

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. **CEE CEM** means "commercial electronic message" as defined in section 6 of the Spam Act and sent via the CEE.
 - 1.1.7. **CEM** means "commercial electronic message" as defined in section 6 of the Spam Act and includes CEE CEMs.
 - 1.1.8. **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.
 - 1.1.9. **Commencement Date** means 2 June 2023.
 - 1.1.10. **designated commercial electronic message** (designated CEM) as defined in Schedule 1 to the Spam Act.
 - 1.1.11. **Independent Consultant** means a qualified and independent consultant with expertise in audits relating to risk and compliance, processes, procedures, systems, governance and controls.
 - 1.1.12. **Spam Act** means *Spam Act 2003* (Cth).
 - 1.1.13. **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 has been amended pursuant to section 38(2) of the Spam Act on 3 October 2024 (**Amendment Date**).
- 2.2. This Undertaking continues for a period of 36 months from the Amendment Date or until it is withdrawn by CBA, with the approval of the ACMA, pursuant to section 38 of the Spam Act, whichever is earlier.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. On 15 August 2024, the ACMA notified CBA that the ACMA has reasonable grounds to believe that between 22 November 2022 and 17 April 2024, CBA sent, or caused to be sent:
 - a. CEMs without consent, in contravention of subsection 16(1) of the Spam Act; and
 - b. CEMs that did not contain a functional unsubscribe facility, in contravention of subsection 18(1) of the Spam Act.
- 3.3. 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.
- 3.4. On 2 June 2023, the ACMA accepted an Undertaking from CBA to acknowledge and address the ACMA's findings referred to in clause 3.1. That Undertaking has since been amended to acknowledge and address the ACMA's findings referred to in clause 3.2.

4. Undertaking

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

Part A: CEE CEMs

5. The obligations in:
 - 5.1. clauses 7.1 to 7.3 and 8 apply in the period from the Commencement Date to the Amendment Date;
 - 5.2. clauses 7.4 and 7.5 apply in the period from the Commencement Date until CBA complies with the obligation in clause 12.1.2; and
 - 5.3. clause 9 applies for the term of this Undertaking.

6. CEE CEM Independent Consultant

- 6.1. CBA undertakes to appoint an Independent Consultant to:
- 6.1.1. review CBA's current procedures, policies, training and systems relating to CBA's compliance with the Spam Act and identify any deficiencies and/or improvements to ensure that:
 - a. all CEE 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 CEE CEM unsubscribe requests within the periods specified in Schedule 2 to the Spam Act for when withdrawal of consent takes effect;
 - c. all CEE 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 CEE 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 CEE CEM complaints to identify systemic and recurring problems and trends (**systemic problems**).
 - 6.1.2. produce a report (**the CEE CEM Report**) making recommendations as to:
 - a. ensuring CBA CEE 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 CEE CEMs;
 - ii. procedures for ensuring CBA's relevant personnel comply with policies and procedures used for sending CEE 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 CEE CEMs.
 - c. ongoing training for relevant personnel of CBA who create or send CEE 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.
- 6.2. 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.

- 6.3. 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.
- 6.4. The Independent Consultant will provide the CEE CEM Report to CBA, including the Board, and at the same time to the ACMA, within 6 months of their appointment.

7. CEE CEM Implementation Plan, Audit & Reporting

- 7.1. Within 3 months of receiving the CEE CEM Report, CBA will:
 - 7.1.1. develop a CEE implementation plan setting out the steps CBA has taken, or will take, to implement all recommendations made by the Independent Consultant in the CEE CEM Report, including timeframes (unless the ACMA specifically agrees that any recommendation need not be implemented upon request in writing from CBA) (**CEE Implementation Plan**); and
 - 7.1.2. provide a copy of the Board-approved CEE Implementation Plan to the ACMA (**Approved CEE Implementation Plan**).
- 7.2. CBA undertakes to comply with the Approved CEE Implementation Plan in accordance with the timeframes specified in the plan.
- 7.3. The Approved CEE Implementation Plan may be modified at any time subject to the ACMA's written approval.
- 7.4. Every 6 months from the date the Approved CEE 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:
 - 7.4.1. the status of actions it will take under the Approved CEE Implementation Plan;
 - 7.4.2. a report of all de-identified consumer CEE 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
 - 7.4.3. action CBA has taken, or proposes to take, on all CEE CEM complaints the ACMA has notified CBA about or that CBA has received directly from consumers.
- 7.5. 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 CEE CEM non-compliance, including the cause of any identified compliance issues and remediation action taken or proposed to be taken and applicable dates.

8. CEE CEM Training

- 8.1. Within 3 months of the Commencement Date, CBA undertakes to train all personnel currently responsible for creating or sending CEE CEMs, and their direct line manager, to ensure compliance with the Spam Act.
- 8.2. CBA undertakes to provide training similar to that described in clause 8.1, for all new personnel that are responsible for creating or sending CEE CEMs within 6 weeks of their commencement in such roles.
- 8.3. CBA undertakes to repeat the training, described in clause 8.1, every 12 months after CBA has undertaken the training referred to in clause 8.1 until the Amendment

Date.

- 8.4. CBA undertakes to provide the ACMA with written notice when it has undertaken training referred to in clauses 8.1 and 8.3.

9. CEE CEM Record-keeping

- 9.1. CBA undertakes to:
- 9.1.1. keep accurate records to enable the identification of electronic account-holders who have consented to the sending of CEE CEMs by CBA;
 - 9.1.2. keep accurate records of CEE CEM withdrawal of consent requests received by CBA;
 - 9.1.3. keep accurate records of CEE CEM complaints; and
 - 9.1.4. provide copies of records referred to in this clause 9 to the ACMA upon request by the ACMA.

Part B: All CEMs

10. The obligations in clauses 11 to 16 apply from the Amendment Date.

11. CEM Independent Consultant

- 11.1. CBA undertakes to appoint an Independent Consultant to:
- 11.1.1. review CBA's current procedures, policies, training and systems relating to its compliance with the Spam Act and additionally, in respect of the CEE, CBA's compliance with the Approved CEE Implementation Plan referred to in clause 7 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*;
 - e. all CEMs sent, or caused to be sent, by CBA with the intent that they be treated as designated CEMs (within the meaning given in Schedule 1 of the Spam Act) have been accurately categorised as designated CEMs having regard to all relevant factors under the Spam Act;
 - f. CBA classifies and analyses its records of CEM complaints to identify systemic and recurring non-compliance with the Spam Act and trends (**systemic problems**);
 - g. CBA allocates adequate resources to support its Spam Act

compliance;

- h. CBA implements effective governance, oversight and quality assurance measures in relation to its CEM procedures, processes and systems, including reporting to the Chief Compliance Officer and the Executive Leadership Team Non-Financial Risk Committee; and
- i. CBA coordinates the governance, oversight and quality assurance measures relating to Spam Act compliance referred to in sub-clause 11.1.1.h so that those measures apply across CBA's relevant business units.

11.1.2. produce a report (**the Report**) making recommendations as to:

- a. ensuring CBA 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 as they relate to compliance with the Spam Act;
 - ii. mechanisms for ensuring relevant CBA personnel comply with policies and procedures including senior approval and oversight of the policies relevant to compliance with the Spam Act by the relevant Executive General Manager owners of those policies;
 - iii. procedures for ensuring CBA's continued compliance when process or system changes are implemented; and
 - iv. processes and procedures to ensure accurate characterisation of designated CEMs and CEMs.
- c. ongoing training for personnel of CBA who are responsible for classifying, creating or authorising the sending of CEMs on Spam Act compliance;
- d. maintaining accurate records (in addition to the records maintained in accordance with clause 9):
 - i. to enable the identification of electronic account-holders who have consented to the sending of CEMs by CBA;
 - ii. of withdrawal of consent requests received by CBA; and
 - iii. of CEM complaints.
- e. ongoing monitoring of Spam Act compliance measures including adequacy of resourcing to support its Spam Act compliance; and
- f. ensuring CBA takes reasonable steps to address any identified systemic non-compliance with the Spam Act.

11.2. CBA undertakes to seek written approval from the ACMA for the appointment of the proposed Independent Consultant within 20 Business Days after the Amendment 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.

- 11.3. 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.
- 11.4. The Independent Consultant will provide the Report to CBA, and at the same time to the ACMA, within six months of their appointment.

12. Implementation Plan, Audit & Reporting

- 12.1. Within 3 calendar months of receiving the Report, CBA will:
 - 12.1.1. 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 and to the extent not yet implemented, the steps in the Approved CEE Implementation Plan including timeframes (unless the ACMA agrees in writing that any recommendation need not be implemented); and
 - 12.1.2. provide a copy of the Board-approved implementation plan to the ACMA (the **Further Implementation Plan**).
- 12.2. CBA undertakes to comply with the approved Further Implementation Plan in accordance with the timeframes specified in the plan.
- 12.3. The Further Implementation Plan may be modified at any time subject to the ACMA's written approval.

13. Independent Consultant - Subsequent Reviews and replacement

- 13.1. CBA undertakes to instruct the Independent Consultant to review, during the term of this Undertaking, every 12 months from the date the Report is provided to CBA and the ACMA (each a **Subsequent Review**):
 - 13.1.1. CBA's progress to address the actions set out in the Further Implementation Plan including, in respect of the CEE, CBA's compliance with the Approved CEE Implementation Plan referred to in clause 7; and
 - 13.1.2. any changes since the Independent Consultant's last review that CBA has made to procedures, policies, training, and systems relating to its Spam Act compliance.
- 13.2. CBA undertakes to instruct the Independent Consultant to provide the results of Subsequent Reviews in writing to CBA, including the Board, and, at the same time, the ACMA within 2 months of the commencement of each Subsequent Review, including a statement about whether they are satisfied that CBA's procedures, policies, training and systems are effective in ensuring compliance with the Spam Act.
- 13.3. 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 the ACMA. If the ACMA does not approve the choice of Independent Consultant, CBA will repeat this process until it has the ACMA's approval.

14. Periodic compliance reports

- 14.1. For every six month period from the date the Further Implementation Plan is provided to the ACMA (**reporting period**), CBA will provide a compliance report, approved by the Board, to the ACMA that covers that reporting period that includes:

- 14.1.1. the status of actions CBA has taken, or will take under the Further Implementation Plan;
 - 14.1.2. 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;
 - 14.1.3. action CBA has taken on each CEM complaint the ACMA has notified CBA about or CBA has received directly from consumers;
 - 14.1.4. details of training provided under clause 15 of this Undertaking; and
 - 14.1.5. all identified instances of non-compliance with the Spam Act that occurred during the period covered by the report, including the cause of any identified compliance issues and remediation action taken or proposed to be taken and including a copy of any report already provided to the ACMA pursuant to clause 7.5 of this Undertaking.
- 14.2. CBA will provide the Board approved compliance report to the ACMA within 2 months of the last day of each reporting period.

15. Training

- 15.1. Within 5 months of the Amendment Date, CBA undertakes to train all personnel who are responsible for classifying, creating or authorising the sending of CEMs, and their direct line manager, in relation to compliance with the Spam Act. CBA undertakes to use its best endeavours to provide training to personnel in authorising roles within 3 months of the Amendment Date.
- 15.2. Commencing 5 months from the Amendment Date, CBA undertakes to provide training similar to that described in clause 15.1 for all new personnel that may be, or are responsible for classifying, creating or authorising the sending of CEMs within 6 weeks of their commencement in such roles.
- 15.3. CBA undertakes to repeat the training, described in clause 15.1, every 12 months after CBA has undertaken the training referred to in clause 15.1 for the term of this Undertaking.
- 15.4. CBA undertakes to keep records of such training (including the names of personnel who undertook the training, and the date and content of the training) during the term of the Undertaking. CBA undertakes to provide the ACMA with written notice when it has undertaken training referred to in clauses 15.1 and 15.3.
- 15.5. The training under clauses 15.1 and 15.2 is to be either:
 - 15.5.1. conducted in person or virtually by a suitably qualified compliance professional or legal practitioner with expertise in the Spam Act; or
 - 15.5.2. delivered via online training modules which have been designed with the input of a suitably qualified compliance professional or legal practitioner with expertise in the Spam Act.

16. Record-keeping

- 16.1. In addition to the records maintained in accordance with clause 9, CBA undertakes to:
 - 16.1.1. keep accurate records to enable the identification of electronic account-holders who have consented to the sending of CEMs by CBA;
 - 16.1.2. keep accurate records of withdrawal of consent requests received by

CBA; and

16.1.3. keep accurate records of CEM complaints.

16.2. CBA undertakes to:

16.2.1. implement any recommendations made in the Report under clause 11.1.2.d (unless the ACMA agrees in writing that any recommendation need not be implemented) with respect to the way in which it stores and maintains the records referred to in clause 16.1; and

16.2.2. from the date the Further Implementation Plan is provided to the ACMA, provide copies of the records referred to in clause 16.1 to the ACMA within 20 business days (or another period as agreed in writing by the ACMA, upon request of CBA before the end of the initial 20 business days) from receipt of a request by the ACMA.

Part C: General

17. Acknowledgment of publication

17.1. CBA acknowledges that the ACMA may publish these undertakings.

Execution

SIGNED by an authorised representative for **Commonwealth Bank of Australia** (ACN 123 123 124)



Signature of Authorised Representative

Monique Macleod

Name of Authorised Representative

Group Executive Marketing and Corporate Affairs

Title of Authorised Representative

3 October 2024

Date of Signature

SIGNED by an authorised representative for the **AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY**



Signature of Authorised Representative

J.C. FENTON

Name of Authorised Representative

EXECUTIVE MANAGER,
UNSOLICITED COMMUNICATIONS & CALLS

Title of Authorised Representative

3 OCTOBER 2024

Date of Signature