

SCHEDULE 6 FORM OF LEGAL OPINION IN RESPECT OF THE COUNTER-INDEMNITY

A. OPINION REGARDING COUNTER-INDEMNITY

To: The Commonwealth of Australia

[State/Territory] (“Acronym”)

**Deed of Counter-Indemnity dated [insert date] (“Counter-Indemnity”)
given in favour of the Commonwealth of Australia (“Commonwealth”)**

- A.1.1. We refer to the entry by the [State/Territory] into the Counter-Indemnity in respect of which we have acted as legal advisers to the [State/Territory].
- A.1.2. This opinion relates only to the laws of, [insert a reference to the State/Territory jurisdiction] and is given on the basis that it will be construed in accordance with the laws of [insert a reference to the State/Territory jurisdiction]. We express no opinion about the laws of any other jurisdiction or factual matters.
- A.1.3. In this opinion the expression “laws” means the common law, principles of equity and laws constituted or evidenced by documents available to the public generally.

Documents

- A.1.4. We have examined copies (certified or otherwise identified to our satisfaction) of the following documents relating to the Counter-Indemnity:
- a. the Deed of Guarantee executed by the Commonwealth and taking effect from 24 July 2009 (“**Guarantee**”);
 - b. the Counter-Indemnity;
 - c. [insert details of the authorisations/delegations in respect of the entry into, and performance of obligations under, the Counter-Indemnity];

Assumptions

- A.1.5. We have assumed:
- a. the authenticity of all signatures, seals, duty stamps and markings;
 - b. the completeness, and conformity to originals, of all documents submitted to us;

- c. that all authorisations referred to above remain in full force and effect;
- d. that the Counter-Indemnity has been duly authorised and executed by the [State/Territory];
- e. that the Deed of Guarantee and associated Scheme Rules are legal, valid, binding and enforceable;
- f. that no person has been, or will be, engaged in conduct that is unconscionable, dishonest, misleading or deceptive or likely to mislead or deceive.

A.1.6. We have not taken any steps to verify these assumptions.

Opinion

A.1.7. On the foregoing basis and subject to the qualifications set out below, we are of the opinion that:

- a. the [State/Territory] has:
 - i. the power to enter into the Counter-Indemnity and to observe its obligations under it; and
 - ii. taken all action required on its part to authorise the execution, delivery and observance of its obligations under the Counter-Indemnity;
- b. the obligations of the [State/Territory] in respect of the Counter-Indemnity are legal, valid, binding and (subject to the terms of the Counter-Indemnity) enforceable.
- c. the execution and delivery of the Counter-Indemnity and the observance of obligations under it have not violated and do not contravene any law or the constitution of the [State/Territory].

A.1.8. The expression “enforceable” means that the relevant obligations are of a type that the courts enforce and does not mean that the obligations will necessarily be enforced in all circumstances in accordance with their terms.

Qualifications

A.1.9. This opinion is subject to the following qualifications:

- a. we assume no obligation to update the opinions set out in this document;
- b. the nature and enforcement of obligations may be affected by lapse of time, failure to take action, laws and defences generally affecting creditors’ rights, court orders, public policy, restitution and the discretionary nature of equitable remedies;
- c. the rights of a party to the Counter-Indemnity to enforce its rights may be limited or affected by:

- i. breaches by that person of its obligations under the Counter-Indemnity, or misrepresentations made by it in, or in connection with, the Scheme Rules, Counter-Indemnity, the Guarantee or an Eligibility Certificate (as defined for the purposes of the Guarantee);
 - ii. conduct of that party in relation to the Scheme Rules, Counter-Indemnity, the Guarantee or an Eligibility Certificate which is unlawful;
 - iii. the invalidity or unenforceability of the Scheme Rules, Guarantee or an Eligibility Certificate; or
 - iv. conduct of that person in relation to the Counter-Indemnity, the Guarantee or an Eligibility Certificate which gives rise to an estoppel or claim against that person by the person against whom it is seeking to enforce its rights under the Counter-Indemnity;
 - v. an obligation on the parties to act reasonably and in good faith in their dealings with each other, to exercise discretions reasonably and to base opinions and determinations on good faith;
- d. we express no opinion as to the severance of invalid or unenforceable provisions, an indemnity for legal costs, provisions precluding oral amendments or waivers;
 - e. court proceedings may be stayed if the subject of the proceedings is concurrently before another court and a document may not be admissible in court proceedings unless applicable stamp duty has been paid; and
 - f. this opinion does not apply to any amendment or variation of the Counter-Indemnity.

Benefit

- A.1.10. This opinion is addressed to the Commonwealth of Australia and may not, without our prior written consent, be:
 - a. relied on by another person;
 - b. disclosed, except to persons who in the ordinary course of government have access to Commonwealth papers and records on the basis that they will make no further disclosure except to the extent authorised or required by law; or
 - c. quoted in a public document.
- A.1.11. This opinion is strictly limited to the matters stated in it and does not apply by implication to other matters.
- A.1.12. This opinion is given in respect of the laws which are in force at 9.00 am on the date of this letter.

Yours faithfully