



Commonwealth Securities and Investment Legislation Amendment Bill 2008

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Law and Bills Digest Section

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Commonwealth Securities and Investment Legislation Amendment Bill 2008

Date introduced: 4 June 2008

House: House of Representatives

Portfolio: Treasury

Commencement: On the day after Royal Assent.

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The Bill amends three Commonwealth securities and investment Acts to empower the Treasurer to borrow money on behalf of the Commonwealth by issuing stock in Australian currency and to invest public money in authorised investments. The Bill also expands the types of assets that are acceptable as collateral in Commonwealth securities lending arrangements.

Background

Basis of policy commitment

The Bill is part of a 'suite of initiatives' that is designed by the Rudd Government to ensure 'the efficient operation of Australia's financial markets'.¹ Particularly, the Bill paves the way for the issuance of a further \$25 billion worth of Commonwealth Government Securities (CGS), especially (fixed coupon) Treasury bonds. Treasury bonds are 'medium to long-term debt securities that carry an annual rate of interest fixed over the life of the security, payable six monthly'.² Currently, about \$50 billion worth of Treasury

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1. The Hon Wayne Swan, MP, Treasurer, 'Increasing Commonwealth Government Securities to bolster Australia's financial markets', *Media Release*, No. 58 of 2008, 20 May 2008.
 2. Australian Office of Financial Management, 'Debt Issuance: Background', http://www.aofm.gov.au/content/debt_issuance.asp, accessed on 8 June 2008.

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bonds are on issue—it has been around this level for the past five years.³ The Government plans to add ‘around \$5 billion’ in 2008–09.⁴

The Government referred to the issuance of Treasury bonds in the Budget 2008–09, saying:

Over recent years, persistent fiscal surpluses have removed the need to borrow for budget funding purposes. However, Treasury Bonds have continued to be issued in order to maintain an active Treasury Bond market and to support the market in Treasury Bond futures contracts. These two markets are used in the pricing and hedging of a wide range of financial instruments and in the management of interest rate risks by market participants. They thereby contribute to a lower cost of capital in Australia. Without them, the financial system would be less diverse and less resilient to the shocks that can emerge from time to time either from domestic sources or from overseas. As demonstrated over recent months, the markets for Treasury Bonds and Treasury Bond futures contracts provided important anchors for Australia's financial system as it responded to the impact of credit and liquidity concerns sparked off by the sub-prime housing crisis in the United States of America.⁵

In a Media Release dated 20 May 2008, the Treasurer, the Hon Wayne Swan MP detailed the importance of Treasury bonds to Australian financial markets, and the changes to collateral that will be accepted by the Australian Office of Financial Management (AOFM) in Commonwealth securities lending arrangements:

... The Australian Government's budget surpluses mean that we do not need to issue securities to finance spending, but Treasury Bonds play a special role by providing the lowest-risk, highest-quality instrument in financial markets.

Because they are risk-free, Australian Government Treasury Bonds are the benchmark used by participants in Australia's financial markets to set interest rates beyond the short end of the yield curve, including in the bond futures market. The Australian Government is committed to ensuring that its bonds can play this role efficiently.

The existence of an active and efficient bond market alongside the banking system strengthens the robustness of Australia's financial system and reduces its vulnerability to adverse shocks.

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3. The Hon Chris Bowen MP, Assistant Treasurer, ‘Second reading speech: Commonwealth Securities and Investment Legislation Amendment Bill 2008’, House of Representatives, *Debates*, 4 June 2008, p. 2. An electronic copy is available at <http://www.aph.gov.au/hansard/reps/dailys/dr040608.pdf>, accessed on 8 June 2008.
 4. Swan, op. cit.
 5. Budget Paper No. 1, Statement 7: Asset and Liability Management, Budget 2008–09, http://www.aph.gov.au/budget/2008-09/content/bp1/html/bp1_bst7-03.htm, accessed on 8 June 2008.

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To maintain the important benchmarking role played by Government bonds and ensure that the Government has the flexibility it needs to maintain liquidity in the bond spot and futures market, we will provide legislative authority for an increase in future CGS issuance of up to \$25 billion.

...

I am also announcing changes to the operation of the securities lending facility operated by the AOFM. This facility supports the CGS market by allowing market participants to access bonds that are in temporary short supply. This helps smooth the operation of the market. Under the changed arrangements, the facility will be permitted to accept a wider range of assets as collateral. The change will allow the AOFM to accept similar securities to those accepted as collateral by the Reserve Bank of Australia in its market operations.⁶

Australian Office of Financial Management

The AOFM is a 'specialist Australian Government agency primarily responsible for management of Australian Government debt'.⁷ According to its website:

The AOFM's debt management activities encompass the issue of debt securities such as Treasury Bonds and Notes and the execution of debt related derivative transactions such as interest rate swaps. The AOFM's activities also include management of the Australian Government's cash balance, financial risk management and compliance activities, financial reporting and portfolio administration.

Over recent years, the AOFM's debt issuance activities have been directed towards maintaining efficient Treasury Bond and Treasury Bond futures markets rather than to meet Government budget funding requirements.⁸

In May 2008, the AOFM noted that in the 2008–09 financial year, 'Treasury Bond issuance is planned to total \$10.3 billion' (being the \$5.3 billion announced in the Budget 2008–09 plus a further \$5 billion), adding that:

Treasury Bond issuance is targeted at maintaining liquid and efficient Treasury Bond and Treasury Bond futures markets. The volume and timing of Treasury Bond issuance accordingly takes account of the need to have an appropriate range of

6. Swan, op. cit.

7. Australian Office of Financial Management, 'About the AOFM: Role and Function', <http://www.aofm.gov.au/content/role.asp>, accessed on 8 June 2008.

8. *ibid.*

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Treasury Bonds available for inclusion in the bond baskets for Treasury Bond futures contracts.⁹

In the Second reading speech for the Bill, the Assistant Treasurer, the Hon Chris Bowen MP, reiterated these views, saying that the Bill 'will strengthen the efficient operation of the Treasury bond market by increasing Treasury bond issuance and extending the collateral accepted for securities lending of these bonds'. Mr Bowen went on to say that the Bill 'also provides for the safe investment of the proceeds of increased issuance in conjunction with management of the government's cash balances, using a wider range of high quality investment instruments than at present'.¹⁰ Particularly in relation to the matter of Treasury Bonds, the Assistant Treasurer said:

Over recent months, demand for the bonds has intensified due to the strength of the Australian economy and exchange rate, together with global credit concerns that have increased the demand for high-quality securities.

As a result, the Treasury bonds available on issue have become more tightly held and it has become more difficult for dealers to obtain some lines of stock and maintain an active market in them.

Some increase in their issuance is needed for the market to continue to operate effectively.¹¹

On the subject of the securities lending facility operated by the AOFM, the Assistant Treasurer noted that the AOFM requires collateral (in the form of other CGS) from financial market participants wishing to borrow Treasury bonds for short periods of time. Mr Bowen noted that the types of assets that will be accepted by the AOFM as collateral after the passage of the Bill are the same sorts of assets that are currently accepted by the Reserve Bank of Australia as collateral in its market operations. He said:

[The current collateral required by the AOFM] has constrained access to the facility when such securities have been in short supply.

Following consultations with financial market participants the government has decided to allow a wider range of collateral to be accepted by the facility.

At present, the securities lending facility operates using the Treasurer's investment powers under the Financial Management and Accountability Act.

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9. In relation to the calculation of the figure \$10.3 billion, see Bowen, op cit; for the quotation about Treasury Bond issuance, see Australian Office of Financial Management, 'Issuance Calendar: Treasury Bonds', updated 20 May 2008, <http://www.aofm.gov.au/content/borrowing/calendar.asp>, accessed on 8 June 2008.
 10. Bowen, op. cit.
 11. *ibid.*

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The bill provides a separate authority for the Treasurer to enter into securities lending arrangements for the loan of CGS.

The bill requires that collateral must be received for any securities lending and lists collateral that may be accepted, including cash and investment grade securities.

The bill requires the Treasurer to give a direction on the kinds of collateral that may be taken from within the categories listed in the bill.

The list is sufficiently wide to cover the same assets as the Reserve Bank of Australia currently accepts as collateral in its market operations.¹²

Position of significant interest groups/press commentary

Market participants have long craved an increase in the level of issuance of Treasury bonds. Particularly, they lobbied the Government earlier this year ‘as the credit crunch exacerbated a tight supply’ of existing bonds.¹³ As financial journalists, Rachel Pannett and Iain McDonald, explain:

Australia's government has run large budget surpluses since the mid-1990s, allowing it to reduce the value of its bonds on issue from a peak of nearly \$96 billion in 1997.

But a lack of liquidity has bedevilled the market for many years as the size of the market remained static. The credit crunch encouraged a rush by investors for risk-free assets, such as government bonds, further straining supply.

Foreign investors hold about 65 per cent of all government bonds on issue, leaving a relatively small amount for Australian fund managers and banks, which use the bonds for, among other things, collateral in their dealings with the central bank.

Another financial journalist, Philip Baker has provided further history and background about the Australian bond market and the need for increased issuance of Treasury bonds, saying:

The supply of fresh commonwealth government bonds is in line with expectations, at \$5.3 billion, despite a plea from the Australian Financial Markets Association to the commonwealth to increase its supply of bonds, and includes a new June 2014 bond. About \$5 billion is set to mature next year, and this will keep the level of outstanding

12. *ibid*, p. 3. See also Australian Office of Financial Management, ‘Activities: Securities Lending Facility’, <http://www.aofm.gov.au/content/borrowing/securities.asp>, accessed on 8 June 2008.

13. Rachel Pannett and Iain McDonald, ‘Swan bolsters bond supply by 50pc’, *The Australian*, 21 May 2008, p. 37.

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bonds at \$50 billion, which is considered by experts as the minimum needed to keep the market efficient.

The bond market has been shrinking because of the run of budget surpluses since the Howard government first came to office in 1996.

The volume of tradable bonds on issue has halved from \$114 billion in 1997 to \$50 billion as government debt has been repaid.

In keeping with the previous government's pledge to ensure that the bond market remains viable, this year's budget also notes that, in recent months, the markets for government bonds and bond futures contracts have provided important anchors for Australia's financial system as it responded to the impact of credit and liquidity concerns sparked by the sub-prime housing crisis in the United States.¹⁴

Paul Bide, head of debt markets at Macquarie Bank and Chairman of the Australian Financial Market Association's market governance committee approved of the Government's increase in the supply of Treasury bonds and the consequent effect on liquidity, saying:

This is what we asked for. ... The increase in government bond issuance, the wider stock-switching powers of the AOFM and [the related issue of] the dropping of the interest withholding tax on semi-government bonds [issued by State Governments] will all help.¹⁵

Similarly, Stephen Halmarick, Citi's co-head, economic and market analysis, said that these announcements 'are a significant positive for Australia's financial markets and very much in line with the 'spirit' of the decision in the 2003-04 budget to retain the CGS market and ensure a "liquid and efficient" market'.¹⁶

In relation to the fall of bond futures prices and the rise in government bond yields which followed the announcement of the increased issuance of Treasury bonds, Damien McColough, chief interest rate strategist at Westpac Institutional Bank, said 'it was a "trade off" between the bearish implications of extra supply and the expected extra offshore buying demand for Australian assets arising from the new tax treatment of semi-government bonds'.¹⁷

14. Philip Baker, 'States will benefit from funds', *Australian Financial Review*, 15 May 2008, p. 12.

15. *ibid.*

16. Philip Baker, 'Tax break boosts government bonds', *Australian Financial Review*, 21 May 2008, p. 25.

17. Pannett and McDonald, *op. cit.*

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Coalition position

The Coalition has no immediately ascertainable position on this issue as at the date of writing. However, according to the Treasurer's Media release issued on 20 May 2008:

The Government's decision to increase CGS issuance is consistent with the decision of the [Howard Government], announced in the 2003-04 Budget, to maintain the CGS market. In announcing that decision, the [Howard Government] noted that 'this will entail ensuring sufficient CGS remains on issue to support the Treasury bond futures market'.¹⁸

This position is confirmed by the newspaper articles noted above.

Financial implications

The Government intends that the measures contained in the Bill will be cost neutral. According to a Media Release issued by the Treasurer on 20 May 2008:

The increase in CGS issuance will not adversely affect the Government's net financial worth since the increase in CGS will be fully offset by an increase in financial assets on the Government's balance sheet.

...

As a result, the increase in borrowings is not expected to involve any net cost to Government. The new investments would continue to be low risk.¹⁹

Main provisions

Part 1—Amendments

Part 1 of Schedule 1 to the Bill contains proposed amendments to three Commonwealth securities and investment Acts.

Proposed amendments to the *Commonwealth Inscribed Stock Act 1911* (Cth)

Items 1–5 of Schedule 1 contain proposed amendments to the *Commonwealth Inscribed Stock Act 1911* (Cth) (the Inscribed Stock Act).

18. Swan, op. cit. See also Budget Paper No. 1, Statement 7: Budget Funding, Budget 2003–04, <http://www.budget.gov.au/2003-04/bp1/html/bst7.htm>, accessed on 8 June 2008.

19. Swan, op. cit.

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Item 1 inserts **proposed subsection 3A(1)**, which gives the Treasurer authority to borrow money on behalf of the Commonwealth by issuing stock in Australian currency. **Proposed subsection 3A(2)** states that nothing in **proposed subsection 3A(1)** affects the power of the Treasurer to borrow money on behalf of the Commonwealth, or to issue stock or securities under the Inscribed Stock Act or any other Act.

Item 2 amends subsection 4(1) of the Inscribed Stock Act by inserting **proposed paragraph 4(1)(d)**. The current text of subsection 4(1) is as follows:

- (1) The Governor-General may, by writing signed by him or her, create stock, Treasury Bonds, Treasury Notes or other prescribed securities from time to time for:
 - (a) raising money by way of loan; or
 - (b) converting any loan raised by the Commonwealth into any other loan so raised; or
 - (c) paying any expenses of carrying this Act into effect that the Governor-General considers are properly payable out of capital.

Proposed paragraph 4(1)(d) refers to ‘lending by the Treasurer under securities lending arrangements under section 5BA of the *Loans Securities Act 1919*’. Section 5AB of the *Loans Securities Act 1919* (the Loans Securities Act) does not currently exist—the text for **proposed section 5AB** is contained in **Item 10** of the Bill.

Item 3 makes a consequential amendment to paragraph 4(2)(a) of the Inscribed Stock Act following the insertion of **proposed section 3A**. This amendment does not depend on the passage of **proposed paragraph 4(1)(d)**. When referring to the Governor-General’s power to ‘create stock, Treasury Bonds, Treasury Notes or other prescribed securities’ ‘for raising money by way of loan’ in paragraph 4(1)(a), the proposed amendment to paragraph 4(2)(a) makes specific reference to the Treasurer’s authority to borrow the moneys to be raised by the issue or sale of stock (etc) money under **proposed section 3A** ‘or by any other Act’.

Item 4 inserts **proposed section 5**. **Proposed subsection 5(1)** sets a limit of \$75 billion on the total ‘face value’ of stock and securities issued under the Inscribed Stock Act and the Loans Securities Act. The term ‘face value’ is not defined in either Act. According to the *Macquarie Dictionary*, it means ‘the value stated on the face of a financial instrument or document; par value’. **Proposed subsection 5(2)** sets out the types of stocks and securities that are to be disregarded in working out the ‘total face value of the stock and securities’ for the purposes of **proposed subsection 5(1)**.

Item 5 inserts **proposed section 51JA**, which gives the Treasurer power to delegate the powers in **proposed section 3A**. By **proposed subsection 51JA(1)**, the Treasurer may delegate the powers to an SES employee or an APS employee who holds or performs the

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duties of an Executive Level 2 or equivalent in ‘the Department’,²⁰ or to a person of similar rank appointed as a staff member of the Reserve Bank Service under section 67 of the *Reserve Bank Act 1959* (Cth). **Proposed subsection 51JA(2)** provides that the Treasurer must give a direction, by signed instrument, ‘as to the maximum total face value of stock and securities that may be on issue’ under the Inscribed Stock Act and the Loans Securities Act, having regard to the exceptions mentioned in proposed subsection 5(2), in relation to borrowings under **proposed section 3A** (and also section 4 of the *Lands Redemption and Conversion Act 1921* (Cth)).

In exercising the powers under **proposed section 3A**, a delegate must have regard to a direction in force under (proposed) subsection 51JA(2) and any other direction given by signed instrument to the delegate by the Treasurer: **proposed subsection 51JA(3)**.

The Treasurer must table any direction given under **proposed subsection 51JA(2)** or **proposed paragraph 51JA(3)(b)** in each House of Parliament no later than 15 sitting days after it is given: **proposed subsection 51JA(4)**.

Proposed amendments to the *Financial Management and Accountability Act 1997* (Cth)

Items 6–9 of Schedule 1 contain proposed amendments to the *Financial Management and Accountability Act 1997* (Cth) (FMA Act).

Item 6 amends section 5 of the FMA Act (the definitions section) to insert a definition of the phrase ‘Department of the Treasury’. It is an ‘open’ definition. It includes not only the Department administered by the Treasurer but (a) persons who are allocated to the Department ‘by regulations made for the purposes of subparagraph (a)(i) of the definition of ‘Agency’ in section 5, and (b) ‘any part of the Department that is a prescribed Agency’. The term ‘Agency’ is defined in section 5 to mean:

- (a) a Department of State:
 - (i) including persons who are allocated to the Department (for the purposes of this Act) by regulations made for the purposes of this paragraph; but
 - (ii) not including any part of the Department that is a prescribed Agency;

20. Section 34 of the *Public Service Act 1999* (Cth) defines ‘SES employees’ as ‘those APS [Australian Public Service] employees who are classified as SES [Senior Executive Service] employees under the Classification Rules’. The term ‘the Department’ is not defined in the Inscribed Stock Act, but applying paragraph 19AB(3)(b) of the *Acts Interpretation Act 1901* (Cth), it means the Treasury.

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- (b) a Department of the Parliament, including persons who are allocated to the Department (for the purposes of this Act) by regulations made for the purposes of this paragraph;
- (c) a prescribed Agency.

For example, according to Regulation 4 of the Financial Management and Accountability Regulations 1997 (the FMA Regulations), a member of the Defence Force is generally allocated to the Department of Defence (although there are some exceptions), and ‘a person employed, under the *Members of Parliament (Staff) Act 1984*, on the staff of an office-holder or a Senator or Member is allocated to the Department of State to which the money out of which the person’s remuneration is paid is appropriated’.

The term ‘prescribed Agency’ is also defined in section 5 of the FMA Act to mean ‘a body, organisation or group of persons prescribed by the regulations for the purposes of this definition’. The term is also defined in Regulation 5. Schedule 1 to the FMA Regulations contains a list of prescribed agencies, including the AOFM.²¹

Item 7 amends subsection 39(2) by repealing the current subsection and substituting new text. Currently subsection 39(2) provides:

- (2) For the purpose of managing the public debt of the Commonwealth, the Treasurer may invest public money in any authorised investment.

The proposed amendment removes reference to the purpose of managing public debt and simply states that the Treasurer ‘may invest public money in any authorised investment’.

The term ‘authorised investment’ is currently defined in subsection 39(10) of the FMA Act as follows:

- (a) in relation to the Finance Minister—any of the following investments:
 - (i) securities of the Commonwealth or of a State or Territory;
 - (ii) securities guaranteed by the Commonwealth, a State or a Territory;
 - (iii) a deposit with a bank, including a deposit evidenced by a certificate of deposit;
 - (iv) any other form of investment prescribed by the regulations; and

21. Other prescribed agencies include the Australian Federal Police, National Archives of Australia, Centrelink, Office of National Assessments, Office of Parliamentary Counsel, Office of the Director of Public Prosecutions, Private Health Insurance Ombudsman and Royal Australian Mint.

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- (b) in relation to the Treasurer—any of the following investments:
- (i) securities of the Commonwealth or of a State or Territory;
 - (ii) securities guaranteed by the Commonwealth, a State or a Territory;
 - (iii) a deposit with a bank, including a deposit evidenced by a certificate of deposit;
 - (iv) debt instruments issued or guaranteed by:
 - (A) the government of a foreign country; or
 - (B) a financial institution whose members consist of foreign countries, or of Australia and foreign countries;
 being debt instruments with a credit rating that is consistent with the sound management of public debt;
 - (v) any other form of investment prescribed by the regulations.

Item 8 seeks to amend subparagraph 39(10)(b)(iv) of that definition by revising that subparagraph and also inserting **proposed subparagraphs (iva) and (ivb)**. In essence, current sub-subparagraphs 39(10)(b)(iv)(A) and (B) are renumbered and become **proposed subparagraphs 39(10)(b)(iv) and (iva)**. **Proposed subparagraph 39(10)(b)(ivb)** is entirely new and includes reference to ‘debt instruments denominated in Australian currency with an investment grade credit rating’. The term ‘investment grade credit rating’ is not defined in the FMA Act, but the remarks of Steven Wright, Director of Fixed Interest ABN AMRO Morgans Limited, in the *Investor Update email newsletter* of the Australian Stock Exchange (ASX) are useful in understanding this term:

Securities with a credit rating of BBB or above are deemed to be investment grade and so offer investors a higher degree of comfort that their principal will be returned and that interest will be paid in a timely manner. Ratings below this do not mean that an issuer is necessarily high risk, but the lower rating tells investors that securities with sub-investment grade ratings are more vulnerable to financial pressures. It should be noted that many well known companies listed on the ASX and other global exchanges are not rated investment grade, but still receive solid investor support.²²

It may be useful to include a definition of ‘investment grade credit rating’ in the FMA Act.

22. Steven Wright, Director of Fixed Interest, ABN AMRO Morgans Limited, ‘Credit Ratings’, *ASX Investor Update email newsletter*, 13 December 2005, http://www.asx.com.au/resources/newsletters/investor_update/20051213_credit_rating_type_s.htm, accessed on 8 June 2008.

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Item 9 repeals current section 62A and replaces it with **proposed section 62A**. Current section 62A is only two lines:

- (1) The Treasurer may, by written instrument, delegate to an official any of the Treasurer's powers or functions under this Act.
- (2) In exercising powers or functions under a delegation, the official must comply with any directions of the Treasurer.

Proposed section 62A is far more detailed, running to seven subsections. For example, it specifies:

- the types of Treasury officials to whom the Treasurer may delegate his powers or functions under the FMA Act (**proposed subsection 62A(1)**)
- the matters about which the Treasurer may give directions (**proposed subsection 62A(2)**)
- the matters about which the Treasurer may not give directions (**proposed subsection 62A(3)**)(see below)
- the fact that if there is a delegation in force under **proposed subsection 62A(1)**, there must be at least one direction in force under **proposed subsection 62A(2)** (**proposed subsection 62A(4)**)
- the fact that in exercising powers or functions under a delegation, the official must comply with directions given by the Treasurer, including those given under **proposed subsection 62A(2)** (**proposed subsection 62A(5)**)
- the requirement for the Treasurer to table any direction made under **proposed section 62A** in each House of Parliament not less than 15 sitting days after it is given (**proposed subsection 62A(6)**), and
- the fact that the term 'authorised investment' in **proposed section 62A** has the same meaning as it does in paragraph (b) of the definition of that term in subsection 39(10) of the FMA Act, quoted above (**proposed subsection 62A(7)**).

Proposed subsection 62A(3) is as follows:

The Treasurer must not give a direction under subsection (2) that has the purpose, or has or is likely to have the effect, of directly or indirectly requiring a delegate or delegates to allocate financial assets to a particular company, partnership, trust, body politic or business.

Presumably, this provision is designed to prevent abuse of the Minister's position by prohibiting him from instructing a delegate to invest funds in any particular company or

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business (etc). According to the Assistant Treasurer, the purpose of this provision ‘is to ensure that investment decisions are based on sound financial criteria’.²³

Proposed amendments to the *Loans Securities Act 1919* (Cth)

Items 10–11 of Schedule 1 to the Bill contain proposed amendments to the *Loans Securities Act 1919* (Cth) (the Loans Securities Act).

Item 10 inserts **proposed section 5BA** into the Loans Securities Act to empower the Treasurer to enter into securities lending arrangements on behalf of the Commonwealth. **Proposed subsection 5BA(1)** provides that the Treasurer may enter into such arrangements ‘by lending stock and securities’ issued under the Inscribed Stock Act ‘and denominated in Australian currency’.

Proposed subsection 5BA(2) states that the total face value of stock and securities ‘on loan by the Treasurer at any time under securities lending arrangements’ under **proposed subsection 5BA(1)** must not exceed \$5 billion.

Proposed subsection 5BA(3) provides that the Treasurer must not lend stocks or securities under securities lending arrangements unless he receives ‘collateral of one or more of the following kinds’: cash, ‘debt instruments denominated in Australian currency with an investment grade credit rating’ (whether in hard copy or electronic form), bank deposit (evidenced by a certificate of deposit), and ‘any other collateral prescribed by the regulations’.

Proposed subsection 5BA(4) states that the Treasurer must take sufficient collateral to cover the market value of the security on loan *at all times*. However, no method is provided for establishing the market value of the security, nor is any time limit set for ascertaining the market value of the security from time to time. Further, no provision is made for the logistics of taking extra security (or possibly returning security) where the market value of the security has either increased or decreased.

Proposed subsection 5BA(5) states that the word ‘lending’ (in relation to stock or securities) ‘is taken to include an arrangements under which it is sold and repurchased’. Apparently such arrangements are common in Australia’s financial markets. According to the AOFM, its securities lending facility operates through repurchase agreements between the Reserve Bank and bond market participants: ‘A repurchase agreement (commonly referred to as a repo) involves a holder of debt securities (e.g. Treasury Bonds) selling them for cash, and simultaneously agreeing to repurchase them at a fixed price on a fixed date in the future’.²⁴

23. Bowen, *op. cit.*, p. 3.

24. Australian Office of Financial Management, ‘Activities: Securities Lending Facility’, *op. cit.*

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Proposed subsection 5BA(6) states that the Consolidated Revenue Fund ‘is appropriated as necessary for the purposes of this section’.²⁵

Proposed subsection 5BA(7) provides that nothing in **proposed section 5BA** ‘affects the power to make investments under section 39’ of the FMA Act, discussed in part above.

Finally, **item 11** inserts **proposed section 5E** of the Loans Securities Act to empower the Treasurer to delegate the powers and functions contained in **proposed section 5BA**. It is in similar terms to **proposed section 51JA** of the Inscribed Stock Act and **proposed section 62A** of the FMA Act, discussed above. In summary, **proposed section 5E** provides that the Treasurer can only delegate his powers and functions under **proposed section 5BA** of the Loans Securities Act to certain officials in the Treasury Department; the Treasurer must give a signed direction about the kinds of collateral that must be received; in exercising powers under **proposed section 5BA**, the delegate must comply with any direction that is in force; and the Treasurer must table any relevant direction in each House of Parliament within 15 sitting days of giving the direction.

Part 2—Application

Part 2 of Schedule 1 to the Bill deals with the application of the proposed amendments. None of the proposed amendments has retrospective operation; the amendments apply to money or stock or securities borrowed or invested, or to securities lending arrangements entered into, ‘on or after the commencement’ of the relevant item of the Bill. However, the actual issuing of the relevant stock or securities to which **item 5** of the Bill relates may pre-date the commencement of the item.

Concluding comments

The initiatives contained in the Bill seem to be neither novel nor controversial. For example, the Rudd Government’s decision to increase the supply of CGS is consistent with the position of the previous Howard Government. The initiatives are designed to stimulate the operation of Australia’s financial markets in a responsible, if somewhat cautious, way. While key players in Australia’s financial markets certainly support the initiatives, it is worth noting that the Australian Financial Markets Association actually wanted a greater increase in the issuance of Treasury bonds than the \$5.3 billion increase which the Government is willing to effect.²⁶

25. Section 83 of the Constitution provides: ‘No money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law’.

26. Baker, ‘States will benefit from funds’, op. cit.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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