



# Infringement Notice

## *Spam Act 2003*

I, Jeremy Fenton, an authorised person for the purposes of clause 9 of Schedule 3 to the *Spam Act 2003 (Spam Act)*, having reasonable grounds to believe that the Commonwealth Bank of Australia (ACN 123 123 124) (**CBA**) has committed one or more contraventions of a particular civil penalty provision, **HEREBY** give an infringement notice (**the Notice**) under subclause 3(1) of Schedule 3 to the Spam Act to:

### **Commonwealth Bank of Australia**

at

‘Commonwealth Bank Place South’  
Level 1, 11  
Harbour Street  
SYDNEY NSW 2000

### **Details of Alleged Civil Contraventions**

It is alleged that CBA contravened:

- subsection 16(1) of the Spam Act by sending commercial electronic messages (CEMs) that had an Australian link without the consent of the relevant electronic account holder, and which were not designated commercial electronic messages; and
- subsection 18(1) of the Spam Act by sending CEMs that had an Australian link without a functional unsubscribe facility, and which were not designated commercial electronic messages.

Schedule 1 to this Notice sets out brief details of the alleged civil contraventions.

### **Amount of Penalty**

The total pecuniary penalty (**the penalty**) for the alleged civil contraventions is **\$7,502,610**. The penalty is calculated in accordance with item 2 of the table under subclause 5(1) of Schedule 3 to the Spam Act, as set out in paragraph 4.1 of Schedule 1 to this Notice.



## SCHEDULE 1

**In accordance with Clause 4 of Schedule 3 to the Spam Act, brief details of each of the alleged civil contraventions are set out below.**

### **1. Background**

- 1.1. CBA is a registered company under the *Corporations Act 2001*, with a registered office at 'Commonwealth Bank Place South', Level 1, 11 Harbour Street, Sydney NSW 2000.
- 1.2. On 9 January 2024, the ACMA commenced an investigation into whether CBA had contravened the Spam Act.
- 1.3. The ACMA's findings are based on eight submissions provided by CBA between 9 June 2023 and 29 April 2024, including in response to two ACMA compulsory information gathering notices on 10 January 2024 and 23 February 2024.

### **2. Matters giving rise to the Infringement Notice**

- 2.1. During the period 22 November 2022 to 17 April 2024 CBA sent electronic messages to consumers.
- 2.2. Information provided by CBA showed that the purpose of the messages was to promote the CBA, and/or products and services, to consumers. Therefore, the messages described at paragraph 2.1 were commercial electronic messages (CEMs), as defined in section 6 of the Spam Act.
- 2.3. The CEMs were not 'designated' commercial electronic messages as described in Schedule 1 to the Spam Act.
- 2.4. The CEMs had an Australian link as defined in section 7 of the Spam Act. They were sent by CBA, whose central management and control is in Australia.
- 2.5. Specific CEMs were sent without consent in contravention of subsection 16(1) of the Spam Act.
- 2.6. Specific CEMs did not contain a functional unsubscribe facility as required by subsection 18(1) of the Spam Act.

### **3. Relevant civil penalty provisions of the Spam Act**

- 3.1. Subsection 16(1)
  - 3.1.1. Subsection 16(1) of the Spam Act provides that a person must not send, or cause to be sent, a commercial electronic message that has an Australian link and is not a designated message.
  - 3.1.2. Subsection 16(2) of the Spam Act provides that subsection 16(1) does not apply if the relevant electronic account-holder consented to the sending of the message.
  - 3.1.3. The commercial electronic messages sent by CBA to electronic addresses during the relevant period were sent after the relevant electronic account-holders had withdrawn consent in accordance with subclause 6(1) of Schedule 2 of the Spam Act.
  - 3.1.4. The ACMA has reasonable grounds to believe that CBA has contravened section 16(1) of the Spam Act during the relevant period as set out in this Infringement Notice.
  - 3.1.5. Subsection 16(1) of the Spam Act is a civil penalty provision.
- 3.2. Subsection 18(1)
  - 3.2.1. Subsection 18(1) of the Spam Act provides that a person must not send, or cause to be sent, a CEM that has an Australian Link and is not a designated message, unless the CEM contains a statement to the effect that the recipient may use an electronic address

set out in the CEM to send an unsubscribe message to the person who authorised the sending of the CEM (an unsubscribe statement).

3.2.2. The CEMs sent by CBA to electronic addresses during the relevant period did not include an unsubscribe statement as described in subsection 18(1) of the Spam Act.

3.2.3. The ACMA has reasonable grounds to believe that CBA has contravened subsection 18(1) of the Spam Act during the relevant period, as set out in this Notice.

3.2.4. Subsection 18(1) of the Spam Act is a civil penalty provision (Subsection 18(8) of the Spam Act).

#### **4. The amount of the penalty**

4.1. The total penalty specified in this Notice is **\$7,502,610** calculated in accordance with the table in subclause 5(1) of Schedule 3 to the Spam Act, as shown in the table below.

### Penalties for contraventions of the Spam Act

Date of contravention	Number of contraventions	Penalty units <sup>1</sup>	Penalty imposed
<b>Subsection 16(1) Contraventions</b>			
21/08/2023	50	1000	\$313,000
22/08/2023	50	1000	\$313,000
23/08/2023	50	1000	\$313,000
24/08/2023	50	1000	\$313,000
28/08/2023	50	1000	\$313,000
4/09/2023	50	1000	\$313,000
2/10/2023	50	1000	\$313,000
25/10/2023	50	1000	\$313,000
26/10/2023	50	1000	\$313,000
27/10/2023	50	1000	\$313,000
2/11/2023	50	1000	\$313,000
4/12/2023	50	1000	\$313,000
<b>Total ss 16(1)</b>		<b>12,000</b>	<b>\$3,756,000</b>
<b>Subsection 18(1) Contraventions</b>			
20/08/2023	47	470	\$147,110
21/08/2023	50	500	\$156,500
22/08/2023	50	500	\$156,500
23/08/2023	50	500	\$156,500
24/08/2023	50	500	\$156,500
25/08/2023	50	500	\$156,500
26/08/2023	50	500	\$156,500
27/08/2023	50	500	\$156,500
28/08/2023	50	500	\$156,500

<sup>1</sup> At the time of the alleged contraventions, the amount of a penalty unit was \$313, as set by section 4AA of the *Crimes Act 1914*.

29/08/2023	50	500	\$156,500
30/08/2023	50	500	\$156,500
31/08/2023	50	500	\$156,500
1/09/2023	50	500	\$156,500
2/09/2023	50	500	\$156,500
3/09/2023	50	500	\$156,500
4/09/2023	50	500	\$156,500
5/09/2023	50	500	\$156,500
6/09/2023	50	500	\$156,500
7/09/2023	50	500	\$156,500
8/09/2023	50	500	\$156,500
9/09/2023	50	500	\$156,500
10/09/2023	50	500	\$156,500
11/09/2023	50	500	\$156,500
12/09/2023	50	500	\$156,500
<b>Total ss 18(1)</b>		<b>11,970</b>	<b>\$3,746,610</b>
<b>Grand Total</b>		<b>23,970</b>	<b>\$7,502,610</b>