or raising from which the amount of the charge was calculated; and
 - (iii) such other particulars of the borrowing or raising relevant to the calculation of the charge as are required by the charge determination; and
- (b) may stipulate that interest (including interest on any interest) is payable, as provided in the charge determination, on any amount of charge that is not paid by the day on which it is due.

Charges for Commonwealth guarantees arising automatically by force of a law of the Commonwealth

6. (1) The Treasurer may make a determination in writing requiring payment of a charge to the Commonwealth by a body referred to in Part C or D of the Schedule in respect of borrowings and raisings of money by the body in connection with which the repayment or payment of money is, by force of a law of the Commonwealth, automatically guaranteed by the Commonwealth.

(2) The charge—

- (a) is payable in respect of all amounts borrowed or raised by the body (excluding interest) in connection with which the repayment or payment of money is, by force of a law of the Commonwealth, automatically guaranteed by the Commonwealth or, if the determination so provides, in respect of such of those borrowings or raisings, or such parts of such of those borrowings or raisings, as are provided in the determination;
- (b) in the case of a body referred to in item 2, 3 or 4 of Part C of the Schedule—may be payable only in respect of borrowings or raisings that, in the opinion of the Treasurer, are overseas borrowings or overseas raisings, as the case may be;
- (c) shall be calculated in the manner provided in the determination;

- (d) shall not exceed 0.5% per annum of the amount in respect of which the charge is payable;
- (e) is payable at the times and in the manner provided in the determination; and
- (f) is recoverable, together with any interest owing under paragraph (4) (b), in a court of competent jurisdiction as a debt due to the Commonwealth.

(3) Without limiting the generality of paragraph (2) (c), the determination may provide that the charge shall be calculated on the basis of the amounts of the borrowings and raisings in respect of which the charge is payable that are outstanding at such times as are provided in the determination.

(4) The determination—

- (a) may require a specified officer of the body to provide the Treasurer, at specified times, with a statement certifying—
 - (i) the amount of the charge payable by the body under the determination at a specified time;
 - (ii) the amounts of borrowings and raisings from which the amount of the charge was calculated; and
 - (iii) such other particulars of borrowings and raisings by the body relevant to the calculation of the charge as are required by the determination; and
- (b) may stipulate that interest (including interest on any interest) is payable, as provided in the determination, on any amount of charge that is not paid by the day on which it is due.

Regulations

7. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Special transitional provision for the Australian Industry Development Corporation

8. Notwithstanding that the Australian Industry Development Corporation is listed in Part B of the Schedule, it shall be deemed, in relation to borrowings and raisings of money undertaken by it before 8 October 1986, to have been listed in Part C of the Schedule rather than in Part B.

SCHEDULE

Section 4

PART A

BODIES FOR WHICH COMMONWEALTH GUARANTEES MAY BE PROVIDED BY THE TREASURER IN RESPECT OF THE BORROWING OR RAISING OF MONEY

1. AUSSAT Pty. Ltd., being a company incorporated on 6 November 1981 under the law in force in the Australian Capital Territory
2. AUSSAT Finance Ltd., being a company incorporated on 14 August 1985 under the law in force in the Australian Capital Territory
3. Australian Capital Territory Electricity Authority
4. Australian National Airlines Commission
5. Any body corporate that is a wholly-owned subsidiary of the Australian National Airlines Commission for the purposes of sub-section 32D (1) of the *Australian National Airlines Act 1945*
6. Australian National Railways Commission
7. Australian Postal Commission
8. Australian Shipping Commission
9. Australian Telecommunications Commission
10. Commonwealth Serum Laboratories Commission
11. Federal Airports Corporation
12. Any body corporate that is a wholly owned subsidiary of the Federal Airports Corporation for the purposes of sub-section 52 (1) of the *Federal Airports Corporation Act 1986*
13. Health Insurance Commission
14. Housing Loans Insurance Corporation
15. Overseas Telecommunications Commission (Australia)
16. Pipeline Authority
17. Qantas Airways Limited
18. Snowy Mountains Engineering Corporation
19. Snowy Mountains Hydro-electric Authority

PART B

BODY FOR WHICH COMMONWEALTH GUARANTEE ARISES BY FORCE OF A LAW OF THE COMMONWEALTH IN RESPECT OF SUCH BORROWINGS AND RAISINGS OF MONEY AS THE BODY DETERMINES

1. Australian Industry Development Corporation

PART C

BODIES FOR WHICH COMMONWEALTH GUARANTEES ARISE AUTOMATICALLY BY FORCE OF A LAW OF THE COMMONWEALTH IN RESPECT OF ALL BORROWINGS AND RAISINGS OF MONEY

1. Australian Trade Commission
2. Commonwealth Bank of Australia
3. Commonwealth Development Bank of Australia
4. Commonwealth Savings Bank of Australia

SCHEDULE—continued

PART D

**BODIES FOR WHICH COMMONWEALTH GUARANTEES ARISE
AUTOMATICALLY BY FORCE OF A LAW OF THE COMMONWEALTH IN
RESPECT OF SOME BORROWINGS AND RAISINGS OF MONEY**

1. Australian Capital Territory Electricity Authority
 2. Australian Postal Commission
 3. Australian Telecommunications Commission
 4. Snowy Mountains Hydro-electric Authority
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*[Minister's second reading speech made in—
House of Representatives on 14 November 1986
Senate on 25 February 1987]*