



Corporations Amendment (National Guarantee Fund Payments) Regulations 2019

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 14 November 2019

David Hurley
Governor-General

By His Excellency's Command

Jane Hume
Assistant Minister for Superannuation, Financial Services and Financial Technology
Parliamentary Secretary to the Treasurer

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1 Name

This instrument is the *Corporations Amendment (National Guarantee Fund Payments) Regulations 2019*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	19 November 2019

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under section 888C of the *Corporations Act 2001*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Corporations Regulations 2001

1 After regulation 7.5.18

Insert:

7.5.18A Caps on compensation

A liability of the SEGC under Subdivision 4.3, 4.7, 4.8 or 4.9 to pay an amount in relation to a claim allowed under that Subdivision is subject to regulations 7.5.72A (participant-related limits of compensation) and 7.5.72B (claimant-related limits of compensation).

Note: A liability of the SEGC arising under other provisions of Subdivision 4.10 is also subject to regulations 7.5.72A and 7.5.72B.

2 Regulation 7.5.71

Repeal the regulation.

3 After regulation 7.5.72

Insert:

7.5.72A Participant-related limits of compensation

(1) If:

- (a) a claim made under this Division relates to a loss connected with a particular participant, or past participant, in a financial market; and
- (b) the participant or past participant becomes insolvent on a day before the claim is settled by the SEGC (whether or not the insolvency is the cause of the loss mentioned in paragraph (a));

the total amounts paid out of the Fund in connection with claims relating to losses connected with the participant or past participant must not exceed an amount equal to 15% of the minimum amount of the Fund as at the end of that day.

(2) For the purposes of subregulation (1):

- (a) the SEGC must disregard an amount paid out of the Fund in connection with a claim to the extent to which the amount has been repaid to the Fund; and
- (b) if money or other property has been recovered by, or on behalf, of the SEGC because of the exercise of a right or remedy in relation to the loss to which a claim relates, being a right or remedy of the claimant who makes the claim to which the SEGC is subrogated, the SEGC must disregard so much of the amount, or of the total of the amounts, paid out of the Fund in connection with the claim as does not exceed the sum of:
 - (i) the amount of that money; and
 - (ii) the value of so much (if any) of that other property as has not been, and is not required to be, supplied in respect of the claim.

(3) The SEGC may, in relation to each claim, determine in writing:

- (a) whether the claim meets the requirements of paragraphs (1)(a) and (b); and

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- (b) an amount to be the maximum amount in relation to the claim.
 - (4) If the SEGC makes determinations under paragraph (3)(b) in relation to 2 or more claimants, the SEGC must ensure that, as far as practicable, the proportion of any claimant's claim for which compensation is received is the same for each claimant.
 - (5) For the purposes of subregulation (4):
 - (a) the amount of a claimant's claim is taken to be reduced by any reduction under subregulation 7.5.72B(3) of the maximum amount in relation to the claimant; and
 - (b) the compensation received by a claimant is the amount of compensation received by the claimant from all sources (including the Fund).
 - (6) If a determination is in force under paragraph (3)(b), the amount paid out of the Fund in connection with the claim must not exceed the amount that has been determined.

7.5.72B Claimant-related limits of compensation

- (1) If:
 - (a) a claim made by a claimant under this Division relates to a loss connected with a particular participant, or past participant, in a financial market; and
 - (b) the loss is referable to a particular event or circumstance;the sum of the amounts paid out of the Fund to the claimant (the **maximum amount**) in connection with claims relating to losses connected with the participant or past participant that are referable to the event or circumstance (the **eligible claims**):
 - (c) must not exceed \$1 million; and
 - (d) to the extent that the eligible claims relate to cash held with the participant or past participant immediately before the event or circumstance—must not exceed \$250,000.
- (2) For the purposes of subregulation (1):
 - (a) the SEGC must disregard an amount paid out of the Fund in connection with a claim to the extent to which the amount has been repaid to the Fund; and
 - (b) if money or other property has been recovered by, or on behalf, of the SEGC because of the exercise of a right or remedy in relation to the loss to which a claim relates, being a right or remedy of the claimant who makes the claim to which the SEGC is subrogated, the SEGC must disregard so much of the amount, or of the total of the amounts, paid out of the Fund in connection with the claim as does not exceed the sum of:
 - (i) the amount of that money; and
 - (ii) the value of so much (if any) of that other property as has not been, and is not required to be, supplied in respect of the claim.
- (3) If:
 - (a) the participant or past participant becomes insolvent on a day before the eligible claims are settled by the SEGC (whether or not the insolvency is connected with the loss mentioned in paragraph (1)(a)); and
 - (b) the sum of what would, apart from this subregulation, be the maximum amounts in relation to all claimants in connection with eligible claims (the

total claimants' amounts) exceeds the amount worked out under subregulations 7.5.72A(1) and (2);

the maximum amount in relation to the claimant is reduced by an amount worked out as follows:

$$\frac{\text{Claimant's amount} \times \text{Excess}}{\text{Total claimants' amounts}}$$

where:

claimant's amount means the amount that would, apart from this subregulation, be the claimant's maximum amount.

excess means the amount of the excess mentioned in paragraph (b).

- (4) The SEGC may determine in writing:
 - (a) whether the claimant's claims are eligible claims; and
 - (b) an amount to be the maximum amount in relation to the eligible claims.
- (5) If a determination is in force under paragraph (4)(b), the amount paid out of the Fund to the claimant must not exceed the amount that has been determined.

4 At the end of regulation 7.5.75

Add:

- (3) In determining an amount of compensation payable to a claimant in respect of a claim, the SEGC may reduce the amount by reference to any money or other property that the claimant has received, or is likely to receive, from sources other than the Fund as compensation for money or property to which the claim relates.

5 In the appropriate position in Chapter 10

Insert:

Part 10.34—Application provisions related to the Corporations Amendment (National Guarantee Fund Payments) Regulations 2019

10.34.01 Application—claims for compensation payable out of the NGF

The amendments made by Schedule 1 to the *Corporations Amendment (National Guarantee Fund Payments) Regulations 2019* apply in relation to a claim made by a claimant if the claimant's entitlement to make the claim under Subdivision 4.3, 4.7, 4.8 or 4.9 arises on or after the commencement of that Schedule.