

ENFORCEABLE UNDERTAKING

ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING ACT 2006

UNDERTAKING TO THE CHIEF EXECUTIVE OFFICER OF AUSTRAC FOR THE PURPOSES OF

SECTION 197 OF THE AML/CTF ACT

BY

PAYPAL AUSTRALIA PTY LIMITED ACN 111 195 389

Definitions

AML/CTF Act means the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)*.

AML/CTF Rules means the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* made under section 229 of the AML/CTF Act.

AUSTRAC's Concerns means the concerns referred to in paragraphs 8 through 10 of this enforceable undertaking.

Cash Dealer has the meaning given in section 3 of the FTR Act.

Date of this enforceable undertaking means the date on which it is accepted by AUSTRAC.

Designated service means a service listed in tables 1, 2, 3, 29 and 30 of table 1 in section 6 of the AML/CTF Act.

FTR Act means the *Financial Transaction Reports Act 1988 (Cth)*

FTR Regulations means the *Financial Transaction Reports Regulations 1990 (Cth)*.

ML/TF Risk has the meaning given in rule 1.2.1 of the AML/CTF Rules.

Introduction

1. Under section 3 the objects of the AML/CTF Act include, fulfilling Australia's international obligations designed to combat the laundering of money and the financing of terrorism. Under section 212 of the AML/CTF Act the Chief Executive Officer of AUSTRAC (the **AUSTRAC CEO**) is charged with, among other things, promoting compliance with the Act.

Person giving the enforceable undertaking

2. This enforceable undertaking is given to the AUSTRAC CEO by PAYPAL AUSTRALIA PTY LIMITED ACN 111 195 389 (**PayPal**) of Sydney in the state of New South Wales, under section 197 of the AML/CTF Act.

Background

3. PayPal is licensed by the Australian Prudential Regulation Authority (APRA) as an authorised deposit-taking institution (ADI) under the *Banking Act 1959 (Cth)* in the special category of Purchased Payment Facility (PPF). PayPal is so licensed for the purpose of providing online payments for the sale of goods or services and for person to person transactions. PayPal is also

the holder of a Financial Services Licence in Australia from the Australian Securities and Investments Commission.

4. PayPal is a cash dealer for the purposes of the FTR Act and a reporting entity for the purposes of the AML/CTF Act.
5. The FTR Act, the FTR Regulations, the AML/CTF Act and AML/CTF Rules impose obligations on cash dealers and reporting entities respectively to, inter alia, lodge reports with the AUSTRAC CEO and to implement risk-based systems and controls to identify, mitigate and manage the ML/TF Risk posed by the provision of certain designated services.
6. PayPal acknowledges that it has breached certain provisions of the Australian AML/CTF Act and the Australian AML/CTF Rules as they relate to the risk assessment requirements set forth in the declaration issued to PayPal by AUSTRAC on 3 October 2008 (**Declaration**).
7. PayPal has offered this enforceable undertaking to the AUSTRAC CEO for the purposes of section 197 of the AML/CTF Act and the AUSTRAC CEO accepts it to minimise the risk of future breaches by PayPal of the AML/CTF Act and the AML/CTF Rules.

AUSTRAC's Concerns

8. AUSTRAC has expressed concern that PayPal has contravened and continues to contravene the AML/CTF Act and the AML/CTF Rules.
9. AUSTRAC has expressed concern that PayPal does not have adequate systems in place to assess the ML/TF Risk level of a customer prior to providing a designated service.
10. AUSTRAC has expressed concern that PayPal does not have systems and controls to adequately manage its ML/TF Risk and that the systems which have been adopted by PayPal may not allow PayPal to comply fully with its reporting and other obligations under the AML/CTF Act.

Acknowledgements by PayPal of AUSTRAC's Concerns

11. PayPal acknowledges AUSTRAC's Concerns, and voluntarily offers an enforceable undertaking in the terms of paragraphs 17 to 19 below.
12. PayPal confirms that it has received legal advice in relation to its obligations under, and the effect of, this enforceable undertaking.

Acknowledgements – Operation of Enforceable Undertaking

13. PayPal acknowledges that:
 - (i) This enforceable undertaking has no operative force until accepted by the AUSTRAC CEO.
 - (ii) The date of the enforceable undertaking is the date on which it is accepted by the AUSTRAC CEO.
 - (iii) The AUSTRAC CEO's acceptance of this enforceable undertaking does not affect AUSTRAC's power to investigate, pursue a criminal prosecution or take civil or administrative action or seek a civil penalty order in relation to:
 - a) any contravention not the subject of AUSTRAC's Concerns; or

- b) arising from future conduct occurring after the date of this enforceable undertaking whether or not the future conduct arises from the conduct described in AUSTRAC's Concerns, but excluding conduct (including reporting obligations) which is being or will be addressed by this enforceable undertaking.
- (iv) This enforceable undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in AUSTRAC's Concerns or arising from future conduct.
- (v) The AUSTRAC CEO may publish a copy of this enforceable undertaking on AUSTRAC's internet site in accordance with subsection 197(5) of the AML/CTF Act.
- (vi) AUSTRAC may issue a media release on execution of this enforceable undertaking referring to its terms and to AUSTRAC's Concerns that led to its execution. AUSTRAC will give PayPal prior notice of any media release it plans to issue.
- (vii) AUSTRAC may from time to time publicly refer to this enforceable undertaking.
- (viii) PayPal has disclosed to the AUSTRAC CEO the material facts, matters and circumstances in relation to AUSTRAC's Concerns.
- (ix) If any part of this enforceable undertaking is held invalid that part shall be severed from this enforceable undertaking and the remainder of this enforceable undertaking will continue to be valid and enforceable.

Commencement of the Enforceable Undertaking

- 14. This enforceable undertaking comes into effect when:
 - (i) the enforceable undertaking is executed by PayPal; and
 - (ii) the AUSTRAC CEO accepts the enforceable undertaking so executed.
- 15. Upon the commencement of this enforceable undertaking, PayPal undertakes to assume the obligations set out in paragraphs 17 to 19 below.

Undertakings

- 16. Under subsection 197(1) of the AML/CTF Act, PayPal has offered, and the AUSTRAC CEO has agreed to accept, as an alternative to pursuing civil action in relation to AUSTRAC's Concerns, the undertakings as set out in paragraphs 17 to 19 inclusive.
- 17. PayPal undertakes that it will pay the costs of its compliance with this enforceable undertaking including the remuneration and costs associated with the engagement of any independent expert.
- 18. PayPal will, until the date on which this enforceable undertaking ends pursuant to paragraph 21 below and, within a reasonable period of time after receiving a request from AUSTRAC, provide all documents and information requested by AUSTRAC from time to time for the purpose of assessing PayPal's compliance with the terms of this enforceable undertaking. For the avoidance of doubt, PayPal is not required to provide AUSTRAC with any document or information that is the subject of legal professional privilege.

19. PayPal will by the dates set out below or such later date as agreed to by AUSTRAC in writing:

- (i) by 30 May 2010, undertake a revised ML/TF risk assessment in relation to PayPal's business; and
- (ii) by 30 May 2010, review and strengthen its systems and controls to enable it to comply with all of its obligations set out in the AML/CTF Act (as modified by the Declaration), and the applicable AML/CTF Rules, consistent with the guidance in AUSTRAC Guidance Note *Risk Management and AML/CTF Programs* as at the date of this undertaking; and
- (iii) by 31 July 2010, submit to the AUSTRAC CEO a written report of each of the matters set out in sub-paragraphs (a) to (f) below. The report must be prepared by a person independent of PayPal and its officers. The person's engagement must be approved in writing by AUSTRAC. This report will set out the following:
 - a) the adequacy of PayPal's revised ML/TF risk assessment in relation to PayPal's business in regard to PayPal's customer types, the types of designated services it provides, the methods by which it delivers designated services and the foreign jurisdictions to and from which its customers may send or receive payments;
 - b) the adequacy of PayPal's risk based systems and controls to properly identify, mitigate and manage its ML/TF risk;
 - c) the adequacy of PayPal's systems to enable PayPal to comply with all its reporting obligations under Part 3 of the AML/CTF Act;
 - d) the adequacy of PayPal's practices, policies and procedures to ensure compliance with the obligations to verify customers contained in Part 2 of the AML/CTF Act and the applicable AML/CTF Rules as modified by the Declaration;
 - e) confirmation that PayPal has complied with its obligations with regards to customers who registered between 12 December 2007 and 12 March 2009 ("Lookback Customers") as set forth in the PayPal letter of 19 February 2008 and confirmed by AUSTRAC's letter of 17 April 2008;
 - f) confirmation that PayPal complied with its obligations with regards to customers who registered between 13 March 2009 and 31 October 2009 as set forth in the Declaration and AUSTRAC's letter of 22 May 2009; and
- (iv) to the extent that the report identifies deficiencies, the report must make recommendations (**Remedial Recommendations**) on how to rectify those deficiencies and set out reasonable timeframes for the rectification of those deficiencies; and
- (v) by 31 July 2010, submit to the AUSTRAC CEO a plan (**Remedial Action Plan**) setting out the action it proposes to take to address the Remedial Recommendations and specifying the time in which this action will be taken. If the AUSTRAC CEO requires any reasonable modifications to the Remedial Action Plan, including the time specified, PayPal must modify the Remedial Action Plan accordingly; and

- (vi) PayPal must implement the Remedial Action Plan within the time specified.

Provision of documents to AUSTRAC

20. The address for providing AUSTRAC with any document which this enforceable undertaking requires to be provided to AUSTRAC is:

Australian Transaction Reports and Analysis Centre
PO Box 5516
West Chatswood NSW 1515

End date

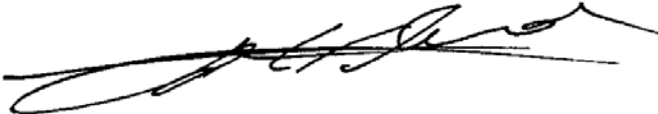
21. This enforceable undertaking ends on 31 December 2011.

EXECUTED BY

PayPal pursuant to section 197 of the AML/CTF Act.

This 20th day of November 2009

ACCEPTED BY THE AUSTRAC CEO, JOHN SCHMIDT PURSUANT TO SECTION 197 OF THE
AML/CTF ACT.

A handwritten signature in black ink, appearing to read 'John Schmidt', with a long horizontal flourish extending to the left.

John Schmidt
Chief Executive Officer

This 23rd day of November 2009