

COURT ENFORCEABLE UNDERTAKING

Banking Act 1959 (Cth)

Section 18A

This court enforceable undertaking (CEU) is given by:

Westpac Banking Corporation (ACN 007457141)
of 275 Kent Street, Sydney, New South Wales 2000

(Westpac)

AND IS ACCEPTED BY:

Australian Prudential Regulation Authority
of 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.

In addition to terms defined elsewhere in this CEU, capitalised terms are defined in Schedule 2 of this CEU.

RECITALS

- A. APRA is the prudential regulator of the financial services industry.
- B. On 20 November 2019, the Australian Transaction Reports and Analysis Centre (**AUSTRAC**) filed proceedings in the Federal Court of Australia against Westpac (**Proceedings**) alleging widespread breaches of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (**AML/CTF Act**).
- C. On 17 December 2019, APRA publicly announced that the Proceedings had given APRA cause to initiate an extensive review program focused on Westpac's Risk Governance (**Review Program**).
- D. On 24 September 2020, Westpac and AUSTRAC agreed to a \$1.3 billion proposed penalty to settle the Proceedings. In agreeing to the proposed penalty, Westpac has admitted to contravening the AML/CTF Act on over 23 million occasions.
- E. On 21 October 2020, the Federal Court of Australia declared that Westpac had contravened the AML/CTF Act on over 23 million occasions and ordered Westpac to pay a penalty totaling \$1.3 billion pursuant to section 175(1) of the AML/CTF Act.
- F. In responding to the Proceedings and the Review Program, Westpac has commissioned a number of Risk Governance Reviews including a reassessment of the Culture, Governance and Accountability Self-Assessment it conducted in 2018. On 17 July 2020, Westpac publicly released the findings of the Reassessment.
- G. The Reassessment found Westpac's non-financial risk culture to be immature and reactive and Westpac acknowledges that it has significant work to do to improve its risk management capability and risk culture. APRA's Prudential Reviews of Westpac have also identified additional weaknesses in Westpac's Risk Governance.
- H. APRA is concerned, and Westpac acknowledges, that Westpac's poor risk culture and slow progress in remediating the issues which Westpac and APRA have identified has allowed, and will allow, new and significant prudential concerns to surface.

- I. This CEU is given by Westpac pursuant to section 18A of the Act and has been accepted by APRA to ensure that Westpac prepares, and delivers on, a holistic Risk Governance Remediation Agenda.

BACKGROUND

APRA

1. APRA has the functions and powers set out in the *Australian Prudential Regulation Authority Act 1998* (Cth) and the Act.
2. Under section 18A of the Act, 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.
3. Pursuant to section 11B of the Act, the functions of APRA include the encouragement and promotion of the carrying out by authorised deposit-taking institutions (**ADI**) of sound practices in relation to prudential matters and the evaluation of the effectiveness and carrying out of those practices.
4. Pursuant to section 5(1) of the Act, prudential matters include matters relating to:
 - a. the conduct of any part of the affairs of, or the structuring or organising of, an ADI, in such a way as to keep the ADI in a sound financial position; and
 - b. the conduct of any part of the affairs of an ADI with integrity, prudence and professional skill.
5. 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**).

Westpac

6. Westpac is authorised under section 9 of the Act to carry on banking business in Australia and is an ADI.
7. As an ADI, Westpac must comply with the Act and the Prudential Standards.

APRA'S CONCERNS

8. APRA is concerned about the nature and extent of the weaknesses in Westpac's Risk Governance which have been identified by the Proceedings, the Risk Governance Reviews, and APRA's Prudential Reviews of Westpac and the pace at which those weaknesses will be rectified.
9. Concerns around the pace and effectiveness of Westpac's remediation stem from APRA's own observations:
 - a. that Westpac's past attempts at remediation have often resulted in ongoing delays and, in some cases, a reset of programs; and
 - b. that the Culture, Governance and Accountability Program, which Westpac commenced in January 2019, has only delivered incremental progress and has lacked sufficient momentum.
10. While APRA acknowledges that Westpac has publicly committed to delivering on its CORE Program, APRA is concerned that the CORE Program still lacks key features which

will be integral to achieving wholesale improvements in Westpac's Risk Governance. For example, APRA has observed that:

- a. Westpac is not actively managing the significant interdependencies between the CORE Program and Westpac's Other Remediation Activities especially in circumstances where:
 - i. certain actions are contingent on others first being completed;
 - ii. there appears to be overlap between two or more remediation activities that have a common purpose; and
 - b. the timeframes for when certain actions will be completed continue to shift and Westpac's overall completion timeframe for the CORE Program has already been delayed by 6 months (from March 2022 to September 2022).
11. New and significant risk issues have continued to emerge, reflecting ongoing failings in Westpac's Risk Governance. These issues have reinforced APRA's view that, to date, Westpac is not making sufficient progress in implementing its Risk Governance Remediation Agenda.
 12. Westpac acknowledges that the complexity and breadth of its Risk Governance Remediation Agenda poses significant execution risks that need to be addressed to ensure that material improvements to Westpac's Risk Governance are made.

UNDERTAKINGS

Remedial action plan

13. Under section 18A of the Act, Westpac undertakes:
 - a. to prepare a written remediation plan, in a form approved by APRA, which:
 - i. details all activities which Westpac is undertaking, or will undertake, as part of the Risk Governance Remediation Agenda (**Risk Remediation Activities**);
 - ii. identifies how the Risk Remediation Activities fit within the CORE Program Workstreams;
 - iii. sets out a clear timeline for the implementation of the Risk Remediation Activities; and
 - iv. specifies the Accountable and Responsible Persons for each of the Risk Remediation Activities

(**Integrated Plan**).

 - b. to submit the Integrated Plan to APRA within 90 days from the commencement of this CEU.
 - c. to address any deficiencies in, or concerns with, the Integrated Plan identified by APRA to APRA's satisfaction.
 - d. not to delay the implementation of the Integrated Plan beyond the timeline

proposed pursuant to paragraphs 13.a.iii or 13.c of this CEU without APRA's consent.

Governance

14. Under section 18A of the Act, Westpac undertakes to:
 - a. establish appropriate Governance Arrangements to oversee and manage:
 - i. the implementation of the Integrated Plan; and
 - ii. the sustainable integration of the outcomes achieved by the Integrated Plan into Westpac's Risk Governance;
 - b. provide sufficient funding and appropriately skilled personnel to design, and support the implementation of, the Integrated Plan; and
 - c. provide Detailed Reporting to APRA within 15 Business Days from the end of each Quarter commencing from the date the Integrated Plan is submitted to APRA on Westpac's progress in implementing the Integrated Plan.

Independent Review

15. Under section 18A of the Act, Westpac undertakes to appoint an Independent Reviewer to report to APRA within 15 Business Days from the end of each Quarter commencing from the date of this CEU and continuing until otherwise agreed with APRA, on:
 - a. the status of compliance with this CEU;
 - b. the status of compliance with the Integrated Plan; and
 - c. whether the Independent Reviewer considers the implementation of the Integrated Plan to be effective and sustainable and the reasons for the Independent Reviewer's conclusions.

Accountability

16. Under section 18A of the Act, Westpac undertakes to reflect and give significant weight to the accountability for completing items in the Integrated Plan in the Remuneration Scorecards of the Accountable and Responsible Persons specified in the Integrated Plan, and other staff as relevant.
17. Westpac also undertakes to make the necessary changes to the Accountability Statements of the relevant Accountable Persons to reflect accountability for the completion of the Risk Remediation Activities in the Integrated Plan.

Capital adjustment

18. Under section 18A of the Act, Westpac undertakes to only apply for removal of all, or part, of the Existing \$1 Billion Capital Add-On when it has reasonable grounds to conclude that it:
 - a. can demonstrate compliance, to APRA's satisfaction, with the specific undertakings within this CEU; and
 - b. has completed, to APRA's satisfaction, the Risk Remediation Activities set out in

the Integrated Plan.

ACKNOWLEDGEMENT

19. In giving the undertakings outlined in this CEU, Westpac acknowledges that:

- a. This CEU has no operative force until accepted by APRA and the date of commencement of this CEU is the date it is accepted by APRA.
- b. This CEU does not affect APRA's power to take any other action necessary and arising from the circumstances set out in this CEU or any other circumstances regarding, or conduct by, Westpac.
- c. Westpac acknowledges that upon any breach of the terms of this CEU, 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.
- d. This CEU is given voluntarily and that Westpac has obtained legal advice in relation to its obligations under, and the effect of, this CEU.
- e. This CEU in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this CEU or arising from any other conduct.
- f. APRA:
 - i. may from time to time refer publicly to this CEU;
 - ii. may make this CEU public and may publish it on APRA's website at <https://www.apra.gov.au/>;
 - iii. may issue a media release on, and refer publicly to, the CEU referring to its terms and the reasons why APRA accepted the CEU.
- g. If any part of this CEU is held invalid that such part shall be severed from this CEU and the remainder of this CEU will continue to be valid and enforceable.
- h. The references to provisions of Commonwealth Acts of Parliament in this CEU 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.
- i. For the purposes of this CEU, any correspondence may be sent to Westpac at 275 Kent Street, Sydney, NSW 2000 and/or to the email of the Group Executive, Financial Crime, Compliance and Conduct and to APRA's office at Level 12, 1 Martin Place, Sydney, NSW 2000, to the email of the Executive Director of the Banking Division of APRA and/or to the email of the General Manager of Banking Branch 1 of the Banking Division of APRA.
- j. This CEU may be varied at any time pursuant to section 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 **Westpac Banking Corporation**)
(**ACN 007457141**) in accordance with section)
127 of the *Corporations Act 2001 (Cth)*)

John McFarlane
Chairman

Peter King
Director

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

John Lonsdale
Deputy Chair

Dated: **3** December 2020

SCHEDULE 1 - SECTION 18A OF THE BANKING ACT 1959 (CTH)

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.

SCHEDULE 2 - INTERPRETATION

For the purposes of this CEU:

Accountability Statements mean documents which comply with s 37FA of the Act.

Accountable and Responsible Persons mean the persons described in s 37BA of the Act and paragraph 20 of *Prudential Standard CPS 520 Fit and Proper*.

Accountable Persons mean the persons described in s 37BA of the Act.

APRA's Prudential Reviews of Westpac mean the reviews undertaken by APRA relating to Westpac's Risk Governance between 1 March 2017 and the commencement of this CEU.

Business Day means a day that is not a Saturday, a Sunday or a public holiday in the state of New South Wales.

CORE Program means Westpac's "CORE – Customer Outcomes and Risk Excellence" program as outlined in the document titled "CORE PROGRAM – Program Design and Implementation Plan" dated 26 June 2020.

CORE Program Workstreams mean the 14 workstreams identified on page 21 of the Reassessment.

Culture, Governance and Accountability Program means the program commenced by Westpac in January 2019 to implement recommendations made in the Culture, Governance and Accountability Self-Assessment.

Culture, Governance and Accountability Self-Assessment means the document titled 'Governance, Accountability and Culture Self-Assessment Westpac Banking Corporate' dated 28 November 2018 available at https://www.westpac.com.au/content/dam/public/wbc/documents/pdf/aw/media/Westpac_Self-Assessment_Report_.pdf

Detailed Reporting means the provision of written information including, but not limited to:

- an assessment of Westpac's progress in designing, implementing, completing, and embedding the Risk Remediation Activities against progress milestones and success measures;
- a description of any challenges Westpac is facing, or is expecting to face, when implementing the Integrated Plan including new issues identified;
- a description of Westpac's proposed course of action to address the challenges it is facing, or is expecting to face, when implementing the Integrated Plan.

Existing \$1 Billion Capital Add-On means the amount of capital that APRA has required Westpac to hold since 30 September 2019 and the commencement of this CEU pursuant to paragraph 16 of Prudential Standard APS 115 Capital Adequacy: Advanced Measurement Approaches to Operational Risk.

Governance Arrangements mean arrangements which ensure oversight of, and accountability for, the implementation of the Integrated Plan by Accountable and Responsible Persons and other staff as relevant. Governance Arrangements include formal Board and management forums for providing leadership, challenge and oversight over the Integrated Plan, regular reporting on all aspects of the Integrated Plan including its progress, effectiveness and the management of key risks such as interdependencies across the Risk Governance Remediation

Agenda, quality and consistency across the Risk Governance Remediation Agenda, provision of appropriate funding and expertise, design and implementation of success metrics, and clear accountability mechanisms.

Independent Reviewer means a person approved by APRA with expertise to report on the matters required by paragraph 15 of this CEU.

Material Risks mean the risks that could have a material impact, both financial and non-financial, on Westpac or on the interests of Westpac's depositors and include the risks identified in paragraph 26 of *Prudential Standard CPS 220 Risk Management*.

Remuneration Scorecards mean the scorecards used as part of Westpac's balanced scorecard framework outlined in the Westpac Group Remuneration Policy approved by the Westpac Board on 3 May 2018.

Quarter means the period of time between 1 January and 31 March, 1 April and 30 June, 1 July and 30 September and 1 October to 31 December of each year.

Reassessment means the document titled 'Reassessment of the Culture, Governance and Accountability Remediation Plan' dated June 2020 available at <https://www.westpac.com.au/about-westpac/media/media-releases/2020/17-july/>

Risk Governance Remediation Agenda means the CORE Program and Westpac's Other Remediation Activities.

Risk Governance Reviews mean the:

- Culture, Governance and Accountability Self-Assessment;
- the Reassessment;
- the document titled 'Attachment 1: Overview of Westpac's AML/CTF Compliance Failures Related to AUSTRAC's Statement Of Claim' dated 4 June 2020 available at pages 3 to 9 of <https://www.westpac.com.au/content/dam/public/wbc/documents/pdf/aw/media/westpac-releases-findings-into-austrac-statement-of-claim-issues-media-release.pdf>; and
- the document titled 'Board Governance of AML/CTF Obligations at Westpac: The Advisory Panel Review' dated 8 May 2020 available at pages 11 to 48 of <https://www.westpac.com.au/content/dam/public/wbc/documents/pdf/aw/media/westpac-releases-findings-into-austrac-statement-of-claim-issues-media-release.pdf>.

Risk Management Frameworks mean the totality of systems, structures, policies, processes and people within an institution that identify, measure, evaluate, monitor, report and control and/or mitigate internal and external sources of Material Risks.

Westpac's Other Remediation Activities mean activities separate to the CORE Program related to strengthening Westpac's Risk Governance which Westpac is undertaking, or proposes to undertake, including activities in response to APRA's Prudential Reviews of Westpac.

Westpac's Risk Governance means the Risk Management Frameworks, the practices, and the culture that enable effective oversight of, and accountability for, identifying, monitoring and managing Material Risks.