

COURT ENFORCEABLE UNDERTAKING

Banking Act 1959 (Cth)

Section 18A

This CEU is given by:

Bank of Queensland Limited (ABN 32 009 656 740)
of 100 Skyring Terrace, Newstead, Queensland 4006

AND IS ACCEPTED BY

Australian Prudential Regulation Authority of 1
Martin Place, Sydney, New South Wales 2000

UNDER SECTION 18A of the Act.

A copy of section 18A of the Act is set out in Schedule 1 of 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. BOQ is an ADI under section 9 of the Act and is regulated by APRA.
- C. BOQ assessed the following Prudential Standard Breaches as significant, and reported these to APRA pursuant to s 62A of the Banking Act in 2022 and 2023:
 - 1. Breach of APS 210 (paragraph 51) reported on 3 August 2022;
 - 2. Breaches of CPS 232 reported on 2 September 2022; and
 - 3. Breaches of CPS 231 reported on 13 February 2023.
- D. APRA engaged with BOQ throughout 2022 on a range of supervisory matters, including with regard to its risk management and compliance practices.
- E. In September 2022, APRA requested that BOQ appoint an independent expert to prepare the Root Cause Analysis Report in response to the Prudential Standard Breaches and BOQ's risk management practices more broadly.
- F. In December 2022 and January 2023, APRA undertook the Prudential Review which was focused on BOQ's operational risk, compliance, and risk culture. APRA wrote to BOQ with its findings from the Prudential Review in March 2023.
- G. In April 2023, KPMG, as the appointed independent expert, finalised the Root Cause Analysis Report.
- H. The Root Cause Analysis Report and the Prudential Review confirmed the Underlying Weaknesses, and heightened APRA's concerns about both the seriousness of the Underlying Weaknesses and BOQ's ability to remediate them.

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- I. APRA is concerned, and BOQ acknowledges, the Underlying Weaknesses have allowed, and may, if not addressed, allow further, significant prudential issues to arise.
- J. APRA acknowledges that BOQ has initiated a remediation program, referred to in an ASX release dated 14 April 2023 as the Integrated Risk Program. BOQ acknowledges that it will need to continue to engage constructively with APRA to prepare a Remedial Action Plan for APRA's approval.
- K. This CEU has been given by BOQ under section 18A of the Act and has been accepted by APRA as a means of ensuring that BOQ prepares, and delivers on, a holistic remediation agenda to promptly address the Underlying Weaknesses.

Relevant Legislation

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 or body corporate in connection with a matter in relation to which APRA has a power or function.
3. Under section 11B of the Act, APRA's functions include the encouragement and promotion of the carrying out by ADIs of sound practices in relation to 'prudential matters' and the evaluation of the effectiveness and carrying out of those practices.
4. Under 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. Under section 11AF of the Act, APRA may make Prudential Standards to be complied with by ADIs.
6. BOQ has authority under section 9A(1) of the Act on to carry on banking business in Australia as an ADI.

Acknowledgement of Underlying Weaknesses

7. APRA is concerned about, and BOQ acknowledges, the nature and extent of the Underlying Weaknesses, the Prudential Standard Breaches that these caused, the slow pace at which they were identified and the potential for new and significant prudential issues, including more Prudential Standard Breaches, to arise if the Underlying Weaknesses are not rectified as a priority.
8. BOQ acknowledges and accepts the following findings of the Prudential Review and the Root Cause Analysis Report in relation to the Underlying Weaknesses, which confirmed that:
 - a. the design and operation of BOQ's Risk Management Framework was insufficient for a bank of BOQ's size and complexity. This was partly due to inadequate controls and over-reliance on manual controls;

- b. BOQ was not able to sufficiently monitor risks, controls and obligations on an 'end-to-end' basis across the business, and it was unable to accurately report on and monitor non-financial risk;
 - c. BOQ's 'three lines of defence' operating model was inadequate, with a low level of assurance provided by the second and third-line functions;
 - d. BOQ identified gaps in its risk culture in 2016, 2018, 2020 and 2022. However, BOQ's risk culture remained immature and BOQ did not prioritise risk culture uplift sufficiently over that time;
 - e. BOQ lacked risk capability, experience and capacity to embed sustainable changes to remedy the Underlying Weaknesses;
 - f. reporting to the BOQ Board and to Board committees was overly positive and failed to highlight material issues. This impacted the BOQ Board's ability to oversee and make sufficiently informed decisions on risks;
 - g. BOQ did not sufficiently engage with regulators when heightened risks or significant issues arose; and
 - h. BOQ's performance and consequence management did not adequately hold BOQ's leadership to account where risks and issues had not been adequately addressed.
9. BOQ acknowledges that the Underlying Weaknesses caused the Prudential Standard Breaches set out in Recital C and will likely lead to further breaches of Prudential Standards until the Underlying Weaknesses are fully addressed.
10. BOQ acknowledges that APRA introduced a \$50 million capital add-on as a result of the Prudential Standard Breaches, the Underlying Weaknesses, and the matters set out in AUSTRAC's CEU.
11. APRA accepts this CEU as a means of ensuring that:
- a. BOQ acknowledges the seriousness of the Underlying Weaknesses; and
 - b. remediation of Underlying Weaknesses is prioritised.

Undertakings

Remedial Action Plan

12. Under section 18A of the Act, BOQ undertakes:
- a. to prepare the Remedial Action Plan, which:
 - i. details the Remediation Activities;
 - ii. incorporates and manages key interdependencies between the Remediation Activities and other activities underway at BOQ, including but not limited to activities required under the AUSTRAC CEU;
 - iii. sets out an appropriate timeline for the implementation of the Remediation Activities, that is specific, measurable and achievable;

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- iv. specifies the Accountable Persons with responsibility for each aspect of the Remediation Activities, and the responsibilities of those Accountable Persons; and
 - v. specifies the funding and personnel BOQ is committing to the Remediation Activities.
- b. to submit to APRA for approval the Remedial Action Plan within 120 days from the commencement of this CEU;
 - c. to incorporate any recommendations or to address any concerns with the Remedial Action Plan identified by APRA as part of its review of the Remedial Action Plan as set out in paragraph 12(b) above to APRA's satisfaction within 15 Business Days from receiving such recommendations or concerns from APRA;
 - d. not to delay the implementation of the Remedial Action Plan beyond the timeline proposed under paragraphs 12.a.iii and 12.c of this CEU without APRA's written consent.

Governance

- 13. Under section 18A of the Act, BOQ undertakes to provide Board papers on its progress implementing the Remedial Action Plan within 15 Business Days of the Board meetings, commencing from the date the Remedial Action Plan is approved by APRA.

Independent review

- 14. Under section 18A of the Act, BOQ undertakes to:
 - a. appoint an Independent Reviewer, and the scope of the Independent Reviewer's engagement, to be approved in writing by APRA;
 - b. the Independent Reviewer is to report on:
 - i. BOQ's progress on the Remedial Action Plan;
 - ii. whether the Independent Reviewer considers the implementation of the Remedial Action Plan to be effective and sustainable and the reasons for the Independent Reviewer's conclusions; and
 - iii. whether the Independent Reviewer considers it is necessary to amend the Remedial Action Plan (including requiring further work) to ensure that the Underlying Weaknesses are addressed and the reasons for the Independent Reviewer's conclusions.
 - c. complete any further work identified by the Independent Reviewer and/or otherwise agreed with APRA to that the Underlying Weaknesses are addressed. BOQ undertakes to complete any further work required under this paragraph within reasonable timeframe(s) to be agreed with APRA; and
 - d. the reporting under paragraph 14.b should be completed every four months and provided to APRA within 20 Business Days of each four month period from the date the Remedial Action Plan is approved by APRA and continuing until otherwise agreed with APRA.

Accountability

15. Under section 18A of the Act, BOQ undertakes to reflect and give significant weight to the accountability for Remediation Activities in the Remedial Action Plan in the Remuneration Scorecards of the Accountable and responsible persons specified in the Remedial Action Plan, and other staff as relevant.
16. BOQ also undertakes to make the necessary changes to the Accountability Statements of the relevant Accountable Persons to reflect accountabilities for the completion of the Remediation Activities in the Remedial Action Plan.

Capital adjustment

17. Under section 18A of the Act, BOQ undertakes to only apply for removal of all, or part, of the \$50 million 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 Remediation Activities set out in the Remedial Action Plan.

Acknowledgement

In giving the undertakings outlined in this CEU, BOQ acknowledges that:

18. 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.
19. 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 BOQ.
20. BOQ 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.
21. This CEU is given voluntarily and that BOQ has obtained legal advice in relation to its obligations under, and the effect of, this CEU.
22. 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.
23. APRA:
 - a. may from time to time refer publicly to this CEU;
 - b. may make this CEU public and may publish it on APRA's website at <https://www.apra.gov.au/>; and
 - c. may issue a media release on, and refer publicly to, this CEU referring to its terms and the reasons why APRA accepted this CEU.
24. 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.

- 25. 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.
- 26. For the purposes of this CEU, any correspondence may be sent to:
 - a. BOQ at Level 6, 100 Skyring Terrace, Newstead, Queensland 4006 and/or to the email of the Company Secretary; and
 - b. 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 3.
- 27. This CEU may be varied under section 18A(2) of the Act. Any such variation must be made in writing and authorised by an APRA General Manager or above.

Execution and Acceptance

Executed by Bank of Queensland Limited (**ABN 32 009 656 740**) in accordance with section 127 of the *Corporations Act 2001* (Cth))
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Warwick Negus
Chair

Patrick Allaway
Managing Director and CEO

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

John Lonsdale
Chair

Dated:

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

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; and
 - d. any other order that the Court considers appropriate.

SCHEDULE 2 - INTERPRETATION

For the purposes of this CEU:

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

Act means the *Banking Act 1959 (Cth)*

ADI means authorised deposit taking institution as defined by s 5 of the Act.

APS 210 means *Prudential Standard APS 210: Liquidity*.

AUSTRAC CEU means the court enforceable undertaking accepted by the Australian Transaction Reports and Analysis Centre from BOQ on 30 May 2023.

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

CPS 231 means *Prudential Standard CPS 231: Outsourcing*.

CPS 232 means *Prudential Standard CPS 232: Business Continuity Management*.

CEU means a court enforceable undertaking.

Independent Reviewer means a person approved by APRA with expertise to report on the matters required by paragraph 14 of this CEU.

Prudential Review means the review undertaken by APRA in December 2022 and January 2023 of BOQ's risk practices, with a focus on operational risk, compliance and risk culture, including the programs of work underway to enhance risk maturity at BOQ.

Prudential Standards means standards made by APRA in relation to prudential matters.

Prudential Standard Breaches means breaches of prudential requirements that were assessed as significant by BOQ and reported to APRA pursuant to s 62A of the Banking Act, specifically:

1. Breach of APS 210 (paragraph 51) reported by BOQ on 3 August 2022;
2. Breaches of CPS 232 reported by BOQ on 2 September 2022; and
3. Breaches of CPS 231 reported by BOQ on 13 February 2023.

Remedial Action Plan means the written remediation plan comprised of the matters set out in paragraph 12a(i)-(v) of this CEU.

Remediation Activities means all activities BOQ is undertaking, or will undertake, to address the Underlying Weaknesses and the root causes of the Underlying Weaknesses.

Root Cause Analysis Report means the report prepared by the independent expert identifying and reporting on the root causes of the Prudential Standard Breaches.

Underlying Weaknesses means BOQ's underlying weaknesses in risk management practices, controls, systems, governance and risk culture, and their root causes, including those confirmed by the Prudential Review and the Root Cause Analysis Report.