

# Offer Management Agreement Summary

## 1 Offer Management Agreement

---

The Offer Management Agreement (**OMA**) is dated 20 February 2017.

The OMA relates to the offer by Commonwealth Bank of Australia (**Issuer**) through its New Zealand branch of Commbank PERLS IX Capital Notes (**PERLS IX**), in Australia to raise \$750 million, with the ability to raise more or less (**Offer**).

Any capitalised term used but not defined in this summary has the meaning given to it in the prospectus lodged with ASIC in relation to the Offer on 20 February 2017 (**Prospectus**), which can be obtained from [www.commsec.com.au](http://www.commsec.com.au) during the Offer Period and from the CBA Shareholder Centre at [www.commbank.com.au](http://www.commbank.com.au) after the Issue Date.

### 1.1 Arrangers

Commonwealth Bank of Australia (Capital Markets Division) (**CBA Markets**) and Morgan Stanley Australia Securities Limited (**Morgan Stanley**) (each an **Arranger**) agree to act as joint arrangers to the Offer including providing certain settlement support in respect of the bookbuild.

### 1.2 Joint Lead Managers

CBA Markets, Morgan Stanley, Evans and Partners Pty Limited, J.P. Morgan Australia Limited, Morgans Financial Limited, National Australia Bank Limited and Westpac Institutional Bank, a division of Westpac Banking Corporation (each a **JLM**) agree to act as joint lead managers including providing certain settlement support in respect of their respective firm allocations.

### 1.3 Co-Managers

The Issuer has appointed Co-Managers to the Offer, as set out in the Prospectus.

### 1.4 Fees and Expenses

- (a) (**Arranger Fees**) Subject to the JLMs complying with their obligations under the OMA, the Issuer must pay to the Arrangers the fees to be agreed between the Issuer and each Arranger, as detailed in the Prospectus.
- (b) (**JLM Fees**) If a JLM (including a JLM that is an Arranger) subscribes for and settles (or procures subscriptions which are settled including under the priority Securityholder Offer) the PERLS IX which have been allocated to it on a firm basis (**JLM Allocation**) in full, the Arrangers must pay (out of the funds received from the Issuer under paragraph (a) above) to that JLM:
  - (1) a management fee of 0.50% in respect of the gross proceeds of their JLM Allocation; and
  - (2) a selling fee equal to 1.00% of the gross proceeds of their JLM Allocation.

- (c) **(Co-Managers selling fee)** Subject to paragraph (g) below, if a Co-Manager subscribes for and settles (or procures subscriptions which are settled including under the priority Securityholder Offer) the PERLS IX which have been allocated to it under the bookbuild (**Co-Manager Allocation**) in full, the Arrangers must pay on behalf of the Issuer (out of the funds received under paragraph (a)) to that Co-Manager a selling fee equal to 1.00% of the gross proceeds of their Co-Manager Allocation.
- (d) **(Participating Broker selling fee)** Subject to paragraph (g) below, if a Participating Broker subscribes for and settles (or procures subscriptions which are settled including under the priority Securityholder Offer) its allocation of PERLS IX in the bookbuild supplement (**Participating Broker Allocation**) in full, the Arrangers must pay on behalf of the Issuer (out of the fees received under paragraph (a)) to that Participating Broker a selling fee of 1.00% of the gross proceeds of the Participating Broker Allocation.
- (e) **(Cornerstone investors)** Subject to paragraph (g) below, if an Arranger subscribes for and settles (or procures subscriptions which are settled including under the Priority Securityholder Offer) an allocation of securities in its JLM Allocation on behalf of a cornerstone investor whose identity is agreed with the Issuer in advance (**Cornerstone Investor**) then:
- (1) if the Cornerstone Investor holds their PERLS IX until the second Distribution Payment Date (as defined in the Terms) the Arranger must pay the Cornerstone Investor on behalf of the Issuer (out of the funds received in paragraph (a)) a fee of 0.50% of the gross proceeds of that Cornerstone Investor's allocation; and
  - (2) if the Cornerstone Investor holds their PERLS IX until the fourth Distribution Payment Date (as defined in the Terms) the Arranger must pay the Cornerstone Investor on behalf of the Issuer (out of the funds received in paragraph (a)) a fee of 1.00% of the gross proceeds of that Cornerstone Investor's allocation.
- (f) **(Rebates)** The JLMs must not rebate any part of the fee described in the OMA to any investor or external third party (other than investors allowed to participate in the bookbuild or Cornerstone Investors), unless that party is an agreed broker, planner or affiliate of the JLM or unless the Issuer and the Arrangers have given prior written approval.
- (g) **(Shortfall)** In the event a JLM or Co-Manager does not:
- (1) subscribe for and settle (or procure subscriptions which are settled) the allocation of securities allocated to it in its JLM Allocation or Co-Manager Allocation, no fees will be payable on the shortfall amount; or
  - (2) deliver (or procure the delivery of) a sufficient number of Colonial Group Subordinated Notes to the Issuer to subscribe in full for its allocation of PERLS IX under the priority Securityholder Offer as set out in the bookbuild supplement (as set out in the OMA), the Issuer may in its absolute discretion determine not to pay any fees on the shortfall amount between the JLM Allocation or Co-Manager Allocation (as applicable) in respect of the priority Securityholder Offer and the number of PERLS IX represented by amount of Colonial Group Subordinated Notes sold by that JLM or Co-Manager (as applicable) to the Issuer.
- (h) **(GST)** Fees payable by the Issuer to the Arrangers and by the Arrangers to the JLMs, Co-Managers and Participating Brokers are exclusive of any GST.

- (i) The Issuer has also agreed to reimburse the JLMs for all reasonable costs, charges and expenses (except for their legal and tax advice fees) of and incidental to any aspect of the Offer or the OMA provided that the JLMs seek approval of the Issuer prior to incurring any costs or incidental expenses in excess of \$5,000. Payment of costs are to be paid as soon as reasonably practicable after a request for payment or reimbursement is made by a JLM.

## 1.5 Representations and Warranties

- (a) Each of the parties represent and warrant to each other that, amongst other things:
  - (1) **(status)** it is validly created and existing under relevant laws and it has the power to carry on its business as now conducted or contemplated;
  - (2) **(power)** it has the power to enter into and perform its obligations under all documents that relate to the Offer (**Transaction Documents**);
  - (3) **(authorisation)** it has taken all necessary action to authorise the entry into and the performance of its obligations under the Transaction Documents; and
  - (4) **(document binding)** each Transaction Document is a valid and binding obligation enforceable in accordance with its terms.
- (b) The Issuer represents and warrants to each JLM that amongst other things:
  - (1) **(accounts)** its most recent consolidated audited financial statements give a true and fair view of its state of affairs;
  - (2) **(no litigation)** except as disclosed in the Prospectus, to the best of its knowledge and belief, no litigation (or similar event) is current, pending or threatened, the adverse determination of which would have a material adverse effect on its ability to comply with its obligations under the Transaction Documents;
  - (3) **(no event of insolvency)** no event of insolvency has occurred, nor is there any act which has occurred or any omission made which may result in an event of insolvency occurring, in respect of the Issuer or any related body corporate;
  - (4) **(no default)** it is not: (i) in default under any document or agreement binding on it or its property; or (ii) in default under any applicable law, regulation (or similar), which has had or would likely have a material adverse effect on its ability to comply with its obligations under the Transaction Documents;
  - (5) **(no misrepresentation)** so far as it is aware, (i) all written information provided by its officers or agents to any of the JLMs in or in connection with the Offer documents was true when given in all material respects and was not misleading, by omission of information or otherwise, in any material respect; and (ii) (having made due enquiry of appropriate senior management of the Issuer), it has fully disclosed to the JLMs in writing all material information relating to it and the Offer documents and materials which is relevant to the nature and amount of risk assumed by the JLMs in respect of the Offer;
  - (6) **(ranking)** all PERLS IX will constitute, unsecured and subordinated obligations of the Issuer ranking pari passu amongst themselves;

- (7) (**no immunity**) it does not enjoy any legal immunity;
- (8) (**no trustee**) it does not enter into any Transaction Document in its capacity as a trustee of any trust or settlement;
- (9) (**Offer materials**) the Offer materials comply with applicable Australian law and the issue and distribution of the Offer materials will not constitute misleading or deceptive conduct or conduct that is likely to mislead or deceive;
- (10) (**Trust Deed and Trustee**) the Trustee is approved by ASIC (if required) and the Trust Deed complies with applicable Australian law;
- (11) (**quotation**) the PERLS IX are eligible to be quoted on ASX under the ASX Listing Rules and other requirements of ASX;
- (12) (**business of the Issuer**) except as disclosed in the Prospectus or to the ASX prior to the date of this agreement, since the last balance date: (i) the business of the Issuer has been carried on, and it has not entered into any commitments which are material or onerous other than, in the ordinary and usual course; and (ii) there has been no material adverse change in, nor any matter which has materially adversely affected, the assets, total liabilities or financial condition or profitability of the Issuer and its controlled entities (**Group**);
- (13) (**due diligence**) the Issuer has conducted, and will continue until the Issue Date to conduct, the due diligence investigations;
- (14) (**Transactions Permitted**) the conduct of the Offer, entry into, and the observance and performance of obligations under the Transaction Documents, and the carrying out of the transactions contemplated by those Transaction Documents, do not and will not violate any provision of: (i) any applicable law or any judgment (or similar) of any government body or court binding on it or its material subsidiaries (except where such violation could not have any adverse effect on the validity or enforceability of, or the ability of the Issuer to perform any of its obligations under, the Transaction Documents), (ii) its constitution or other constituent documents, or (iii) any other instrument, arrangement or agreement which is binding upon it or its property, except where such violation could not have any adverse effect on the validity or enforceability of, or the ability of the Issuer to perform, any of its obligations under the Transaction Documents;
- (15) (**winding up**) it will not at any time up to and including the Issue Date, pass any resolution that it be wound up, enter into any scheme or composition with or for the benefit of its creditors, have a receiver or manager appointed to the whole or any part of its assets or undertakings, permit any breach or default whereby it is liable to be wound up or have an administrator appointed to it;
- (16) (**anti-corruption**) none of the Issuer, any of its affiliates or, to the knowledge of the Issuer, any director, officer, employee or other person acting on behalf of the Issuer or any of its affiliates (other than the JLMs) has: (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity, (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds, or (iii) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment, in each case, in

violation of any applicable law including, but not limited to the U.S. Foreign Corrupt Practices Act of 1977;

- (17) **(anti-money laundering)** the operations of the Issuer and its affiliates are, and have been conducted at all times, in compliance in all material respects with the money laundering statutes of Australia (and any other applicable jurisdictions) as well as the rules and regulations thereunder to the extent that they apply to the Issuer and its affiliates and no action, suit or proceeding by or before any court or governmental body involving the Issuer or any of its affiliates with respect to any money laundering statutes is pending or, to the best knowledge of the Issuer, threatened; and
  - (18) **(sanctions)** none of the Issuer or any of its affiliates, nor, to the knowledge of the Issuer, any of its directors, officers, employees, agents or representatives of the Issuer or its affiliates (other than the JLMs), is currently subject to any sanctions administered or enforced by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the United Nations Security Council, the European Union or any of its Member States, or other relevant sanctions authority **(Sanctions)**, or located, organised or resident in a country or territory that is the subject of Sanctions; and the Issuer will not directly or indirectly use the proceeds of the offering of the PERLS IX, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, to fund or facilitate any activities of any person or entity or in any country or territory that is subject to any Sanctions, or in any other manner that will result in a violation of Sanctions by any person participating in the Offer.
- (c) The representations and warranties are repeated by the Issuer and by each JLM for the benefit of the other parties on the date of the OMA and on the Issue Date of the Offer.

## 1.6 Indemnity

- (a) Subject to certain exclusions relating to, amongst other things, fraud, recklessness, wilful misconduct or negligence by an indemnified party, the Issuer agrees to keep the JLMs, their related bodies corporate and affiliates and their respective officers, employees and advisers **(Indemnified Parties)** indemnified from loss in connection with the Offer.
- (b) The indemnity does not waive or release a JLM from its obligations under the OMA, nor permit recovery in respect of any cost of performing such obligations except to the extent attributable to a breach or misrepresentation by the Issuer.

## 1.7 Conditions Precedent

- (a) The obligations of the JLMs under the OMA are subject to the satisfaction of various conditions precedent, including (but not limited to):
  - (1) **(Prospectus)** the Prospectus being lodged with ASIC;
  - (2) **(ASX and ASIC instruments)** all ASIC and ASX instruments required to enable the Issuer to make the Offer being received by the Issuer on or prior to the date on which the Prospectus is lodged with ASIC and ASX **(Lodgement Date)**;

- (3) (**due diligence report**) delivery to the JLMs on or prior to the date on which the Prospectus is lodged with ASIC, of the due diligence report and various sign offs, reports and opinions from management of the Issuer and certain advisers;
  - (4) (**APRA Confirmation**) the Issuer providing, prior to lodgement of the Prospectus with ASIC, confirmation to the JLMs that it has received a letter from APRA containing various approvals and confirmations; and
  - (5) (**Tax Ruling**) before lodgement of the Prospectus with ASIC, the Issuer has applied for a private tax ruling from the Australian Tax Office (**ATO**) and a private tax ruling from the Inland Revenue Department of New Zealand (**IRD**) (and the Issuer has not withdrawn the application and the ATO and IRD have not refused the rulings as at the Lodgement Date).
- (b) The JLMs will have no obligations in relation to settlement support and payment of bookbuild proceeds until certain conditions have been met by the Issuer, including (but not limited to):
- (1) (**Completion Certificate**) a duly executed completion certificate is delivered to each JLM by 9:00am on 30 March 2017 (**Settlement Date**);
  - (2) (**Private tax rulings**) before the Settlement Date, the private tax rulings referred to in 1.7(a)(5) being issued, confirming the Australian and New Zealand tax treatment of PERLS IX for the Issuer sought by the Issuer in its applications as of the date of the OMA;
  - (3) (**Tax Ruling**) the Issuer has applied to the ATO for a tax ruling to confirm that investors in PERLS IX will not be denied franking credits in respect of their holdings of PERLS IX (and the Issuer has not withdrawn the application and the ATO has not refused the ruling as at the Issue Date);
  - (4) (**Exposure Period**) the period referred to in section 727(3) of the Corporations Act has expired (including any extension by ASIC);
  - (5) (**Margin replacement prospectus**) lodgement by the Issuer of the replacement prospectus with ASIC; and
  - (6) (**ASX quotation**) ASX indicating in writing that it will grant official quotation of the PERLS IX on ASX, subject only to customary pre-quotation conditions, on or before 9.00 am on the Settlement Date.

## 1.8 Termination Rights

Each JLM (whether or not with the consent of the other JLMs) may terminate its obligations under the OMA, by notice to the Issuer and other JLMs at any time before 3.00pm on the Settlement Date, upon becoming aware of the happening of any one or more of the following events:

- (a) (**compliance with regulatory requirements**) except to the extent disclosed prior to the date of the OMA, a material contravention by the Issuer or any entity in the Group of the Corporations Act, its constitution, any of the Transaction Documents or any of the ASX Listing Rules; or
- (b) (**Offer Documents to comply**) any of the Offer documents do not comply in all material respects with the Corporations Act, the ASX Listing Rules or any other applicable law; or

- (c) **(listing approvals)** approval is refused or not granted, other than subject to customary conditions, to the official quotation of the PERLS IX on ASX on or before 8:30am on the Issue Date, or if granted, the approval is subsequently withdrawn, qualified or withheld; or
- (d) **(notifications):**
  - (1) ASIC issues an order or interim order under section 739 of the Corporations Act; or
  - (2) an application is made by ASIC for an order under sections 1324B or 1325 of the Corporations Act in relation to the Prospectus or ASIC commences any investigation or hearing under Part 3 of the *Australian Securities & Investments Commission Act 2001* (Cth) in relation to the Prospectus; or
  - (3) any person (other than a JLM) who has previously consented to the inclusion of its name in the Prospectus (or any supplementary Prospectus) or to be named in the Prospectus withdraws that consent; or
- (e) **(withdrawal)** the Issuer withdraws the Prospectus or the Offer; or
- (f) **(market or trading disruptions)** the occurrence of:
  - (1) a suspension or material limitation (persisting for at least one Business Day) in trading in securities generally on ASX, the New York Stock Exchange or the London Stock Exchange;
  - (2) a suspension (persisting for at least one Business Day) in trading in the securities of the Issuer on ASX (other than pursuant to a trading halt); or
  - (3) a general moratorium on banking activities in Australia, the United States or the United Kingdom is declared by the relevant authorities, or there is a material disruption in commercial banking or securities settlement or clearance services in those places; or
- (g) **(other adverse market events)** the occurrence of any other calamity or crisis or any change in financial, political or economic conditions or currency exchange rates or controls in Australia, New Zealand, Singapore, Hong Kong or the United States, the United Kingdom or elsewhere, which, in the judgment of the JLMs (acting reasonably), makes it impracticable or inadvisable to proceed with the Offer on the Issue Date on the terms and in the manner contemplated by the Offer Documents.

## 1.9 Material Termination Events

Upon becoming aware of the happening of any of the following events, each JLM may terminate their obligations under the OMA by notice to the Issuer and other JLMs at any time before 3.00pm on the Settlement Date, but only if the JLM has reasonable grounds to believe that one of the following events has or is likely to have a materially adverse effect on the outcome or settlement of the Offer or performance of the secondary market trading of the PERLS IX during the 30 day period following quotation on ASX:

- (a) **(ratings downgrade)** either the credit rating assigned to the Issuer at the date of this agreement by Standard & Poor's, Moody's or Fitch is downgraded or withdrawn or that credit rating is placed on credit watch negative; or
- (b) **(adverse change)** any adverse change occurs (or becomes known) after lodgement of the Prospectus in the assets, liabilities, financial position or

performance, profits, losses or prospects of the Issuer or the Group (insofar as the position in relation to an entity in the Group affects the overall position of the Issuer), including any adverse change in the assets, liabilities, financial position or performance, profits, losses or prospects of the Group from those respectively disclosed in the Offer documents or the Offer materials; or

- (c) **(new circumstances)** a new circumstance has arisen since the Prospectus was lodged that would have been required to be included in the Prospectus if it had arisen before the Prospectus was lodged in relation to the Issuer, or any entity in the Group (other than a routine change to the Issuer's board of directors for renewal purposes); or
- (d) **(hostilities)** hostilities not presently existing at the date of the OMA commence (whether war has been declared or not) or a major escalation in existing hostilities occurs in certain key worldwide countries or a major terrorist act is perpetrated on any of those countries or any diplomatic, military, commercial or political establishment of any of those countries elsewhere in the world; or
- (e) **(change in management)** a change in the senior management or board of directors of the Issuer occurs (other than as disclosed in writing prior to the date of the OMA or a routine change to the board of directors for renewal purposes), or a director or senior executive of the Issuer is charged with an indictable offence; or
- (f) **(change of law)** there is introduced, or there is a public announcement of a proposal to introduce a new law or policy which does or is likely to prohibit or regulate the Offer, capital issues or stock markets, or there is a Tax Event (as defined in the OMA); or
- (g) **(default)** a default by the Issuer in the performance of any of its obligations under any of the Transaction Documents occurs; or
- (h) **(warranties)** a warranty contained in any of the Transaction Documents on the part of the Issuer is not true or correct; or
- (i) **(completion certificate)** the completion certificate provided by the Issuer is not true or correct; or
- (j) **(due diligence report)** the due diligence report or any other information supplied by or on behalf of the Issuer to a JLM in relation to the Group or the Offer is misleading or deceptive; or
- (k) **(compliance)** any aspect of the Offer does not comply with the Corporations Act, the ASX Listing Rules or any other applicable law or regulation; or
- (l) **(disclosure in Prospectus)** a statement contained in the Prospectus is misleading or deceptive, or a matter is omitted from the Prospectus; or
- (m) **(timetable)** any event set out in the Offer timetable is delayed for more than 5 Business Days (other than a delay caused by the JLMs or as a result of a request by the JLMs) without the prior written consent of the JLMs.

## 1.10 Material Adverse Market Events

If at any time in the period from the date of this agreement to the time two hours before settlement occurs there is a material adverse change in market conditions which, in the reasonable opinion of a majority of the JLMs, makes it inadvisable to proceed with the Offer on the Completion Date on the terms and in the manner contemplated by the Offer Documents, CBA may be required to enter into good faith discussions with the JLMs for the purposes of discussing the viability of completing the Offer on the terms and in the manner contemplated by the Offer Documents.