

Treasury Report: Retail Deposit Guarantee Scheme Bill: Cabinet Legislation Committee Paper

Date:	Friday 21 August 2009	Report No:	T2009/1973
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Action Sought

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Minister of Finance (Hon Bill English)	Sign the attached Cabinet paper and letter and submit it to Cabinet Office. Note next steps.	10am Monday 24 August 2009.

Contact for Telephone Discussion (if required)

Name	Position	Telephone		1st Contact
Joanna Gordon	Manager	[Withheld – privacy]	[Withheld – privacy]	✓
Jeremy Salmond	Senior Solicitor	[Withheld – privacy]	[Withheld – privacy]	

Minister of Finance's Office Actions (if required)

Submit the attached paper to Cabinet Office by 10.00am Monday 24 August 2009.

Note the Cabinet Office have indicated that the absolute latest this paper can be submitted for consideration by LEG on 27 August 2009 is 10.00am Tuesday 25 August 2009. If the paper is submitted after the Monday deadline please also submit the attached letter to the LEG Chair explaining why it is necessary for this late paper to be included in the LEG agenda.

Enclosure: Yes

Treasury Report: Retail Deposit Guarantee Scheme Bill: Cabinet Legislation Committee Paper

Purpose of Report

1. This report seeks your agreement to sign and submit the attached paper to Cabinet Office by 10.00am Monday 24 August 2009. The paper will be considered by the Cabinet Legislation Committee (LEG) on Thursday 27 August 2009.
2. Cabinet Office have indicated that the absolute latest the paper can be submitted for consideration by LEG on 27 August 2009 is 10.00am on Tuesday 25 August 2009. If the paper is submitted after the 10.00am Monday 24 August deadline this report requests that you also sign and submit the attached letter to the Chair of LEG explaining why it is necessary for the late paper to be included in the LEG agenda.

Analysis

Crown Retail Deposit Guarantee Scheme Bill

3. On 17 August 2009 Cabinet agreed to extend the Retail Deposit Guarantee Scheme (DGS) on revised terms until 31 December 2011 (CAB Min (09) 29/2 refers).
4. The Parliamentary Council Office has drafted the Crown Retail Deposit Guarantee Scheme Bill to give effect to this decision. The attached LEG paper *Crown Retail Deposit Guarantee Scheme Bill: Approval for Introduction* seeks agreement to the introduction of this Bill.
5. The Bill has two main parts. The substantive part of the Bill (Part 2):
 - enables the Minister of Finance to set eligibility criteria for the extended scheme and give appropriate guarantees for the period up to 31 December 2011;
 - confirms the Crown's right to recover money paid under the guarantees and, to assist with such recovery, ensures that the Crown can rely on the rights of creditors that receive guarantee payments;
 - provides permanent legislative authority for any guarantee payments;
 - confirms the exercise of powers to establish the Retail Deposit Guarantee Scheme; and
 - clarifies that the Public Finance Act and Crown Wholesale Funding Guarantee Facility are not affected by the Bill.
6. If the Crown makes payments under the guarantee to a creditor it takes the rights and remedies in respect of the entity, any third party and security that the creditor would have had. This means the Crown will not rank above a secured creditor that has been paid out with respect to security held. On the liquidation of the security the Crown will receive its share of the security on a pro-rata basis where the deposit exceeds the coverage cap (i.e. \$500,000 for banks or \$250,000 for non-banks).
7. The following departments/ agencies have been consulted in the preparation of this paper: Crown Law, the Ministry of Economic Development (including the Companies Office) the Reserve Bank of New Zealand and the Securities Commission. The views of these departments and agencies have been reflected in the paper. The Department of Prime Minister and Cabinet has been informed of the paper.

8. The Ministry of Justice has been forwarded a draft of the Bill and will inform the Attorney General directly about the outcome of the Bill of Rights Act vetting process. We do not envisage that the Bill will raise Bill of Rights Act issues. We have included a note in this regard in the compliance section of the LEG paper.

Regulatory impact statement

9. We have prepared a release version of the Regulatory Impact Statement (RIS) for the extension of the DGS. The release version of the RIS will be included as an explanatory note in the Bill. The release version removes information that we would withhold under the Official Information Act (OIA) for reasons including commercial sensitivity. The release version of the RIS is attached to this report for your approval, and will be incorporated as an explanatory note in the Bill which Parliamentary Council Office will submit directly to Cabinet Office.

Other documentation to implement the extended Scheme

10. Note that other documentation to implement the extended Scheme cannot be finalised until after the Bill is passed, establishing the powers to implement the extended Scheme. However, officials are working on these documents and will provide drafts to you in readiness for the efficient implementation of the extension after the Bill has been passed.

Eligibility Criteria

11. The Bill states that the Minister of Finance may specify eligibility criteria for the extended scheme (including the types of entities that are eligible). Once the Bill comes into force on 15 September, you will need to approve the eligibility criteria. They will then be published on Treasury's website, notified in the Gazette and tabled in Parliament.
12. Officials will provide you with draft eligibility criteria during the week of 24 August 2009 for your consideration. These are essentially that institutions must already be members of the current DGS (with the exception of any new entrant New Zealand registered banks or merged entities at the Crown's discretion) and have a credit rating of BB or above. Collective Investment Schemes (CISs) will not be eligible to join the extended scheme.

Policy Guidelines

13. The Bill provides that you may give guarantees to eligible entities if it appears to you to be necessary or expedient in the public interest to do so. To enable the efficient implementation of the extended scheme, we recommend that you delegate authority to actually enter into the guarantee deeds to the Secretary to the Treasury on the same basis (i.e., if it appears to him to be necessary or expedient in the public interest to do so). Note that there could be well over 100 applications and guarantee deeds. If you agree to this approach, officials will provide you with a draft of the formal delegation by 7 September 2009.
14. To enable the Secretary to exercise that delegated authority consistent with the policy goals for the extended scheme, we recommend that you approve policy guidelines which will inform the Secretary's consideration of the public interest.
15. Following your approval, the policy guidelines will be published on the Treasury website when the application process begins (estimated 15 September 2009). Officials will provide you with draft policy guidelines during the week of 24 August 2009 for your consideration.

Deeds for extension period

16. Officials are currently working on the detail of the extension guarantee deeds. Under the current scheme, the delegation from the Minister of Finance includes authority to “sign-off” on the form of the deeds. We recommend that this approach also be adopted for the extension period, i.e., the Minister of Finance agrees the detail of the policy for the extension, but the Secretary approves the specific terms of the deeds giving effect to that policy.
17. Officials will provide you with a summary of the provisions of the Deed of Guarantee for the extension period during the week of 24 August 2009.

Revised Deeds for the rest of the current guarantee period

18. At the same time as the Deeds for the extension period are being issued, Treasury will also be issuing Revised Deeds to institutions covered by the current scheme. The Revised Deeds will apply for the rest of the current guarantee period (i.e. until 12 October 2010). The Crown is able to issue Revised Deeds as long as the Revised Deed is not materially adverse to Creditors generally as compared to the terms of the current Deed.
19. Revised Deeds are being issued to:
 - improve efficiency in the administration of the DGS;
 - provide additional management tools and reporting;
 - help speed up payout in the event of the failure of a guaranteed entity; and
 - better manage the Crown’s liability under the DGS.
20. The Secretary to the Treasury is authorised under delegation from the Minister of Finance dated 13 October 2008 to determine the form of and enter into guarantees under the existing scheme. We anticipate that the Revised Guarantees will be finalised and given under the terms of that delegation.
21. However, officials will provide you with a summary of the provisions of the Revised Deeds during the week of 24 August 2009.

Communications

22. Treasury communications staff are liaising with your office regarding material to support the public announcement planned for next week.

Next steps

23. The next steps for the Bill and indicative timeframes are as follows:

When	What
Week 24-28 August	Public announcement. Eligibility criteria, policy guidelines and summary of Deed provisions (for revised Deeds and Deeds for extension period) to Minister of Finance’s office.
Tuesday 25 – Thursday 27 August	Minister of Finance’s office briefs other parliamentary parties on draft Bill.
Thursday 27 August	LEG considers Bill.

Week 31 August – 4 September Monday 31 August	(House adjourned) Cabinet approves Bill for introduction.
Week 7 – 11 September Monday 7 September Tuesday 8 September Wednesday 9 September	Draft delegation letter to Minister of Finance's office. Bill introduced and passed through all stages under urgency. Specimen Deeds published on Treasury website to allow industry opportunity to comment.
Week 14 – 18 September Monday 14 September Tuesday 15 September	Act receives Royal Assent. Act comes into force and application process begins. Deeds finalised; Eligibility criteria and Policy Guidelines finalised and published in the Gazette. Minister delegates issuing of Deeds for the extension period to the Treasury Secretary.

Recommended Action

We recommend that you:

LEG paper

- a **sign** and **submit** the attached Cabinet paper to Cabinet Office by 10.00am on Monday 24 August 2009 for the Cabinet Legislation Committee on Thursday 27 August 2009;
- b *[if paper is submitted after 10.00am Monday 24 August deadline]* **sign** the attached letter to the Chair of LEG explaining why it is necessary for the late paper to be included in the LEG agenda;

Regulatory impact statement

- c **agree** to the release version of the regulatory impact statement for extending the Retail Deposit Guarantee Scheme;

agreed/ not agreed

Other documentation

- d **agree** that a delegation to the Secretary to the Treasury be prepared authorising the Secretary to enter into and determine the form of the extension guarantee deeds;

agreed/ not agreed

- e **agree** that policy guidelines be developed to inform the exercise of that delegation; and
agreed/ not agreed
- f **agree** that Secretary to the Treasury determine the Revised Deeds under the existing delegation.
agreed/ not agreed

Joanna Gordon
Manager
for Secretary to the Treasury

Hon Bill English
Minister of Finance

Chair
Cabinet Legislation Committee

Dear Gerry

I am writing to seek permission to submit the paper "Crown Retail Deposit Guarantee Scheme Bill: Approval for Introduction" as a late paper to LEG on 27 August 2009. The paper needs to be considered in order to provide certainty to the market soon about the future of the guarantee scheme.

Yours sincerely

Hon Bill English
Minister of Finance