

## ENFORCEABLE UNDERTAKING

### Banking Act 1959 (Cth)

#### Section 18A

This enforceable undertaking is given by:

**Commonwealth Bank of Australia (ACN 123 123 124)**

of Ground Floor, Tower 1, 201 Sussex Street, Sydney, New South Wales, 2000

(**CBA**)

AND IS ACCEPTED BY:

**Australian Prudential Regulation Authority**

of Level 12, 1 Martin Place, Sydney, New South Wales 2000

(**APRA**)

UNDER SECTION 18A of the *Banking Act 1959* (Cth) (the **Act**).

A copy of section 18A of the Act is set out in Schedule 1.

#### RECITALS

- A. On 28 August 2017 APRA announced that it would establish a prudential inquiry into CBA focussing on governance, culture and accountability frameworks and practices within the group.
- B. A key objective of the prudential inquiry was to identify aspects of governance, culture and/or accountability within CBA that required improvement, and provide CBA with a road map to support the CBA Board and staff in translating its financial strength and good intent into better meeting the community's needs and the standards expected of a systemically important bank in Australia.
- C. APRA appointed Dr John Laker AO, Prof Graeme Samuel AC and Jillian Broadbent AO to constitute an Inquiry Panel.
- D. CBA co-operated with and assisted the Inquiry.
- E. On 1 February 2018 APRA published a progress report prepared by the Inquiry Panel.
- F. On 1 May 2018 APRA will publish the Inquiry Panel's final report (**Final Report**).
- G. The Final Report raises a number of issues of concern relevant to APRA.
- H. APRA may accept a written undertaking given by a person in connection with a matter in relation to which APRA has a function or power under the Act in accordance with section 18A of the Act.
- I. In light of the matters referred to in this Enforceable Undertaking (**EU**), CBA has offered and APRA has accepted the undertakings set out in paragraphs 12 to 15.

## BACKGROUND

### APRA

1. APRA has the functions and powers set out in the *Australian Prudential Regulation Authority Act 1998 (Cth)* and the Act.
2. Pursuant to s11B of the Act, APRA is responsible for encouraging and promoting the carrying out by authorised deposit-taking institutions (**ADIs**) of sound practices in relation to prudential matters. It is also responsible for the evaluation of the effectiveness and carrying out of those practices.
3. Pursuant to section 11AF of the Act, APRA may make standards in relation to prudential matters that must be complied with by all ADIs (**Prudential Standards**). The Prudential Standards set out the minimum prudential requirements to be observed by an ADI.

### CBA

4. CBA is authorised under section 9 of the Act to carry on banking business in Australia and is an ADI.
5. As an ADI, CBA must comply with the Act and the Prudential Standards.
6. This EU is applicable to CBA and all its subsidiaries.

### *The Final Report*

7. The Final Report includes numerous recommendations for promoting change in CBA. The recommendations focus on five key areas for improvement:
  - a. more rigorous Board and Executive Committee level governance of non-financial risks;
  - b. exacting accountability standards reinforced by remuneration practices;
  - c. a substantial upgrading of the authority and capability of the operational risk management and compliance functions;
  - d. injection into CBA's DNA of the "should we?" question in relation to all dealings with and decisions on customers; and
  - e. cultural change that moves the dial from reactive and complacent to empowered, challenging and striving for best practice in risk identification and remediation.

## APRA'S CONCERNS

8. APRA is concerned at the nature and extent of the Inquiry Panel's findings on CBA's governance, accountability and culture frameworks and practices, and requires CBA to address the Inquiry Panel's recommendations as a matter of the highest priority.
9. As a consequence, APRA has indicated its intention to apply a capital adjustment to CBA's minimum capital requirement by applying an add-on of \$1 billion dollars to CBA's operational risk capital requirement, effective from the date of this EU.

10. CBA accepts the findings set out in the Final Report, acknowledges the concerns held by APRA referred to in paragraph 8 above and has offered an enforceable undertaking in the terms set out in this EU. CBA regrets without reservation the circumstances which led to the commissioning of the prudential inquiry and the need for this EU.
11. APRA agrees that the undertakings in this EU provide an acceptable means for CBA to address the recommendations in the Final Report.

## **UNDERTAKINGS**

### *Remedial action plan*

12. Under section 18A of the Act, CBA undertakes to:
  - a. submit a remedial action plan to APRA within 60 days from the commencement of this EU, in a form approved by APRA, responding to each of the recommendations made in the Final Report;
  - b. include in the remedial action plan:
    - i. a clear and measurable set of responses in respect of each recommendation made in the Final Report;
    - ii. a clear timeline for completion of each remedial action;
    - iii. clear accountabilities on the senior executive team, and other staff as relevant, for completing each remedial action.

### *Independent Review*

13. Under section 18A of the Act, CBA undertakes to appoint an independent reviewer (or reviewers), to be approved by APRA and on terms approved by APRA, to report to APRA every three months commencing from 30 September 2018 and continuing until all items in the remedial action plan have been completed, on:
  - a. the status of compliance with this EU; and
  - b. items in the remedial action plan that CBA considers are nearing completion.

### *Remuneration*

14. Under section 18A of the Act, CBA undertakes to:
  - a. provide a report to APRA by 30 June 2018 setting out how the findings contained in the Final Report have been reflected in remuneration outcomes for current and (where appropriate) past executives;
  - b. reflect and give significant weight to the accountability for completing items in the remedial action plan with the performance scorecards of the senior executive team, and other staff as relevant.

### *Capital adjustment*

15. Under section 18A of the Act, CBA undertakes only to apply for removal of all or part of the capital adjustment set out in paragraph 9 above when it believes it can demonstrate compliance, to APRA's satisfaction with:
  - a. the specific undertakings within this EU; and
  - b. the commitments set out in the remedial action plan.

### **ACKNOWLEDGEMENT**

16. This EU has no operative force until accepted by APRA and the date of commencement of this EU is the date it is accepted by APRA.
17. This EU is given by CBA with its effect extending to all of CBA's subsidiaries and is accepted by APRA pursuant to section 18A of the Act, which also addresses, among other matters, the variation, breach and enforcement of this EU.
18. This EU does not affect APRA's power to take any other action necessary as arising from the circumstances set out in this EU or any other circumstances or conduct regarding CBA.
19. CBA acknowledges that upon any breach of this EU, APRA may take regulatory action as it considers appropriate in the circumstances, including enforcement action under section 18A of the Act and other regulatory responses. In respect of any breaches occurring after 1 July 2018, APRA may consider taking action in respect of obligations under the Bank Executive Accountability Regime (including seeking a pecuniary penalty).
20. CBA acknowledge that this EU is given voluntarily and that it has obtained legal advice in relation to its obligations under, and the effect of, this EU.
21. This EU in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this EU or arising from any other conduct.
22. CBA acknowledges that APRA:
  - a. may from time to time refer publicly to this EU; and/or
  - b. may make this EU public and may publish it on APRA's website at [www.apra.gov.au](http://www.apra.gov.au); and/or
  - c. may issue a media release on, and refer publicly to, the EU referring to its terms and the reasons why APRA accepted the EU;
  - d. may refer publicly to the matters set out in paragraphs 12 to 15, including issuing media releases.
23. CBA acknowledges that if any part of this EU is held invalid that such part shall be severed from this EU and the remainder of this EU will continue to be valid and enforceable.

24. The references to provisions of Commonwealth Acts of Parliament in this EU shall include references to those provisions as amended from time to time and in the event of a repeal of any of them, any equivalent provision from time to time.
25. For the purposes of this EU, any correspondence may be sent to CBA at Ground Floor, Tower 1, 201 Sussex Street, Sydney, New South Wales, 2000 and/or to the email of the Executive General Manager Operational Risk and to APRA's office at Level 12, 1 Martin Place, Sydney, NSW 2000 and/or to the email of the General Manager of the Diversified Institutions Division of APRA.
26. This EU may be varied at any time pursuant to subsection 18A(2) of the Act. Any such variation must be made in writing and authorised by an APRA General Manager or above.

**EXECUTION & ACCEPTANCE**

Executed by **Commonwealth Bank of Australia (ACN 123 123 124)** in accordance with section 127 *Corporations Act 2001 (Cth)*: )  
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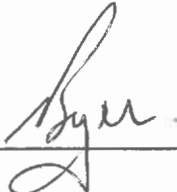
  
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Matthew Comyn  
 Director

  
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Catherine Livingstone  
 Chairman

Accepted by the **Australian Prudential Regulation Authority** under section 18A of the Act by its delegate )  
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Wayne Byres  
 Chairman

Dated: 30 April 2018.

## **SCHEDULE 1**

### **BANKING ACT 1959 (Cth)**

#### **Section 18A Enforceable undertakings**

- (1) APRA may accept a written undertaking given by a person in connection with a matter in relation to which APRA has a power or function under this Act.
- (2) The person may, with APRA's consent, vary or withdraw the undertaking.
- (3) If APRA considers that a person who has given an undertaking has breached any of the terms of the undertaking, APRA may apply to the Federal Court of Australia for an order under subsection (4).
- (4) If the Federal Court is satisfied that a person who has given an undertaking has breached any of the terms of the undertaking, the Court may make any or all of the following orders:
  - (a) an order directing the person to comply with the undertaking;
  - (b) an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person obtained (whether directly or indirectly) and that is reasonably attributable to the breach;
  - (c) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
  - (d) any other order that the Court considers appropriate.