



Australian Government

Australian Government Show Starter Loan Scheme

Scheme Rules

Dated 18 November 2020

The Commonwealth of Australia

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General terms

1 Interpretation

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 25 June 2020, the Prime Minister, the Hon. Scott Morrison MP, announced a range of initiatives to support the arts and entertainment sector rebuild from the impacts of the coronavirus known as COVID-19 (**Coronavirus Pandemic**). This included the establishment of the 'Show Starter Loan Scheme' to assist arts and entertainment businesses access financing for new productions and events that stimulate job creation and economic activity.
- (b) The 'Show Starter Loan Scheme' will enhance lenders' willingness and ability to provide up to \$90 million in credit to Arts and Entertainment Entities for live audiences to support the delivery of New Arts and Entertainment Activities in the near term.
- (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 under the Show Starter Loan Scheme.
- (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.

ADI means an "authorised deposit-taking institution" 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 920.4 *Australian Government Arts Sector Show Starter Loan (SSL) Guarantee Scheme* 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 4.1(a) ("APRA Report Entries").

Arts and Entertainment Activity means any production or event for a live audience that involves:

- (a) the exhibition or showcasing of objects and sites of historical or cultural interest;
- (b) artistic works such as visual artworks, music, dance, story and other performance arts;
- (c) festivals or concerts;
- (d) the exhibition or showcasing of cultural or creative skills of general interest to a general audience; or
- (e) digital and/or online elements, provided they complement and are not the main component of the production or event,

but excludes an Excluded Activity.

Arts and Entertainment Entity means an organisation that in the previous 24 months derived its major source of revenue or worked a majority of hours in activities that involve at least one of the following:

- (a) the employment of Australian Cultural or Creative Workers and/or Australian Support Workers;
- (b) the operation of venues or facilities often used to exhibit or showcase creative and cultural talent; or
- (c) the organisation of Arts and Entertainment Activities.

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

Australian Cultural or Creative Workers means Cultural or Creative Workers who are Australian citizens or permanent residents of Australia.

Australian Support Workers means Support Workers who are Australian citizens or permanent residents of Australia.

Bank Bill Swap Bid Rate means:

- (a) the Australian Bank Bill Swap Reference Rate (Bid) administered by ASX Benchmarks Pty Limited (or any other person which takes over the administration of that rate) for the relevant period displayed on page BBSY of the Thomson Reuters Screen (or any replacement Thomson Reuters page which displays that rate); or
- (b) if the rate described in paragraph (a) above is not available, the sum of:
 - (i) the Australian Bank Bill Swap Reference Rate administered by ASX Benchmarks Pty Limited (or any other person which takes over the administration of that rate) for the relevant period displayed on page BBSW of the Thomson Reuters Screen (or any replacement Thomson Reuters page which displays that rate); and
 - (ii) 0.05% per annum; or
- (c) if the rates described in paragraphs (a) and (b) above are not available, the rate determined by the Commonwealth to be the arithmetic mean of the buying rates quoted to the Commonwealth by Major Bank Lenders at or about 10.30am (Sydney time) on that day for bills of exchange accepted by leading Australian banks which have a term equivalent to the relevant period and, if any such rate is below zero, the Bank Bill Swap Bid Rate will be deemed to be zero. Rates will be expressed as a

yield percent per annum to maturity and, if necessary, will be rounded up to the nearest fourth decimal place.

BCOP means the 2020 Banking Code of Practice (as may be amended or replaced from time to time) published by the Australian Banking Association and approved by the Australian Securities and Investments Commission.

Borrower Hardship means, in relation to an Eligible Borrower and a Participating Lender, circumstances of financial or other borrower hardship for the borrower, as recognised under Relevant Law, applicable regulations, codes and regulatory guidance, the BCOP 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 which in the case of an individual Participating Lender can be amended by the relevant Participating Lender Agreement with that Participating Lender.

Business Group means in relation to an 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, on or after the date of the making of an APRA Report Entry in respect of a Scheme-Backed Loan:

- (a) the occurrence of an Impairment Event in respect of that Scheme-Backed Loan; or
- (b) in the case of a breach of a Loan Use Covenant, the taking of Recovery Action by a Participating Lender following a Recovery Decision 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).

Cultural or Creative Workers means persons who are engaged in cultural or creative roles (such as artists, creative production roles).

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

Directed Enforcement Action means, in relation to a Scheme-Backed Loan, the recovery action the Commonwealth requires a Participating Lender to take to obtain repayment of the Outstanding Principal Amount and all other amounts accrued or outstanding owing by an Eligible Borrower (which, without limitation, may include calling on personal or director's guarantees, and the commencement of proceedings (including insolvency or bankruptcy proceedings, if applicable) against the Eligible Borrower).

Disputed Claim has the meaning given in Rule 10.4 ("Disputed Claims or discrepancies in amounts payable").

Effective Date means the date the Guarantee is signed.

Eligibility Criteria means the requirements for:

- (a) persons to be Eligible Borrowers; and
- (b) 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").

Enforcement Direction has the meaning given in Rule 3.8(a) ("Loan management, consultation and enforcement").

Enforcement Direction Costs means the reasonable costs incurred by a Participating Lender in taking Directed Enforcement Action in accordance with an Enforcement Direction, including court costs, damages awarded against the Participating Lender by a court in respect of that Scheme-Backed Loan, and legal fees on a solicitor/own client basis.

Excluded Activity means:

- (a) screen production and distribution (film, television, online productions, interactive digital games);
- (b) design (eg. architectural and landscape design, industrial and product design etc);
- (c) radio broadcasting;
- (d) sporting activities;
- (e) carnivals, fairs, collectible shows, agricultural and produce shows;
- (f) garden production and events;
- (g) zoological events;
- (h) gambling activities;
- (i) the establishment of a new arts and entertainment entity; or
- (j) the development of new capabilities for an existing arts and entertainment entity.

Final Claim Date means 30 September 2027 unless otherwise extended by the Commonwealth in its absolute discretion.

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.

Grace Period means the twelve (12) month period commencing on and from the Loan Agreement Date.

Guarantee means the Deed of Guarantee in respect of the 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 one hundred percent (100%).

Illegal Financial Activity means the commission of any financial laundering, funding of terrorist activity, bribery and corruption, fraud or the commission of any financial criminal act.

Impairment Event means either:

- (a) a Participating Lender:
 - (i) recognising an impairment to a Scheme-Backed Loan; or
 - (ii) writing-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 to the relevant Scheme-Backed Loan); 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.

Interest Rate Cap means the percentage rate per annum which is, where the interest rate (or effective interest rate) is:

- (d) variable, the aggregate of:
 - (i) the Margin; and
 - (ii) the greater of:
 - (A) the Bank Bill Swap Bid Rate as published from time to time as of 10:30am (Sydney time) and for the period equal in length to the interest period of the relevant Scheme-Backed Loan; and
 - (B) 0%; or
- (e) fixed, 4.5%.

Interest Rate Grace Period means, where the interest rate (or effective interest rate) is variable, a period of 30 days from the date on which the Interest Rate Cap is exceeded by reason of a movement in the Bank Bill Swap Bid Rate. For the avoidance of doubt, there is no interest rate grace period where the interest rate (or effective interest rate) in respect of a credit arrangement is fixed.

Lapse Date means the date that the Notice of Eligibility will lapse as set out in the Notice of Eligibility, which must be the earlier of:

- (a) a date at least 90 days after the date of the Notice of Eligibility; and
- (b) 30 June 2021.

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 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 an Eligible Borrower, 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 Use Covenant means, in relation to an Eligible Loan, the provisions in the relevant loan agreement which are to the effect of, or oblige the Eligible Borrower to comply with, Rules 3.2(e), 3.2(f) and 3.2(n) ("Eligible Loans").

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

Local Government Body has the meaning given in section 4 of the *Local Government (Financial Assistance) Act 1995* (Cth).

Major Bank Lenders means:

- (a) Australia and New Zealand Banking Group Limited (ACN 005 357 522);
- (b) Commonwealth Bank of Australia (ACN 123 123 124);
- (c) National Australia Bank Limited (ACN 004 044 937); and
- (d) Westpac Banking Corporation (ACN 007 457 141).

Margin means 4.5%.

Maximum Loan Limit means the maximum limit for the loan determined by the Commonwealth pursuant to Rule 3.3(b)(i) ("Assessment of Eligibility Criteria by Commonwealth").

Net Amount Payable means, in relation to a Claim, the amount calculated on the basis of the following formula:

$$N = C - CB$$

where:

- (a) **(C)** is the sum of the following:
 - (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 10.5(f) and 10.5(g) ("Reconciliation of Claim payments"); and
- (b) **(CB)** is the sum of the amounts calculated pursuant to Rules 10.5(d) and 10.5(e) ("Reconciliation of Claim payments"); and
- (c) **(N)** is a calculation of the net amount payable by a party such that where 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.

New Arts and Entertainment Activity means one or more Arts and Entertainment Activity which:

- (a) is to be delivered in Australia; and
- (b) is not already established as at the time the Commonwealth conducts its assessment pursuant to Rule 3.3(a) (“Assessment of Eligibility Criteria by Commonwealth”).

Notice of Eligibility means a notice issued by the Commonwealth to an Eligible Borrower following assessment of the eligibility of the borrower and the New Arts and Entertainment Activity, confirming the borrower is an Eligible Borrower and setting out the parameters for a loan under the Scheme.

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 but exclusive of any capitalised enforcement costs).

Participating Lender means each person who:

- (a) is an ADI 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; 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.

Payment Date means the date 30 Business Days following the receipt of the account referred in Rule 10.2 (“Accounts and remittances for final Claims”).

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”).

Prohibited Conduct means any false declaration, misstatement, fraudulent or criminal act (including, without limitation, fraudulent misrepresentation).

Recovery Action means, in relation to a Scheme-Backed Loan, any action following a Recovery Decision, taken by a Participating Lender to:

- (a) cancel its commitments and declare that all principal, together with accrued interest and all other amounts accrued or outstanding are due and payable by the Eligible Borrower; or
- (b) exercise any of its rights, remedies, powers or discretions in relation to a breach by the Eligible Borrower of a Scheme-Backed Loan with the Eligible Borrower.

Recovery Decision means, in relation to a Scheme-Backed Loan, any decision taken by a Participating Lender, acting in accordance with its Lender Policies (as consistently applied in relation to all unsecured loans to SMEs of the Participating Lender (to the extent applicable to the relevant Scheme-Backed Loan)), Relevant Laws, applicable regulations, codes and regulatory guidance, and the BCOP, to, or not to:

- (a) cancel its commitments and declare that all principal, together with accrued interest and all other amounts accrued or outstanding are due and payable by the Eligible Borrower; or
- (b) exercise any of its rights, remedies, powers or discretions in relation to a breach by the Eligible Borrower of a Scheme-Backed Loan with the Eligible Borrower.

Recovery Action Costs means the reasonable external costs incurred by a Participating Lender in taking Recovery Action in respect of a Scheme-Backed Loan, including court costs, damages awarded against the Participating Lender by a court in respect of that Scheme-Backed Loan, and legal fees on a solicitor/own client basis.

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 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 Show Starter Loan 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;
- (c) each APRA Report; and
- (d) as between the Commonwealth and a Participating Lender, the Participating Lender Agreement entered into by that Participating Lender.

Scheme Limit means \$90 million.

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 means an entity that meets both of the following criteria:

- (a) the entity carries on a business or is a non-profit body during the "current year" (as defined in section 5 of the Cth Rules); and
- (b) one or both of the following applies:

- (i) the entity's "annual turnover" (as defined in section 5 of the Cth Rules) in the 2019-20 income year was greater than \$1 million and less than \$120 million;
- (ii) the entity's "annual turnover" (as defined in section 5 of the Cth Rules) in the 2020-21 income year is likely to be greater than \$1 million and less than \$120 million.

SME Declaration means a declaration made by a borrower to a Participating Lender covering one or more of the matters specified in Rule 3.5 ("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).

Support Workers means persons who are engaged in roles that support the Arts and Entertainment Activity (such as technical or administrative roles).

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) and any code of practice 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 from time to time);
- (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

2.1 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.
- (b) 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.
- (c) 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.

2.2 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.

2.3 Scheme limit

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 in accordance with Rule 4.1 (“APRA Report Entries”) to obtain a benefit under the Guarantee in respect of a Scheme-Backed Loan. APRA Report Entries will not be accepted from Participating Lenders in respect of Scheme-Backed Loans which in aggregate exceed the Scheme Limit.

3 Eligibility Criteria

3.1 Eligible Borrowers

To be an **Eligible Borrower** under the Scheme, a person must:

- (a) have an ABN;
- (b) be an Arts and Entertainment Entity;
- (c) be an SME;
- (d) have been adversely affected by the Coronavirus Pandemic;
- (e) be unable to fund the New Arts and Entertainment Activity without the assistance of the Scheme; and
- (f) not be:

- (i) an entity or corporation owned by the Australian Government, state/territory or local government;
- (ii) a Local Government Body; or
- (iii) the operator of a theme park or a fun park.

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 but excluding a credit, debit, charge card or business card facility (however described)) and must:

- (a) be made on terms which are consistent with a Notice of Eligibility issued by the Commonwealth for that Eligible Borrower;
- (b) 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. Participating Lenders must consider applications from new customers in addition to existing customers;
- (c) not be secured by any Security Interest in favour of a Participating Lender other than either or both of the following:
 - (i) for the avoidance of doubt, guarantees; and
 - (ii) any Security Interest securing all monies owed by the Eligible Borrower to the Participating Lender provided the Participating Lender undertakes not to enforce that Security Interest in respect of any amounts due under a Scheme-Backed Loan;
- (d) be payable only in Australian dollars;
- (e) be, and all loan amounts drawn down must be applied solely for the purposes of:
 - (i) delivering a New Arts and Entertainment Activity consistently with any parameters set out in the Notice of Eligibility, with delivery to commence within 24 months of the Loan Agreement Date; and
 - (ii) meeting or reimbursing the costs of delivering or hosting the New Arts and Entertainment Activity, including wages and entitlements of Australian Cultural or Creative Workers and/or Australian Support Workers involved in delivering or hosting the New Arts and Entertainment Activity,

but excludes the purposes described in Rule 3.2(f), noting that the Eligible Borrower's use of loan funds for purposes related or incidental to the New Arts and Entertainment Activity specified in the Notice of Eligibility is permitted;
- (f) not be used:
 - (i) for or in connection with any illegal purpose, act or matter (including use for any Illegal Financial Activity);
 - (ii) to pay normal business operating costs beyond those reasonably required to undertake the New Arts and Entertainment Activity;
 - (iii) to finance any international component of the New Arts and Entertainment Activity;
 - (iv) to finance the costs of non-Australian Cultural or Creative Workers or non-Australian Support Workers;

- (v) 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; or
 - (vi) to provide a loan to an 'associated entity' within the meaning of section 50AAA of the Corporations Act;
- (g) be approved and unconditional (subject only to any standard market practice conditions precedent to utilisation) by the date on or before the first to occur of:
- (i) 30 June 2021; and
 - (ii) the Lapse Date set in the Notice of Eligibility;
- (h) have a maximum term ending on a date on or before the first to occur of:
- (i) the date falling 5 years after the Loan Utilisation Date; or
 - (ii) the date falling 5 years and 3 months after the Loan Agreement Date;
- (i) subject to Rule 3.6 ("Interest Rate Cap"), 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;
- (j) be for a minimum amount of \$100,000;
- (k) have a Loan Limit (excluding amounts which may be capitalised after the Loan Agreement Date) that does not exceed the Maximum Loan Limit when aggregated with the Loan Limits (excluding 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 for the purpose of delivering the same New Arts and Entertainment Activity;
- (l) not provide, under the relevant loan agreement or otherwise, for any payments other than:
- (i) principal and interest (including capitalised interest); and
 - (ii) Recovery Action Costs;
- (m) provide for repayments to not be required (but are permitted without penalty at the option of the Eligible Borrower) during the Grace Period (with interest (if any), payable in the Grace Period being capitalised in accordance with the terms of the agreement);
- (n) require an Eligible Borrower to provide written confirmation to the Participating Lender every 6 months from the Loan Agreement Date until delivery of the New Arts and Entertainment Activity is complete or the Scheme-Backed Loan is repaid in full (whichever occurs first) declaring that the Eligible Borrower is using the loan in a manner consistent with Rules 3.2(e) and (f) and the Notice of Eligibility;
- (o) where the Participating Lender considers it appropriate, provide for the obligations in Rule 3.2(n) to constitute a special covenant that triggers default based action pursuant to the requirements for a 'specialised lending transaction' for the purposes of paragraph 85 of the BCOP;
- (p) have a Loan Agreement Date on or after the Effective Date; and
- (q) include an undertaking by the Eligible Borrower that the Eligible Borrower will co-operate with and provide information as requested by the Participating Lender or the Commonwealth from time to time.

3.3 Assessment of Eligibility Criteria by Commonwealth

The Commonwealth will:

- (a) assess:
 - (i) the criteria for determining if a person is an Eligible Borrower as specified in Rules 3.1(a) - (f) ("Eligible Borrowers"); and
 - (ii) the criteria for determining if a loan will be an Eligible Loan as specified in Rules 3.2(e), (f) and (j) ("Eligible Loans"); and
- (b) if the criteria described in Rule 3.3(a) are met:
 - (i) determine the Maximum Loan Limit, which when aggregated with any Restart Investment to Sustain and Expand (RISE) Fund grants the Eligible Borrower with the same ABN has received or has been approved to receive in support of the same New Arts and Entertainment Activity, will be the lesser of:
 - (A) \$5,000,000; and
 - (B) 50% of the total cost of the New Arts and Entertainment Activity; and
 - (ii) issue a Notice of Eligibility to the Eligible Borrower, which will:
 - (A) be dated;
 - (B) confirm that the criteria described in Rule 3.3(a) are met; and
 - (C) specify the:
 - (aa) New Arts and Entertainment Activity proposed to be funded;
 - (ab) Maximum Loan Limit; and
 - (ac) Lapse Date.

3.4 Notice of Eligibility

Unless otherwise notified by the Commonwealth in writing on a per application basis, a Participating Lender:

- (a) may treat a Notice of Eligibility provided to it by an Eligible Borrower as conclusive evidence of satisfaction of the Eligibility Criteria referred to in the Notice of Eligibility;
- (b) must not rely on any details set out in a Notice of Eligibility provided to it by an Eligible Borrower as evidence of the 'credit worthiness' of the Eligible Borrower; and
- (c) is responsible for assessment and origination of Scheme-Backed Loans in accordance with its Lender Policies.

3.5 Deemed Satisfaction of Eligibility Criteria

- (a) The criteria for any Eligible Loan specified in Rule 3.2(k) ("Eligible Loans") concerning aggregate Loan Limits of all Scheme-Backed Loans may be conclusively evidenced by a SME Declaration obtained by the Participating Lender.
- (b) This Rule 3.5 does not limit the rights, power and discretions of the Commonwealth under the Guarantee or at law.

3.6 Interest rate cap

- (a) The rate of interest on each Scheme-Backed Loan for each interest period (including any default interest rate) must not exceed the Interest Rate Cap.

- (b) If, in relation to any Scheme-Backed Loan and at any time after an Interest Rate Grace Period, a Participating Lender charges an interest rate greater than the Interest Rate Cap, the Guarantee in respect of that Scheme-Backed Loan will be released in full without further action or notice in accordance with the provisions of the Guarantee and the loan will immediately cease to be an Eligible Loan.

3.7 Loan management, consultation and enforcement

- (a) A Participating Lender is required to monitor an Eligible Borrower's compliance with the Loan Use Covenants. The Participating Lender is entitled to rely on written confirmation provided by an Eligible Borrower in accordance with Rule 3.2(n) (except in circumstances where the Participating Lender becomes aware that a breach of a Loan Use Covenant has occurred or is subsisting).
- (b) Subject to Rules 3.7(c) to 3.7(e), if the Participating Lender identifies or considers that an Eligible Borrower has breached a term of a loan agreement in respect of a Scheme-Backed Loan, the Participating Lender must:
 - (i) promptly make a Recovery Decision; and
 - (ii) take Recovery Action except where the Participating Lender can demonstrate to the Commonwealth's reasonable satisfaction that compliance would contravene its Lender Policies (as consistently applied in relation to all unsecured loans to SMEs of the Participating Lender (to the extent applicable to the relevant Scheme-Backed Loan)), Relevant Laws, applicable regulations, codes and regulatory guidance, or the BCOP.
- (c) The Participating Lender will not be required to take Recovery Action following a Recovery Decision where it can demonstrate to the Commonwealth's reasonable satisfaction that compliance would contravene its Lender Policies, any Relevant Laws, applicable regulations, codes or regulatory guidance, or the BCOP.
- (d) If the Participating Lender, in its discretion, identifies or considers that an Eligible Borrower has breached a Loan Use Covenant, the Participating Lender must (whether or not a Claim Trigger has occurred):
 - (i) notify the Eligible Borrower that it considers there has been a breach of a Loan Use Covenant and provide reasonable details of the alleged breach to the Eligible Borrower; and
 - (ii) where the Participating Lender considers the breach is capable of being remedied or overcome, allow the Eligible Borrower a reasonable time to remedy or overcome the breach.
- (e) If a breach of a Loan Use Covenant is not capable of remediation or remains unremedied after the Eligible Borrower has been given a reasonable time to remedy or overcome the breach pursuant to Rule 3.7(d)(ii), the Participating Lender must:
 - (i) determine whether or not the breach is a material breach of a Loan Use Covenant (taking into account any guidance issued by the Commonwealth); and
 - (ii) comply with Rules 3.7(f) and Rule 3.7(g) (as applicable).
- (f) Where the Participating Lender considers that the breach described in Rule 3.7(e) is not a material breach, the Participating Lender must:
 - (i) promptly provide a notice to the Commonwealth with details of:
 - (A) the relevant Scheme-Backed Loan;
 - (B) the Eligible Borrower's breach;

- (C) the reasons why the Participating Lender considers the breach is not a material breach; and
 - (D) the matters described in Rule 3.7(h)(v); and
- (ii) continue to administer and manage the relevant Scheme-Backed Loan in accordance with its Lender Policies.
- (g) Where the Participating Lender considers that the breach described in Rule 3.7(e) is a material breach, the Participating Lender must promptly take Recovery Action. For the avoidance of doubt, the Participating Lender will be required to comply with this Rule 3.7(g) where it identifies or considers that an Eligible Borrower has materially breached a Loan Use Covenant in addition to any other breach which is not related to a Loan Use Covenant.
- (h) Following the conclusion of Recovery Action taken by the Participating Lender in accordance with Rule 3.7(g), the Participating Lender must promptly provide a notice to the Commonwealth with details of:
 - (i) the relevant Scheme-Backed Loan;
 - (ii) the Eligible Borrower's breach;
 - (iii) the Recovery Action taken by the Participating Lender;
 - (iv) whether all amounts due to be paid by the Eligible Borrower have been repaid in full;
 - (v) if all amounts due to be paid by the Eligible Borrower have not been repaid in full:
 - (A) the Outstanding Principal Amount;
 - (B) the Participating Lender's reasonable estimates of costs of any further action that may be taken against the Eligible Borrower;
 - (C) the Participating Lender's reasonable estimates of the likelihood of amounts that may be recovered or lost in connection with any further action that may be taken against the Eligible Borrower; and
 - (D) the Participating Lender's reasonable assessment of the types of additional enforcement action that remain open to be taken against the Eligible Borrower (including any potential Directed Enforcement Action), including consideration of the Participating Lender's Lender Policies, Relevant Laws, applicable regulations, codes and regulatory guidance, and the BCOP; and
 - (vi) any other details which the Commonwealth may reasonably require.
- (i) Without limiting Rule 3.8(a) ("Enforcement of loan use covenants"), the Commonwealth will notify the Participating Lender in writing within a reasonable period of receiving a notice from a Participating Lender in accordance with Rules 3.7(f)(i) or 3.7(h), whether:
 - (i) the Commonwealth will issue an Enforcement Direction in accordance with Rule 3.8(a) ("Enforcement of loan use covenants"); or
 - (ii) the Commonwealth will not issue an Enforcement Direction in accordance with Rule 3.8(a) ("Enforcement of loan use covenants").
- (j) A Commonwealth notification under Rule 3.7(i)(ii) that it will not issue an Enforcement Direction does not in any way limit the Commonwealth's discretion at any future time

to issue a direction to the Participating Lender under Rule 3.8(a) (“Enforcement of loan use covenants”) in relation to the same breach of the Loan Use Covenant by the relevant Eligible Borrower.

- (k) If the circumstances in Rule 3.7(i)(ii) apply and the Commonwealth notifies a Participating Lender that it will not issue an Enforcement Direction, the Participating Lender must continue to administer and manage the relevant Scheme-Backed Loan in accordance with its Lender Policies.

3.8 Enforcement of loan use covenants

- (a) The Commonwealth may at any time, and in its absolute discretion, direct the Participating Lender in writing to take Directed Enforcement Action under and in connection with a Scheme-Backed Loan (**Enforcement Direction**) where the Commonwealth:
 - (i) receives a notice from the Participating Lender provided in accordance with Rules 3.7(f)(i) or 3.7(h) (“Loan management, consultation and enforcement”); or
 - (ii) becomes aware, or reasonably suspects, that an Eligible Borrower has breached a Loan Use Covenant.
- (b) In determining whether to issue an Enforcement Direction, and the terms of any Enforcement Direction, the Commonwealth will have reasonable regard to:
 - (i) the Participating Lender’s Lender Policies, Relevant Laws, applicable regulations, codes and regulatory guidance, and the BCOP;
 - (ii) all matters in any notice provided by the Participating Lender to the Commonwealth in accordance with Rules 3.7(f)(i) or 3.7(h) (“Loan management, consultation and enforcement”);
 - (iii) the Participating Lender’s Recovery Decision and any subsequent Recovery Action taken by the Participating Lender; and
 - (iv) any other matters it considers relevant.
- (c) Subject to Rule 3.8(d), the Participating Lender must comply with the provisions of any Enforcement Direction, including with regard to any specific course of action and time periods specified in the Enforcement Direction.
- (d) The Participating Lender will not be required to comply with an Enforcement Direction where it can demonstrate to the Commonwealth’s reasonable satisfaction that compliance would contravene any Relevant Laws or any applicable regulations.
- (e) If the Commonwealth issues an Enforcement Direction to a Participating Lender, the Commonwealth will reimburse the Participating Lender for its Enforcement Direction Costs in accordance with the reconciliation process under Rule 10.5 (“Reconciliation of Claim payments”) to the extent those costs cannot be recovered from an Eligible Borrower.
- (f) If the Commonwealth issues an Enforcement Direction to a Participating Lender, the Participating Lender must at regular intervals provide the Commonwealth with reasonable written details of any action taken or to be taken in response to the Enforcement Direction and any other details which the Commonwealth may reasonably require.
- (g) Subject to Rules 3.7(c) and 3.8(d), if the Participating Lender fails to comply with an Enforcement Direction or fails to comply with Rule 3.7(b) (“Loan management, consultation and enforcement”), the Guarantee in respect of that Scheme-Backed Loan will terminate and be released in full without further action or notice in

accordance with the provisions of Guarantee and the loan will immediately cease to be an Eligible Loan.

4 APRA Report Entries

4.1 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.

4.2 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 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) Subject to Rule 4.2(a), 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.

4.3 Details in APRA Report Entry

Each APRA Report Entry must comply with APRA Reporting Standard ARS 920.4 *Australian Government Arts Sector Show Starter Loan (SSL) Guarantee Scheme* as updated or amended from time to time.

4.4 Use of APRA Report Entries

Without limiting any other uses, the Commonwealth may use details of the Loan Limit set out in an APRA Report Entry for the purpose of reconciliation against the Maximum Loan Limit for that Eligible Loan in order to determine the balance then remaining under the Scheme Limit.

5 Reporting

5.1 Information and reporting requirements

The Participating Lender must:

- (a) ensure it complies in all respects with the requirements of the APRA Reporting Standard, ARS 920.4 *Australian Government Arts Sector Show Starter Loan (SSL) Guarantee Scheme*, and any other reporting standard issued by the APRA in connection with the Scheme; and
- (b) provide information reasonably requested by the Commonwealth regarding Scheme-Backed Loans acknowledging that the Commonwealth will:
 - (i) consult with the Participating Lender in relation to any such request; and
 - (ii) provide 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 must notify the Commonwealth of the erroneous information (and provide the corrected information to the Commonwealth) as soon as reasonably practicable.

6 Audit

6.1 Audit Requirements

- (a) A Participating Lender must if requested by the Commonwealth and following reasonable consultation with the Commonwealth, procure an audit of the activities of the Participating Lender under the Scheme (**Audit**). The Commonwealth may require the Audit to be undertaken by an external auditor or an internal audit team of the Participating Lender.
- (b) The Commonwealth must consult with the Participating Lender in relation to any proposed Audit.
- (c) Each Audit must test a reasonable statistical sample of Scheme-Backed Loans to provide confidence that:
 - (i) 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 3.5 (“Deemed Satisfaction of Eligibility Criteria”)); and
 - (ii) the requirements of Rule 5 (“Reporting”) have been complied with.
- (d) No later than 40 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 with these Rules or a Participating Lender Agreement (including any of the circumstances specified in Rule 4.2(a) (“General provisions for APRA Report Entries”)):

- (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

- (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 of APRA Report Entries that have been received by the Commonwealth to date; and
 - (iii) 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 content uploaded to the Commonwealth on a website is legible and free from any computer virus; and
 - (ii) agrees:
 - (A) not to use the any website wrongfully or illegally; and
 - (B) that 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) any 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 a 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 Rules.

8 Repayment of Scheme-Backed Loans

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”) arise, any existing Scheme-Backed Loan which is:

- (a) varied or restructured such that the loan:
 - (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 5 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; and
 - (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 5 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 totality¹.

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 loan or overdraft facility from the Loan Agreement Date to the date (**Termination Date**) not more than 5 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) must be notified in the subsequent APRA Report for a Participating Lender.

9 Transfers of Scheme-Backed Loans

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 ("Securitisation arrangements") are satisfied; or
- (c) the transfer is made pursuant to the *Financial Sector (Business Transfer and Group Restructure) Act 1999* (Cth),

provided that no assignment or transfer is 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.

¹ 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.

10 Claims Procedures

10.1 When Claims may be made

Subject to Rule 10.5 (“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 is made in accordance with any requirements specified by the Commonwealth and includes details of:
 - (i) the amount of the relevant Guaranteed Liability;
 - (ii) each APRA Report Entry to which the Claim Trigger relates; and
 - (iii) any other information reasonably requested by the Commonwealth;
- (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 the Final Claim Date; and
- (e) the Participating Lender has provided any other information on reasonable request by the Commonwealth (acknowledging that the Commonwealth will consult with the Participating Lender in making any such requests under this Rule 10.1(e)).

10.2 Accounts and remittances for final Claims

- (a) No later than six (6) months after the Final Claim Date each Participating Lender must submit to the Commonwealth an account detailing the Net Amount Payable.
- (b) A Participating Lender must, if requested in writing by the Commonwealth (in its absolute discretion), submit to the Commonwealth, no later than 31 March 2029, a further account detailing the Net Amount Payable.

10.3 Payments in respect of valid final Claims

- (a) All amounts determined, at the relevant time, to be payable under Rule 10.2 (“Accounts and remittances for final Claims”) must be paid by the relevant party to the other on or before the Payment Date.
- (b) All payments by one party to the other under this Rule 10.3 must be made by or on behalf of the paying party to such bank account as the receiving party will 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 the Payment Date, such party will be liable to pay interest to the other party on the outstanding amount at the Specified Rate on the Payment Date.

10.4 Disputed Claims or discrepancies in amounts payable

- (a) If, in relation to any Claim, the Commonwealth is not satisfied:
 - (i) that the requirements of this Rule 10 have been met; or
 - (ii) as to the determination of any amounts recovered,

the Commonwealth may notify the Participating Lender of such fact, in which event the Claim will be a disputed Claim (**Disputed Claim**);

- (b) If the Commonwealth notifies the Participating Lender of a Disputed Claim on or before the 3rd Business Day before the Payment Date, the amount payable will:
 - (i) if payable by the Commonwealth - be adjusted to the amount which the Commonwealth considers to be payable; and
 - (ii) if payable by the Participating Lender - remain as calculated by the Participating Lender;
- (c) For the avoidance of doubt, nothing in these Rules prevents the Commonwealth notifying the Participating Lender of a Disputed Claim under Rule 10.4(a) after payment in relation to the Claim has been made.
- (d) If by written notice a party determines that an amount payable by one party to the other under Rule 10.2 (“Accounts and remittances for final Claims”) is different from that actually paid, the parties shall use reasonable endeavours to negotiate in good faith to determine the amount payable and the payment will be adjusted by the amount agreed between the parties accordingly.

10.5 Reconciliation of Claim payments

If:

- (a) following a Claim in respect of the Scheme-Backed Loan the following amounts are applied in order:
 - (i) firstly, adding amounts (if any) recovered by a Participating Lender (other than under the Guarantee);
 - (ii) secondly, deducting:
 - (A) Recovery Action Costs which have not been recovered from the Eligible Borrower in respect of Recovery Action; and
 - (B) Enforcement Direction Costs under Rule 3.8(e) (“Loan management, consultation and enforcement”) in respect of Directed Enforcement Action;
 - (iii) thirdly, deducting the amount of any payments clawed back or set aside under any laws relating to the insolvency or bankruptcy of an Eligible Borrower;
 - (iv) fourthly, deducting amounts to discharge other unsecured financial indebtedness due to the Participating Lender by the Eligible Borrower on a pro rata basis as between the Scheme-Backed Loan and the other unsecured financial indebtedness,

and the resulting amount is:

- (v) greater than zero (**Excess Amount**); or
- (vi) less than zero (**Deficiency Amount**); or
- (b) prior to a Participating Lender submitting the accounting under Rule 10.2 (“Accounts and remittances for final Claims”) 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 10.5(a)(iii) (**Void Amounts**); or
- (c) either:

- (i) 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 Prohibited Conduct 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; or
- (ii) the Participating Lender fails to comply with an Enforcement Direction given by the Commonwealth under Rule 3.8(a) (“Enforcement of loan use covenants”),

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).

10.6 Application of the Guarantee in the event of Prohibited Conduct

If, after the relevant Loan Agreement Date, a borrower is found to have engaged in Prohibited Conduct, a Participating Lender will still be entitled to make a Claim in respect of that borrower’s Scheme-Backed Loan provided that:

- (a) the Participating Lender has acted reasonably and in good faith in relation to the relevant Scheme-Backed Loan; and
- (b) the Participating Lender satisfies the Claims Procedures.

11 Changes to these Scheme Rules

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 in respect of any subsisting Guaranteed Liability or any existing Scheme-Backed Loan; 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 will 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 Changes required by the Federal Government or owing to law

The Commonwealth may, at any time and at its absolute discretion, amend or supplement these Rules at the express written direction of the Minister or owing to a change in law or Commonwealth policy that affects any matters that are the subject of such document.

11.3 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 10 Business Days (or such longer period as specified by the Commonwealth) following the day on which notice of the amendment or supplement is first notified by the Commonwealth.

11.4 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

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

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 will 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.