

**ENFORCEABLE UNDERTAKING GIVEN TO THE AUSTRALIAN COMMUNICATIONS AND
MEDIA AUTHORITY BY COMMONWEALTH BANK OF AUSTRALIA (ACN 123 123 124) UNDER
SECTION 38 OF THE SPAM ACT 2003**

1. Definitions

- 1.1. In this Undertaking:
 - 1.1.1. **ACMA** means the Australian Communications and Media Authority.
 - 1.1.2. **Board** means the Board of Directors of CBA or a sub-committee appointed by the Board.
 - 1.1.3. **Business Day** means a day that is not a Saturday, Sunday, or public holiday in Sydney or Melbourne, Australia.
 - 1.1.4. **CBA** means the Commonwealth Bank of Australia (ACN 123 123 124).
 - 1.1.5. **CEE** means CBA's Customer Engagement Engine which is the primary system used by CBA for commercial electronic messages, or an equivalent replacement system.
 - 1.1.6. **CEM** means "commercial electronic message" as defined in section 6 of the Spam Act 2003 and sent via the CEE.
 - 1.1.7. **CEM complaint** means a complaint to CBA that relates to a CEM sent, or alleged to have been sent, by CBA and includes complaints notified to CBA by the ACMA.
 - 1.1.8. **Commencement Date** has the meaning given in clause 2.1.
 - 1.1.9. **Independent Consultant** means a qualified and independent consultant with expertise in audits relating to risk and compliance, processes, procedures, systems, governance and controls.
 - 1.1.10. **Spam Act** means *Spam Act 2003* (Cth).
 - 1.1.11. **Undertaking** means this enforceable undertaking.
- 1.2. Words and expressions defined in the Spam Act have the same meaning in this Undertaking, unless otherwise specified.
- 1.3. A reference to legislation includes any modification, consolidation, replacement or re-enactment of it, and any regulations made under it.

2. Term of the Undertaking

- 2.1. This Undertaking commences when:
 - 2.1.1. it has been executed by CBA; and
 - 2.1.2. so executed, it has been accepted by the ACMA and written notification of that acceptance has been provided to CBA (**Commencement Date**).
- 2.2. This Undertaking continues for a period of 36 months from the Commencement Date or until it is withdrawn by CBA, with the approval of the ACMA, pursuant to section 38 of the Spam Act, whichever is earlier.
- 2.3. This Undertaking may be varied by CBA, with the consent of the ACMA, pursuant to subsection 38(2) of the Spam Act.
- 2.4. Any notice or approval required or permitted to be given by the ACMA under this Undertaking must be in writing and may be given by any ACMA Authority member or by any ACMA staff member who is a member, or acting member, of the Senior Executive Service.

3. Background

- 3.1. On 29 March 2023, the ACMA notified CBA that the ACMA has reasonable grounds to believe that:
 - 3.1.1. between 27 May 2022 and 30 November 2022, CBA sent, or caused to be sent, CEMs without consent, in contravention of subsection 16(1) of the Spam Act; and
 - 3.1.2. between 30 November 2021 and 11 August 2022, CBA sent or caused to be sent, CEMs that did not contain a functional unsubscribe facility, in contravention of subsection 18(1) of the Spam Act.
- 3.2. CBA acknowledges the ACMA's findings, and in response to the ACMA's concerns regarding CBA's compliance with the Spam Act, offers this Undertaking to the ACMA aimed at addressing future compliance with the Spam Act.

4. Undertaking

- 4.1. CBA undertakes to take the following specified actions to ensure the CBA's processes, procedures and systems used for sending CEMs comply with the Spam Act so that the CBA does not contravene the Spam Act in the future.

5. Independent Consultant

- 5.1. CBA undertakes to appoint an Independent Consultant to:
 - 5.1.1. review CBA's current procedures, policies, training and systems relating to the CBA's compliance with the Spam Act and identify any deficiencies and/or improvements to ensure that:
 - a. all CEMs are sent, or caused to be sent, by CBA with the consent of the relevant account holder;
 - b. CBA receives, records and actions all CEM unsubscribe requests within the periods specified in Schedule 2 to the Spam Act for when withdrawal of consent takes effect;
 - c. all CEMs sent, or caused to be sent, by CBA contain the information required by paragraphs 17(1)(a) and (b) of the Spam Act;
 - d. all CEMs sent, or caused to be sent, by CBA contain a functional unsubscribe facility as required by subsection 18(1) of the Spam Act, and, by reference, the *Spam Regulations 2021*; and
 - e. CBA classifies and analyses records of CEM complaints to identify systemic and recurring problems and trends (**systemic problems**).
 - 5.1.2. produce a report (**the report**) making recommendations as to:
 - a. ensuring CBA CEM systems receive, record and action unsubscribe requests;
 - b. improvements to policies and procedures that ensure CBA's compliance with the Spam Act, including but not limited to:
 - i. quality assurance procedures for ensuring the ongoing integrity and functionality of relevant systems used for sending CEMs;

- ii. procedures for ensuring CBA's relevant personnel comply with policies and procedures used for sending CEMs and that there is appropriate management oversight and assurance of the policies and procedures; and
 - iii. procedures for ensuring CBA's continued compliance when process or system changes are implemented in systems used for sending CEMs;
 - c. ongoing training for relevant personnel of CBA who create or send CEMs on Spam Act compliance;
 - d. CBA's ongoing monitoring of relevant Spam Act compliance measures; and
 - e. ensuring CBA takes reasonable steps to address any identified systemic problems.
- 5.2. CBA undertakes to seek written approval from the ACMA for the appointment of the proposed Independent Consultant within 20 business days after the Commencement Date. If the ACMA does not approve the choice of Independent Consultant, CBA will repeat this process until it has the ACMA's written approval.
- 5.3. CBA undertakes to appoint the Independent Consultant, and to provide written notification of that appointment to the ACMA, within 10 Business Days after the ACMA has given its written approval.
- 5.4. The Independent Consultant will provide the report to CBA, including the Board, and at the same time to the ACMA, within 6 months of their appointment.
- 5.5. The Independent Consultant will again review CBA's relevant procedures, policies, training and systems relating to its Spam Act compliance every 12 months during the term of the Undertaking, after they provide their report to CBA and the ACMA (**additional review**).
- 5.6. The Independent Consultant will provide the results of their additional review in writing to CBA, including the Board, and, at the same time, the ACMA within 2 months of the commencement of each additional review, including a statement about whether they are satisfied that CBA's relevant procedures, policies, training and systems are effective in ensuring compliance with the Spam Act.
- 5.7. Subject to the ACMA's written agreement, CBA may remove the Independent Consultant at any time and replace the Independent Consultant with a new Independent Consultant approved by ACMA. If the ACMA does not approve the choice of Independent Consultant, CBA will repeat this process until it has the ACMA's approval.

6. Implementation Plan, Audit & Reporting

- 6.1. Within 3 months of receiving the report, CBA will:
 - 6.1.1. develop an implementation plan setting out the steps CBA has taken, or will take, to implement all recommendations made by the Independent Consultant in the report, including timeframes (unless the ACMA specifically agrees that any recommendation need not be implemented upon request in writing from the CBA); and
 - 6.1.2. provide a copy of the Board-approved implementation plan to the ACMA.
- 6.2. CBA undertakes to comply with the approved implementation plan in accordance with the timeframes specified in the plan.
- 6.3. The implementation plan may be modified at any time subject to the ACMA's written

approval.

- 6.4. Every 6 months from the date the Board approved implementation plan is provided to the ACMA, CBA will provide a compliance report, approved by the Board, to the ACMA that covers the previous 6 months that includes:
 - 6.4.1. the status of actions it will take under the implementation plan;
 - 6.4.2. a report of all de-identified consumer CEM complaints made to CBA about alleged non-compliance with the Spam Act, including the date of the complaint and a unique identifier for each complaint; and
 - 6.4.3. action CBA has taken, or proposes to take, on all CEM complaints the ACMA has notified CBA about or that CBA has received directly from consumers.
- 6.5. CBA will report to the ACMA all identified instances of non-compliance with the Spam Act within 10 business days of identifying an instance of CEM non-compliance, including the cause of any identified compliance issues and remediation action taken or proposed to be taken and applicable dates.

7. Training

- 7.1. Within 3 months of the Commencement Date, CBA undertakes to train all personnel currently responsible for creating or sending CEMs, and their direct line manager, to ensure compliance with the Spam Act.
- 7.2. CBA undertakes to provide training similar to that described in clause 7.1, for all new personnel that are responsible for creating or sending CEMs within 6 weeks of their commencement in such roles.
- 7.3. CBA undertakes to repeat the training, described in clause 7.1, every 12 months after CBA has undertaken the training referred to in clause 7.1 for the term of the Undertaking.
- 7.4. CBA undertakes to provide the ACMA with written notice when it has undertaken training referred to in clauses 7.1 and 7.3.

8. Record-keeping

- 8.1. CBA undertakes to:
 - 8.1.1. keep accurate records to enable the identification of electronic account-holders who have consented to the sending of CEMs by CBA;
 - 8.1.2. keep accurate records of CEM withdrawal of consent requests received by CBA;
 - 8.1.3. keep accurate records of CEM complaints; and
 - 8.1.4. provide copies of records referred to in this clause 8 to the ACMA upon request by the ACMA.

9. Acknowledgment of publication

- 9.1. CBA acknowledges that the ACMA may publish these undertakings.

Execution

Signed for and on behalf of **Commonwealth Bank Australia** (ACN 123 123 124) by its authorised representative:

Monique Macleod

Name of authorised representative

Group Executive Marketing and Corporate Affairs
Title of authorised representative



Signature of authorised representative

1 June 2023

Date of signing

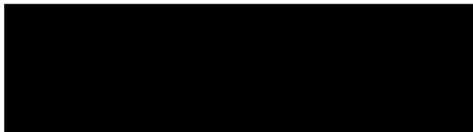
Signed for and on behalf of the **Australian Communications and Media Authority** by its authorised representative:

Jeremy Fenton

Name of authorised representative

Executive Manager,
Consumer, Consent and Numbers Branch

Title of authorised representative



1 June 2023

Date of signing