

1988

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

LOANS SECURITIES AMENDMENT BILL 1988

EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer,  
The Hon P.J. Keating, M.P.)



# LOAN SECURITIES AMENDMENT BILL 1988

## GENERAL OUTLINE

The purpose of this Bill is to amend the Loans Securities Act 1919. The principal amendments facilitate a more flexible approach to Commonwealth overseas debt raising and debt management activities in the interests of more cost effective management of the Commonwealth's external debt portfolio. In particular, the Bill enables the Commonwealth to use a wider range of modern borrowing instruments and will assist in the management of foreign currency exposure with currency and interest rate swaps and other hedging techniques. Standing appropriation is provided for such agreements.

2. The proposed amendments to the Act do not provide the Government with additional powers to borrow money overseas. Under present arrangements, the Constitution empowers the Governor-General to borrow money outside Australia. Section 3 of the Loans Securities Act 1919 presently enables the Governor-General to authorise the Treasurer to borrow money in such amounts as the Governor-General determines and on such terms and conditions as the Governor-General may authorise the Treasurer to determine.

3. The amendments to section 3 and the inclusion of section 5A are designed to provide for more flexible overseas debt issue within limits set by the Governor-General. These amendments would let the Commonwealth issue and rollover short-term debt securities or issue medium term notes on a continuous basis. Under the current arrangements, the Governor-General must authorise each issue or rollover of debt. In practice this could be as often as several times a week. Under the proposed provisions the Governor-General will retain the ability to set the maximum amount of the program, but the Treasurer (or his delegate) will be able to issue and rollover securities within this limit.

4. The new subsection 5B(1) is designed to provide the Treasurer with specific statutory power to enter swaps or other financial agreements for debt management purposes. Swaps are not borrowings. Swaps, which are essentially agreements between two parties to exchange financial obligations, are used extensively by a wide range of international borrowers as a hedging technique. While the Government already has the authority under the Executive power in section 61 of the Constitution to enter into swap agreements (and has undertaken a number of swap transactions under this authority during 1987-88), subsection 5B(1) would provide specific authority to this effect. This would accord with the traditional approach taken in relation to the Commonwealth's overseas borrowings which has been to confer specific authority to borrow overseas, eg the Loans Securities Act 1919, although in the absence of such authority, the Commonwealth would, nevertheless, have authority under section 61 of the Constitution to borrow overseas.

5. Section 5B(1) would also enable the use of other debt management techniques, such as interest rate caps which are designed to limit exposure to floating interest rates.

6. Obligations arising from current swap transactions are presently being met from annual appropriations but, given their unpredictable nature, it would be more appropriate if they were funded by way of standing appropriation. The new subsection 5B(2) provides for such transactions to be financed by way of standing appropriation, which will bring more certainty to the future commitment of funds to honour swap contracts, and would put swap funding on the same basis as overseas borrowing. This is consistent with Government policy that unpredictable outlays be authorised by standing appropriation.

7. These amendments will bring the Commonwealth's ability to issue short term debt overseas into line with the issue of Treasury notes in Australia and provide the Commonwealth with the necessary flexibility to manage its overseas debt portfolio more effectively. Such operational flexibility is consistent with that held by other OECD sovereign borrowers and the majority of the public sector in Australia.

8. In seeking Executive Council authority for the Government to undertake overseas loans and swap agreements, under the terms and conditions of borrowings or swaps which the Treasurer is authorised to determine, it has been customary for the Governor-General to give approval for the Commonwealth to submit to foreign legal jurisdiction and, to the extent to which it is possible under Australian law, to waive legal immunity for the Commonwealth in respect of itself or its property (except for property used or intended to be used for diplomatic, consular or military purposes). The new section 5C formalises these processes.

9. The new section 5D expands existing arrangements for the Treasurer to delegate his powers regarding overseas borrowings, swaps and other financial agreements or arrangements to officials. This would allow Treasury officials and members of the diplomatic mission of Australia to set prices in line with market conditions subject to least favourable terms. This flexibility would be essential for the operation of a medium term note facility. Under such facilities securities are offered to investors continuously at market related rates and it would not be practical for the Treasurer to determine individual bond prices on a continuous basis (possibly several times a week).

**FINANCIAL IMPACT STATEMENT**

10. The proposed amendments provide the Government with the flexibility to undertake a wide range of overseas borrowings and make more timely use of favourable interest rate or exchange rate movements to manage its debt portfolio more efficiently.

11. During 1987-88 expenditure on net swap payments was \$11 million and the Government has appropriated \$30 million for these purposes in 1988-89. The transactions undertaken in 1987-88 were essentially aimed at changing the composition of the Commonwealth's external debt liabilities to better hedge the debt portfolio against possible exchange rate risk. The proposed amendments will ensure that swap commitments are provided for under standing appropriation.

## NOTES ON INDIVIDUAL CLAUSES

### Clauses 1 and 2

The first two clauses of the Bill provide for the short title and the commencement of the legislation. The provisions of the Bill will commence on the day on which the Act receives Royal Assent.

### Clause 3: Conditions of loans

Clause 3 replaces the existing section 3 with a new section. Paragraph (a) of subsection 3(1) is being amended to enable the Treasurer to borrow money overseas up to a limit determined by the Governor-General, while the amendment to paragraph (b) will enable the Governor-General to approve a program of borrowings by the Treasurer, such as a continuously offered medium term note program, on a least favourable terms basis. This will enable the Government to take advantage of favourable economic conditions and enable the Treasurer to issue securities under an approved program at short notice (if necessary) without referring each issue to Executive Council.

The amendments to section 3 also provide for any authorisation (subsection 3(1)) or determination (subsection 3(2)) to be in writing. This will ensure that there is a complete written record of borrowing and debt management transactions.

Other amendments made to section 3 are of a drafting nature, including a reference in paragraph 3(1)(c) to 'stock', for consistency with section 4.

### Clause 4: Powers of Treasurer in relation to borrowings outside Australia

For the purposes of borrowing money outside Australia, formal provision is made at section 5A for the Treasurer to enter into: agreements with banks or other financial institutions (paragraph (a)), fiscal agency agreements (paragraph (b)), to issue documents (paragraph (c)), or to take any action required or permitted to be taken by or on behalf of the Commonwealth regarding any agreements or documents referred to in paragraphs (a), (b), or (c) for the purposes of borrowing money (paragraph (d)). These amendments are designed to provide the Government with flexibility to utilize modern borrowing techniques, such as the ability to operate a medium term note program or commercial paper issue.

Clause 4: Power of Treasurer to enter into swaps or other financial arrangements

Formal provision is made at subsection 5B(1) to incorporate existing practice by providing specific authority for the Treasurer to undertake swaps and other financial transactions. This will provide the Government with the necessary flexibility to utilize a variety of financial transactions to manage its overseas debt portfolio more cost effectively.

In view of the unpredictable nature of outlays associated with these transactions, subsection 5B(2) enables funds for such transactions to be met by way of standing appropriation.

Clause 4: Jurisdiction of foreign courts

To enhance the attractiveness of an overseas issue of securities to investors, commercial practice has been for the Commonwealth (and other sovereign borrowers) to submit to the jurisdiction of foreign courts for the resolution of any commercial disputes that may arise from such borrowings. As mentioned in the 'general outline', existing practice has been for the Treasurer to seek Executive Council approval to submit the Commonwealth to the jurisdiction of a foreign court for each overseas borrowing and to waive legal immunity for the Commonwealth.

Accordingly, formal provision is made at subsection 5C(1) to incorporate existing practice by specifying that the Treasurer, on behalf of the Commonwealth, may enter into a written agreement or undertaking under which the Commonwealth agrees or undertakes to submit to the jurisdiction of a foreign court for the purpose of any action or proceedings arising from any agreements referred to in section 5A and subsection 5B(1), or relating to the issue of any stock or security in relation to borrowings undertaken overseas by the Government. Subject to the operation of any other Act, subsection 5C(2) also incorporates existing practice by specifying that the Treasurer, on behalf of the Commonwealth, may waive or enter into a written agreement or undertaking under which the Commonwealth agrees or undertakes to waive any immunity from legal suit or other legal proceedings against the Commonwealth including against its property or assets (other than property or assets used or intended to be used for any diplomatic, consular or military purpose) regarding overseas borrowings, swaps or other financial agreements.

#### Clause 4: Delegation

The new subsection 5D(1) permits the Treasurer, if he so wished, to delegate his powers in regard to subsection 3(2), sections 5A, 5B and 5C to a specified officer of the Department of the Treasury, or to a person who from time to time holds, or performs the duties of a specified office in the Department. Subsection 5D(2) enables the Treasurer to delegate his powers under subsection 3(2), sections 5A and 5C (in so far as they relate to borrowings of money outside Australia) to a member of the diplomatic mission of Australia in a foreign country or to a person acting in that position as, sometimes, documents may need to be signed following the departure of Departmental officials from the country where a loan was raised.

The purpose of the provision for the delegations is to increase the Government's flexibility for overseas borrowing and debt management purposes by allowing the Treasurer's delegate to set the prices of securities in line with prevailing market conditions and subject to least favourable terms. In a medium term note program, for example, securities are offered to investors continuously at market related rates and it would not be practical for the Treasurer to determine individual bond prices on a continuous basis (possibly several times a week).