
**ENFORCEABLE UNDERTAKING TO THE CHIEF EXECUTIVE OFFICER OF THE
AUSTRALIAN TRANSACTION REPORTS AND ANALYSIS CENTRE**

FOR THE PURPOSES OF SECTION 197 OF THE

ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING ACT 2006

BY

PayPal Australia Pty Ltd

ACN 111 195 389

Definitions

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

AML/CTF Program means an anti-money laundering and counter-terrorism financing program and has the meaning given in section 83 of the AML/CTF Act.

AML/CTF Regulations means the *Anti-Money Laundering and Counter-Terrorism Financing Regulations 2008* (Cth) (as amended).

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

Audit Report means the Audit Report issued by Ernst and Young in 2020.

AUSTRAC means the Australian Transaction Reports and Analysis Centre continued in existence by section 209 of the AML/CTF Act.

AUSTRAC CEO means the Chief Executive Officer of AUSTRAC.

AUSTRAC's Concerns means the concerns referred to in paragraphs 5 to 9 of this Enforceable Undertaking.

Designated Service has the meaning given by section 6 of the AML/CTF Act.

Consolidated Project Plan means the consolidated project plan implemented by PPAU, and reported to AUSTRAC, between 2020 and 2022.

Enforceable Undertaking means an undertaking accepted by the AUSTRAC CEO under subsection 197(1) of the AML/CTF Act.

EU Date means the date of the acceptance of this Enforceable Undertaking by the AUSTRAC CEO.

Outsourced Functions means any and all functions relating to PPAU's obligations under the AML/CTF Act which are carried out or conducted by non-PPAU employees, including contractors, whether in Australia or overseas.

PPAU means PayPal Australia Pty Ltd ACN 111 195 389.

Assurance Action Plan means the plan that appears at **Annexure A**.

Introduction

- 1 Under section 3 of the AML/CTF Act, 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 AUSTRAC CEO's functions include, amongst other matters, promoting compliance with the AML/CTF Act, AML/CTF Rules and AML/CTF Regulations.

Persons giving the Enforceable Undertaking

- 2 This Enforceable Undertaking is given to the AUSTRAC CEO by PPAU.

Background

- 3 PPAU provides Designated Services of the kind set out in section 6, Table 1, Items 1, 2, 3, 29 and 30 (AML/CTF Act) and is a reporting entity for the purposes of the AML/CTF Act.
- 4 The AML/CTF Act and the AML/CTF Rules impose obligations on reporting entities to, amongst other matters, implement appropriate risk-based systems and controls to identify, mitigate and manage the money laundering/terrorism financing risk that a reporting entity might reasonably face through its provision of Designated Services and to give certain reports to the AUSTRAC CEO.

AUSTRAC's Concerns

- 5 AUSTRAC has carried out an enforcement investigation in respect of PPAU that commenced on 17 December 2020. The investigation focussed on self-identified compliance issues relating to the reporting of certain International Funds Transfer Instructions reports (IFTIs).
- 6 AUSTRAC acknowledges that PPAU has co-operated with the investigation and separate regulatory activities respectively, including by answering information requests, producing documents, engaging with an external audit process and responding to recommendations from the Audit Report, and working with AUSTRAC to remediate the IFTI matters. AUSTRAC also acknowledges that, since 2020, PPAU has taken steps to improve its processes and procedures, uplift its technological capabilities and has invested significantly in programs of work and independent audit to mature the governance, oversight and risk management of its business in Australia. AUSTRAC notes the Consolidated Project Plan and the ongoing engagement with AUSTRAC about remediation.
- 7 The remediation of IFTIs the focus of the investigation (**the Backcapture IFTIs**) and transition to business as usual reporting is proceeding by way of separate arrangements between AUSTRAC and PPAU. AUSTRAC notes the complexity of the process and the extent of remedial work undertaken in this area. AUSTRAC notes that business as usual reporting will see an increase in the volume of IFTI reporting and the development of new systems.
- 8 Arising from the investigation, AUSTRAC is concerned that PPAU needs to take specified actions:
 - (a) directed towards ensuring that PPAU does not contravene the AML/CTF Act or the AML/CTF Rules, or is unlikely to contravene the AML/CTF Act or the AML/CTF Rules, in the future; and
 - (b) to demonstrate in accordance with the Assurance Action Plan that the governance and oversight arrangements following the Consolidated Project Plan and the remedial work are sustainable and appropriate, particularly with regard to the transition to business as usual, increased reporting volumes and the use of new systems.

9 Detail of the actions is set out in **Annexure A**, the Assurance Action Plan.

Acknowledgments by PPAU of AUSTRAC's Concerns

10 PPAU acknowledges AUSTRAC's Concerns and voluntarily offers an Enforceable Undertaking in the terms of paragraphs 12 to 23 below.

11 PPAU confirms that it has been offered the opportunity to seek its own legal advice in relation to its obligations under, and the effect of, this Enforceable Undertaking.

Undertakings

Assurance Action Plan

12 Under section 197 of the AML/CTF Act, PPAU undertakes:

- (a) to complete the Assurance Action Plan, in the form approved by AUSTRAC which appears at **Annexure A**;
- (b) to obtain and provide AUSTRAC with the opinion of an External Auditor as to the appropriateness, sustainability and efficacy of the actions taken under the Assurance Action Plan.

Authorised External Auditor

13 Under section 197 of the AML/CTF Act, PPAU undertakes to appoint an individual who is:

- (a) authorised under section 164 of the AML/CTF Act; and
- (b) agreed to by the AUSTRAC CEO in writing;

to act as an External Auditor for the purposes of this Enforceable Undertaking, by 30 June 2023.

14 The External Auditor is to conduct an assessment referred to in the External Auditor Outcome column in the Assurance Action Plan.

15 The External Auditor will provide a final report containing findings of its assessment and recommendations to PPAU and AUSTRAC, on or before 16 April 2024.

16 AUSTRAC will have access to the External Auditor at any time and in any manner which it requires.

Costs

17 PPAU undertakes that it will pay its own costs of complying with this Enforceable Undertaking.

Provision of information and documents

18 PPAU agrees that AUSTRAC may, for the life of this Enforceable Undertaking, request any information or documents for the purpose of monitoring or assessing PPAU's compliance with this Enforceable Undertaking. PPAU undertakes to provide AUSTRAC any information or documents requested for this purpose, on a confidential basis, within 10 business days of the date on which AUSTRAC makes a written request. PPAU is not required to provide to AUSTRAC any documents subject to legal professional privilege.

19 Any documents or information required to be provided to the AUSTRAC CEO under this Enforceable Undertaking should be provided:

- (a) in electronic form by email to Enforcement3@austrac.gov.au; or
- (b) in electronic form by upload to a OneDrive folder that AUSTRAC is given access to;

unless otherwise agreed by AUSTRAC in writing.

Acknowledgements – Operation of Enforceable Undertaking

- 20 PPAU acknowledges that:
- (a) the AUSTRAC CEO has accepted this Enforceable Undertaking based on (among other things) PPAU's disclosures to the AUSTRAC CEO of the material facts, matters and circumstances in relation to AUSTRAC's Concerns;
 - (b) AUSTRAC's acceptance of this Enforceable Undertaking does not affect AUSTRAC's right to take any action in relation to any contraventions of the AML/CTF Act, AML/CTF Rules and/or AML/CTF Regulations;
 - (c) 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;
 - (d) the AUSTRAC CEO may publish a copy of this Enforceable Undertaking on AUSTRAC's website in accordance with subsection 197(5) of the AML/CTF Act;
 - (e) AUSTRAC may from time to time publicly refer to this Enforceable Undertaking; and
 - (f) 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 and duration

- 21 PPAU acknowledges that this Enforceable Undertaking has no operative force until accepted by the AUSTRAC CEO.
- 22 Upon the commencement of this Enforceable Undertaking, PPAU undertakes to assume the obligations set out in paragraphs 12 to 19 above.
- 23 This Enforceable Undertaking ends on the earlier of:
- (a) the date that the AUSTRAC CEO gives PPAU written notice cancelling the Enforceable Undertaking following delivery of the External Auditor report required by paragraph 15 above; or
 - (b) the date on which the AUSTRAC CEO consents to PPAU withdrawing the Enforceable Undertaking.

EXECUTED BY

**EXECUTED by PayPal Australia Pty
Ltd ACN 111 195 389**
in accordance with section
127(1) of the *Corporations Act 2001*
(Cth) by authority of its directors:



.....
Signature of director

ERIC LASSEN

Name of director (block letters)



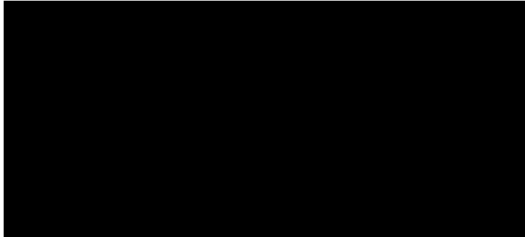
.....
Signature of director

WONG MUN YAT

Name of director (block letters)

This 14th day of March 2023

ACCEPTED BY THE AUSTRAC CEO NICOLE ROSE PSM PURSUANT TO SUBSECTION 197(1)
OF THE AML/CTF ACT.



This *16* day of *March* 2023

Annexure A

Assurance Action Plan

Action	PPAU Deliverable	
1) Escalation of material issues affecting AML/CTF Act reporting obligations	Demonstrate the operation of appropriate systems and controls designed to ensure Board awareness of material issues affecting AML/CTF Act reporting obligations after the EU date.	
2) ML/TF risk in IFTI reporting failures	Demonstrate the operation of appropriate systems and controls designed to ensure compliance with PPAU's reporting obligations are effective in ensuring that PPAU assesses the ML/TF risk of the following factors in respect of any IFTI not reported within the timeframe specified in subsection 45(2) of the AML/CTF Act after the EU Date: <ol style="list-style-type: none">1. the PPAU customer referred to in the IFTI; and	

Action	PPAU Deliverable
	2. the countries referred to in the IFTI.
3) Outsourced Functions	Demonstrate that activities conducted, after the EU Date, under outsourced functions are conducted in compliance with the PPAU AML/CTF Programme.
4) Issue identification and notification	Demonstrate the operation, after the EU Date, of PPAU's issues management framework in relation to contraventions of AML/CTF Act reporting obligations (if any) that occur during the term of the EU, including how the framework enables obtaining competent legal advice where



Action	PPAU Deliverable	
	<p>legal uncertainty exists (if any) about AML/CTF Act reporting obligations.</p>	
<p>5) Impact on compliance with reporting obligations of changes to computer systems</p>	<p>Demonstrate the operation, after the acceptance of this Enforceable Undertaking, of appropriate systems and controls designed to ensure that changes to computer systems used to comply with the AML/CTF Act reporting obligations including, without limitation, the rollout of new code and updates to existing code used to comply with the AML/CTF Act reporting obligations, are tested before deployment and monitored periodically after deployment for their impact on compliance with AML/CTF Act reporting obligations.</p>	