



HERBERT  
SMITH  
FREEHILLS

Deed

# PERLS VII Trust Deed

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Commonwealth Bank of Australia

The Trust Company (Australia) Limited



# Contents

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# 1 Definitions and interpretation

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## 1.1 Definitions

The meanings of capitalised terms used in this deed are set out below. Capitalised terms which are not set out below have the meaning given to them in the Terms.

<b>Term</b>	<b>Meaning</b>
<b>ADI</b>	means an Authorised Deposit-taking institution under the Banking Act 1959.
<b>ASIC</b>	the Australian Securities and Investments Commission.
<b>ASTC</b>	ASX Settlement and Transfer Corporation Pty Limited.
<b>ASX Settlement Operating Rules</b>	the settlement operating rules of ASX from time to time with any applicable modification or waiver granted by ASX.
<b>ASX</b>	ASX Limited ABN 98 008 624 691 or the securities market operated by it, as the context requires.
<b>Authorisation</b>	includes: <ol style="list-style-type: none"><li>1 any consent, authorisation, registration, filing, lodgement, agreement, notarisation, certificate, permission, licence, approval (including any planning approval), authority or exemption from, by or with a Government Agency (including, without limitation, the Foreign Investment Review Board of Australia); or</li><li>2 in relation to anything which could be fully or partly prohibited or restricted by law if a Government Agency intervenes or acts in any way within a specified period the expiry of that period without intervention or action.</li></ol>
<b>CHESS Approved Securities</b>	securities in respect of which approval has been given by ASTC in accordance with ASX Settlement Operating Rules.
<b>Confidential Information</b>	all information and other material (other than information or material in the public domain) provided by CBA to the Trustee, or any officer, employee, delegate, adviser or other consultant of the Trustee under, in connection with or related to this deed or any



<b>Term</b>	<b>Meaning</b>
	obligation, duty or power of the Trustee under this deed.
<b>Costs</b>	includes costs, charges, fees, expenses (including expenses of advisors), commissions, liabilities, losses, damages and Taxes and all amounts payable in respect of any of them or like payments.
<b>Date of Substitution</b>	has the meaning in clause 18 of this deed.
<b>FATCA</b>	means Section 1471 through to 1474 of the United States Internal Revenue Code of 1986, as amended (or any consolidation, amendment, re-enactment or replacement of those sections and including any current or future regulations or official interpretations issued, agreements entered into or non-US laws enacted in relation to those sections).
<b>Full Successor</b>	has the meaning given in clause 18 of this deed.
<b>Government Agency</b>	any government or any governmental, semi governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.
<b>GST</b>	any goods and services tax, consumption tax, value added tax or any similar tax, impost or duty.
<b>Holder</b>	a person whose name is entered in the Register as a holder of PERLS VII.
<b>Holder Resolution</b>	<ol style="list-style-type: none"><li>1 a resolution passed at a meeting of Holders duly called and held under the Meeting provisions in schedule 4 to this deed:<ul style="list-style-type: none"><li>• by more than 50% of the persons voting on a show of hands (unless paragraph (a)(ii) applies); or</li><li>• if a poll is duly demanded, then by a majority consisting of more than 50% of the votes cast; or</li></ul></li><li>2 if the meeting is by postal ballot or written resolution, then by Holders representing (in aggregate) more than 50% of the principal amount of all of the outstanding PERLS VII.</li></ol>
<b>Indirect Tax</b>	any goods and services tax, consumption tax, value added tax or any tax of similar nature.

<b>Term</b>	<b>Meaning</b>
<b>Issuer Level 1 Group</b>	means: <ol style="list-style-type: none"> <li>1 the Issuer; or</li> <li>2 the “extended licensed entity” which is comprised of the Issuer and each Subsidiary of the Issuer as specified in any approval granted by APRA in accordance with APRA’s prudential standards (as amended from time to time).</li> </ol>
<b>Issuer Level 2 Group</b>	means the Issuer and each Subsidiary that is recognised by APRA as part of the Issuer’s Level 2 group in accordance with APRA’s prudential standards (as amended from time to time).
<b>Listing Rules</b>	the listing rules of ASX from time to time with any applicable modification or waiver granted by ASX.
<b>Meeting</b>	a meeting of Holders convened in accordance with this deed.
<b>NOHC</b>	a “non-operating holding company” within the meaning of the Banking Act.
<b>NOHC Event</b>	occurs when the Board initiates a restructure of the CBA Group and a NOHC becomes the ultimate holding company of the Issuer.
<b>Official List</b>	the Official List of the ASX.
<b>Ordinary Share</b>	a fully paid ordinary share in the capital of CBA.
<b>Officially Quoted</b>	quoted on the ASX or any other securities exchange on which PERLS VII are quoted.
<b>Ordinary Resolution</b>	a resolution that is passed at a Meeting by at least 50% of the votes validly cast by Holders in person or by proxy and entitled to vote on the resolution.
<b>Partial Successor</b>	has the meaning given in clause 18 of this deed.
<b>PERLS VII</b>	has the meaning given to it in the Terms set out in schedule 1 to this deed.





<b>Term</b>	<b>Meaning</b>
<b>Power</b>	a right, power, authority, discretion or remedy conferred on the Trustee by this deed or the Terms or by law.
<b>Register</b>	the register of Holders established and maintained by or on behalf of the Issuer and includes any sub-register maintained under the Clearing House Electronic Sub-Register System operated by ASX Settlement Pty Limited (ABN 49 008 504 532) and any branch register.
<b>Related Body Corporate</b>	means related body corporate as defined in the Corporations Act or an entity over which the Issuer, or a future parent entity of Issuer, exercises control or significant influence.
<b>Sale Agent</b>	an entity who is authorised by its Australian financial services licence ( <b>AFSL</b> ) to sell shares (or is an authorised representative of an AFSL holder) and which will sell or procure the sale of Ordinary Shares in accordance with clause 4.7 of this deed in accordance with the Trustee's instructions.
<b>Settled Sum</b>	means \$10.00.
<b>Share Register</b>	the electronic register of Ordinary Shares maintained by or on behalf of the Issuer.
<b>Subsidiary</b>	has the meaning given in the Corporations Act.
<b>Substitution Conditions</b>	has the meaning given in clause 18 of this deed.
<b>Successor</b>	means a Full Successor or a Partial Successor, in each case as defined in clause 18 of this deed.
<b>Successor Deed Poll</b>	has the meaning given in clause 18 of this deed.
<b>Terms</b>	the terms and conditions of PERLS VII, as set out in Schedule 1 to this deed.
<b>Trust</b>	the trust established by this deed.



<b>Term</b>	<b>Meaning</b>
<b>Trustee</b>	the trustee for the time being of the Trust (being initially the person named as party to this deed as Trustee) in its capacity as such trustee.

## 1.2 Interpretation

Capitalised terms and expressions defined in the Terms and not defined in this clause 1 have the same meanings when used elsewhere in this deed. In addition, in this deed, headings and boldings are for convenience only and do not affect the interpretation of this deed and, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency;
- (e) terms defined in the Corporations Act have the same meaning in this deed;
- (f) a reference to any thing (including, but not limited to, any right) includes a part of that thing;
- (g) an annexure, exhibit or schedule to this deed forms part of this deed;
- (h) a reference to a part, clause, party, annexure, exhibit or schedule is a reference to a part and clause of, and a party, annexure, exhibit and schedule to, this deed, a reference to this deed includes any schedule, annexure or exhibit;
- (i) a reference to a statute, regulation, proclamation, ordinance or by law includes all statutes, regulations, proclamations, ordinances or by laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute;
- (j) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (k) a reference to a party to a document includes that party's successors and permitted assigns;
- (l) no provision of this deed will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this deed or that provision;
- (m) a reference to an agreement other than this deed includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (n) a reference to an asset includes all property of any nature, including, but not limited to, a business, and all rights, revenues and benefits;
- (o) a reference to a document includes any agreement in writing, or any certificate, notice, instrument or other document of any kind;



- (p) a reference to a body, other than a party to this deed (including, without limitation, an institute, association or authority), whether statutory or not:
- (1) which ceases to exist; or
  - (2) whose powers or functions are transferred to another body,
- is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (q) a reference to liquidation includes official management, appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death; and
- (r) a reference to 'wilful default' in relation to the Trustee means any wilful failure to comply with, or wilful breach by, the Trustee of any of its obligations under this deed or at law other than a failure or breach which:
- (1) is in accordance with a lawful court order or direction or required by law; or
  - (2) is in accordance with any proper instruction or direction of the Holders given at a Meeting convened pursuant to clause 11 of this deed.

### 1.3 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the succeeding Business Day. Nothing in this clause 1.3 applies to any thing that must be done as a result of a Capital Trigger Event or Non-Viability Trigger Event.

## 2 Appointment of Trustee and declaration of trust

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### 2.1 Appointment

The Trustee is hereby appointed by the Issuer as trustee for the Holders subject to and in accordance with this deed.

### 2.2 Declaration of trust

The Trustee acknowledges receipt of the Settled Sum from the Issuer and declares that it enters into this deed as trustee for the Holders, and it holds the benefit of the following:

- (a) the Settled Sum;
- (b) this deed and any deed executed under clause 18 of this deed;
- (c) the right to enforce the Issuer's duty to repay PERLS VII and to pay any Distribution on PERLS VII or to exchange PERLS VII for Ordinary Shares;
- (d) the right to enforce all other duties of the Issuer under the Terms and the provisions of this deed; and
- (e) any other Powers and any other property which the Trustee may receive or which may be vested in the Trustee,

in trust for the Holders from time to time subject to and in accordance with this deed and the Terms.

### **2.3 Application of moneys**

All money received by the Trustee in respect of amounts payable under this deed must be held by the Trustee on trust to be applied in the following order:

- (a) firstly, in payment of all Costs incurred by or other amounts owing to the Trustee under or in connection with this deed (including all remuneration and other amounts payable to the Trustee under this deed);
- (b) secondly, in or towards payment equally or rateably of all arrears of any Distributions remaining unpaid in respect of PERLS VII and all Face Value due under the Terms; and
- (c) thirdly, in payment of the balance (if any) to the Issuer.

## **3 Issue, ownership and transfer of PERLS VII**

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### **3.1 Issue**

- (a) Subject to the terms of this deed, the Issuer may issue PERLS VII to any person in accordance with the applicable Terms.
- (b) The Issuer may issue PERLS VII to any person by causing that person to be entered in the Register as the Holder of those PERLS VII.
- (c) Upon the issue of a PERLS VII in accordance with clause 3.1(a) of this deed that PERLS VII will be duly constituted as a debt obligation by, and owing under, this deed.
- (d) Despite clause 3.1(c) of this deed, the issue of a PERLS VII will be void, and that PERLS VII will confer no rights against the Issuer on the Holder or any other person, unless the Issuer has received payment in cleared funds in full of the moneys due on application for that PERLS VII.

### **3.2 Ownership**

- (a) PERLS VII are regarded as issued or transferred to a person if and when the person's name is recorded in the Register as the holder of PERLS VII in accordance with this deed.
- (b) Title to PERLS VII vests in the Holder of that PERLS VII. The Issuer and the Trustee may treat Holders as the absolute beneficial owners of PERLS VII held by them and are not bound by or obliged to recognise any other person as having any right or interest in any PERLS VII whether or not they have notice of such right or interest.
- (c) Despite clause 3.2(a) of this deed, the Holder's title to PERLS VII is subject to rectification of the Register for fraud or error.

### **3.3 Death, bankruptcy**

- (a) Subject to clause 12.2 of this deed, if a person becomes entitled to a PERLS VII as a consequence of the death, bankruptcy, liquidation or a winding-up of a Holder or of a vesting order by a court or other body with power to make the



order, or a person administering the estate of a Holder, may, upon providing evidence as to that entitlement or status satisfactory to the Issuer, become recognised as being entitled to require the transfer to it of PERLS VII registered in the Holder's name.

- (b) The Issuer need not register any transfer or transmission under this clause 3.3 unless if the Issuer so requires an indemnity is provided in relation to the correctness of such evidence as to entitlement or status, as the Issuer considers sufficient in respect of any consequence arising from the transfer or transmission.

### **3.4 Holders bound**

The Holders and any persons claiming through any of them are deemed to have notice of, and are bound by, all the provisions of this deed and the Terms. This clause is a condition of each Holder's rights in relation to a PERLS VII under this deed and the Terms.

### **3.5 Brokerage**

The Issuer may pay a commission, procuration fee, brokerage or any other fees to any person for subscribing or underwriting the subscription of or subscription for PERLS VII.

## **4 Terms of PERLS VII**

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### **4.1 Terms**

PERLS VII are issued on and subject to the terms and conditions set out in the Terms and the Issuer undertakes to perform its obligations in respect of PERLS VII under the Terms. To the extent there are any inconsistencies between the Terms and this deed, the Terms prevail.

### **4.2 Payments**

- (a) Without limiting clause 4.1 of this deed, the Issuer covenants to pay to the Trustee on behalf of the Holders all amounts stated or determined to be payable on PERLS VII under the Terms, provided that the Issuer covenants to pay such amounts directly to the Holders if directed to do so by the Trustee or otherwise as required under this deed. The Trustee directs the Issuer to pay the amounts referred to in this clause 4.2 to the Holders, in accordance with their rights and entitlements unless the winding up of the Issuer has commenced in which case the payment must be made to the Trustee.
- (b) Subject to all applicable law, where the Issuer is unable to make a payment or is relieved from the obligation to make a payment under the Terms, the Issuer will send a notice to the registered address of the Holder advising of the unsuccessful payment and the amount is to be held by the Issuer for the Holder in a non-interest bearing deposit with a bank selected by the Issuer until the first of the following to occur:
  - (1) the Holder or a legal representative of the Holder (or the person who was the Holder at the time the entitlement to the payment is determined under the Terms) claims the amount and provides



evidence of its entitlement and details for payment to be effected to the satisfaction of the Issuer;

- (2) the Issuer pays the amount in accordance with the law relating to unclaimed money; and
- (3) the claim for payment of the amount becomes void under the Terms.

No additional amount is payable in respect of any delay in payment.

- (c) The Issuer's obligations to make payments in respect of PERLS VII are subject to all applicable laws. If a payment could not lawfully be made to a particular Holder due to any circumstances or matter affecting the Holder without the approval of a Government Agency or the satisfaction of some other condition then the Holder is not entitled to receive that payment, and the Issuer is not obliged to make that payment, unless that approval has been obtained or that other conditions is satisfied. The Issuer is not obliged to pay any further interest to the affected Holder in such circumstances on account of the delay.
- (d) If the Issuer has determined that a person other than the Holder is or may be entitled to be registered as a Holder and receive a payment in respect of a PERLS VII, the Issuer may withhold the payment until it has established the respective entitlements of those persons to its satisfaction and (if applicable) the persons entitled have been registered as Holder and provided details for the payment to be effected to the satisfaction of the Issuer. The Issuer is not obliged to pay any further interest on account of the delay.
- (e) The Issuer, in its absolute discretion, may withhold or deduct payments to a Holder where it is required to do so under or in connection with FATCA, or where it has reasonable grounds to suspect that the Holder or a beneficial owner of PERLS VII may be subject to FATCA, and may deal with such payment and the Holder's PERLS VII in accordance with FATCA. If any withholding or deduction arises under or in connection with FATCA, the Issuer will not be required to pay any further amounts on account of such withholding or deduction or otherwise reimburse or compensate, or make any payment to, a Holder or a beneficial owner of PERLS VII for or in respect of any such withholding or deduction.
- (f) For the avoidance of doubt, nothing in this clause 4.2 obliges the Issuer to make a payment it has not otherwise determined to make under clause 2 of the Terms.

### **4.3 Entry into Share Register**

Without limiting clause 4.2 of this deed, the Issuer must procure entry into the Share Register, of details in respect of the Ordinary Shares as the Issuer and the operator of the Share Register consider necessary or desirable to record the issue or transfer of the Ordinary Shares in accordance with the Terms and the provisions of this deed. If clause 4.7 of this deed applies, this will include entry into the Share Register of the name of the Trustee (or its nominee) in respect of a number of Ordinary Shares.

### **4.4 Status and subordination**

Without limiting clause 4.1, 4.2 or 4.3 of this deed:

- (a) PERLS VII constitute subordinated unsecured notes of the Issuer;
- (b) the Issuer's obligation to pay amounts due on a PERLS VII is subject to, and subordinated on the Terms set out in, the applicable Terms;
- (c) PERLS VII rank equally without any preference among themselves;



- (d) the Terms are binding on the Trustee in relation to any amount due on PERLS VII that it recovers or seeks to recover and applies to the Trustee as if references to the Holders in the Terms were references to the Trustee.

To avoid doubt, this clause does not affect the Trustee's entitlement to be paid any amount under clause 9 of this deed or any other provision or arrangement providing for the payment of amounts to the Trustee or any replacement arrangements to be put in place by a Successor or alternative arrangements between a Successor and the Trustee, if applicable.

#### **4.5 Automatic Exchange upon the occurrence of a Capital Trigger Event or Non-Viability Trigger Event**

If a Capital Trigger Event or Non-Viability Trigger Event has occurred and all or some PERLS VII (or percentage of the Face Value of each PERLS VII) are required to be Exchanged in accordance with clauses 4.1 or 4.2 of the Terms, then:

- (a) Exchange of the relevant PERLS VII or percentage of the Face Value of each PERLS VII will be taken to have occurred in accordance with clause 7 of the Terms immediately upon the date of occurrence of the Capital Trigger Event or Non-Viability Trigger Event; and
- (b) the entry of the corresponding PERLS VII in each relevant Holder's holding in the Register will constitute an entitlement of that Holder (or, if applicable, of the Trustee) to the relevant number of Ordinary Shares (and, if applicable, also to any remaining balance of PERLS VII or remaining percentage of the Face Value of each PERLS VII), and the Issuer will recognise the Holder (or, if applicable, the Trustee) as having been issued the relevant Ordinary Shares for all purposes,

in each case without the need for any further act or step by the Issuer, the Holder or any other person (and the Issuer will, as soon as possible thereafter and without delay on the part of the Issuer, take any appropriate procedural steps to record such Exchange, including updating the Register and the Share Register.

#### **4.6 No further rights if Exchange cannot occur**

If for any reason Exchange of any PERLS VII (or a percentage of the Face Value of any PERLS VII) required to be Exchanged under clause 4.1 or 4.2 of the Terms fails to take effect under clause 4.5(a) and (b) of the Terms and the Issuer is not otherwise able to issue the Ordinary Shares required to be issued in respect of such Exchange within 5 Business Days of the date of occurrence of the Capital Trigger Event or Non-Viability Trigger Event, then the relevant Holders' rights (including to payment of the Face Value and Distributions) in relation to such PERLS VII or percentage of the Face Value of PERLS VII are immediately and irrevocably terminated.

#### **4.7 Delivery of Ordinary Shares to the Trustee where the Holder does not wish to receive Ordinary Shares or is an Ineligible Holder**

- (a) The Terms contain provisions which require PERLS VII to be Exchanged.
- (b) If PERLS VII of a Holder are required to be Exchanged and:
- (1) the Holder has notified the Issuer that it does not wish to receive Ordinary Shares as a result of Exchange, which notice may be given at any time on or after the Issue Date and prior to the Exchange Date;
  - (2) the Holder is an Ineligible Holder; or



- (3) the Issuer has not received (for any reason whether or not due to the fault of that Holder) any information required by it in accordance with the Terms so as to impede the Issuer issuing the Ordinary Shares to a Holder on the Exchange Date,

then the Terms require that on the Exchange Date the relevant Holder's rights (including to payment of Distributions) in relation to each such PERLS VII being Exchanged are immediately and irrevocably terminated.

- (c) Notwithstanding clause 4.7(b) of this deed and only if required by clause 7.10 of the Terms, the Issuer will at that time instead of issuing Ordinary Shares to the relevant Holder, issue the Exchange Number of Ordinary Shares to the Trustee for no additional consideration to be held by the Trustee on trust for sale for the benefit of the relevant Holder (unless, because the Holder is an Ineligible Holder, the Trustee is deemed to be an Ineligible Holder, in which case such issue shall occur as soon as practicable after the Trustee ceases to be an Ineligible Holder). If Exchange is occurring because of the occurrence of a Capital Trigger Event or Non-Viability Trigger Event and the Exchange fails to take effect and the Issuer is not otherwise able to issue Ordinary Shares to the Trustee within five Business Days, then Holders' rights will be immediately and irrevocably terminated under clause 4.6 of the Terms.
- (d) For the purposes of clause 4.7(c) of this deed, if the Trustee is able to appoint one or more entities to act as the Sale Agent the Trustee will appoint such entity as the Sale Agent and will procure the Sale Agent at the first reasonable opportunity to sell the Ordinary Shares of all relevant Holders in one or more marketable parcels and by such manner as the Sale Agent advises is appropriate and upon a sale of the Ordinary Shares occurring must cause the proceeds of such sale (after deduction of any applicable brokerage, stamp duty and other costs, taxes and charges, including the Trustee's reasonable out of pocket Costs properly incurred by or on behalf of the Trustee in connection with such sale) (the **Proceeds**) to be paid:
- (1) directly to the Trustee; or
- (2) at the direction of the Trustee,
- in either case for payment to each relevant Holder in proportion to the total number of Ordinary Shares that would otherwise have been issued to the relevant Holder.
- (e) The Trustee gives no assurance (and is not required to procure the Sale Agent to give such assurance) as to:
- (1) the appropriateness of the size of the parcels for, the manner of, the timing of, or the price that will be achieved from, the sale of the Ordinary Shares described in clause 4.7(d) above;
- (2) whether a willing buyer for all or some of the Ordinary Shares will be found by the Sale Agent; or
- (3) whether a sale will be achieved.
- (f) If all or some of the Ordinary Shares have been sold by the Sale Agent, the Trustee may make payments to the relevant Holders under clause 4.7(d) of this deed by either crediting an Australian dollar bank account maintained in Australia with a financial institution and nominated by the relevant Holder in writing or in any other manner that the Trustee decides.
- (g) Where the Trustee is unable to make a payment to the relevant Holders under clause 4.7(f) of this deed, the amount may be returned to the Issuer who will be subject to the obligation to hold a payment under clause 4.2(b) of this deed,





unless the winding up of the Issuer has commenced in which case the Trustee must continue to hold the amount until the Trustee pays the amount in accordance with the law relating to unclaimed money. No additional payment is payable in respect of any delay in payment.

- (h) The Issuer will provide a copy of the Register and all necessary information to enable appropriate deductions for withholding taxes or other deductions required by law to be made to the Trustee within 48 hours of a request by the Trustee for a copy of such Register and such information so that the Trustee may make payments to the relevant Holders under clause 4.7(d) of this deed or comply with the law relating to unclaimed money. The Trustee is entitled to accept the correctness of all information contained in the Register without investigation for the purpose of the Trustee making payments to the relevant Holders under clause 4.7(d) of this deed.

## 5 Undertakings of Issuer

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Subject to this deed, the Issuer undertakes to the Trustee that for so long as any Face Value or Distribution due on PERLS VII remains outstanding or any Ordinary Shares that are required to be issued on Exchange have not yet been issued to the person to whom they are required to be issued under this deed or any obligations of the Issuer may arise pursuant to the requirements under clause 4.7 of this deed, it will:

- (a) comply with the provisions of this deed and the Terms;
- (b) comply with all applicable laws;
- (c) provide a copy of this deed to a Holder if they request a copy;
- (d) use all reasonable endeavours and furnish all such documents, information and undertakings as may be reasonably necessary in order to procure that  
PERLS VII are officially quoted on the Official List of the ASX;
- (e) do all things which are reasonably requested by the Trustee to enable the Trustee to comply with the Trustee's obligations under this deed, (or any other laws binding on the Trustee with respect to the trust or PERLS VII), the Listing Rules or the ASX Settlement Operating Rules;
- (f) provide to the Trustee at the same time as their issue (to the extent not already provided to the Trustee)
- (1) all documents sent to Holders;
- (g) provide to the Trustee:
- (1) all other information which is reasonably required or requested by the Trustee from time to time within any reasonable specified timeframe for the purposes of discharging the duties, trusts, and Powers vested in the Trustee under this deed or imposed upon it by law;
- (2) as soon as possible prior to the proposed issue of Ordinary Shares to the Trustee under clause 4.7(c) of this deed, information as to the Exchange Number of Ordinary Shares proposed to be issued to the Trustee for the purpose of the Trustee considering whether such issue of Ordinary Shares to the Trustee would cause the Trustee to be in breach of any applicable law;
- (3) an opinion of reputable legal counsel of recognised standing in Australia that it is open to the Trustee to determine that the Exchange



Number of Ordinary Shares may be issued to the Trustee under 4.7(c) of this deed and that the Trustee is not in breach of any laws imposed upon it in discharging its duties, trusts and Powers vested in the Trustee under this deed (unless the Trustee has obtained its own legal opinion to this effect); and

- (4) an original of any instrument in writing executed by the Issuer amending this deed under clause 14.2 (promptly after execution);
- (h) promptly, after becoming aware of any breach of any term or condition binding on the Issuer under this deed or the Terms that is continuing, provide details of the breach to the Trustee, including if the waiver would require APRA's approval in accordance with clause 7.3(k)(2) of this deed; and
- (i) promptly after cancelling any PERLS VII, confirm details of that cancellation and the relevant provisions in respect of such cancellation under the Terms to the Trustee (including, if applicable, of any Exchange or Redemption).

## 6 Enforcement

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### 6.1 Enforcement by Trustee

- (a) Subject to clause 6.2 of this deed, the Trustee and only the Trustee is entitled to take any action against the Issuer to enforce any term or condition binding on the Issuer under this deed or the Terms in respect of the PERLS VII.
- (b) No Holder shall be entitled to proceed directly against the Issuer to enforce any right or remedy under or in respect of any PERLS VII unless the Trustee, having become bound so to proceed under clause 6.2 of this deed, fails to do so within a reasonable period and such failure shall be continuing. In that case any Holder may, upon giving an indemnity satisfactory to the Trustee, in the name of the Trustee (but not otherwise) and subject to clause 6.2 of this deed, itself institute proceedings against the Issuer for the relevant remedy to the same extent (but not further or otherwise) that the Trustee would have been entitled to do so.
- (c) The Issuer is not liable in damages for breach of any provision of this deed other than in respect of the Trustee's remuneration and expenses due and payable under clause 9 of this deed. This does not affect the Issuer's obligation under the Terms to pay the Face Value, any Distribution or other amounts payable in respect of PERLS VII or to exchange PERLS VII for Ordinary Shares and Costs and other amounts due to the Trustee.

### 6.2 Enforcement on direction by Holders

Subject to clause 7 of this deed, the Trustee must take action to enforce this deed or the Terms where all the following conditions are met:

- (a) the Trustee has been directed to take that action by a Special Resolution of the Holders or the Terms otherwise oblige it to act; and
- (b) the Trustee is indemnified to its reasonable satisfaction:
  - (1) for all actions, proceedings, claims and demands to which the Trustee may render itself liable by taking such action; and



- (2) in respect of all costs, charges, damages and expenses which the Trustee may thereby incur and remuneration which the Trustee may thereby become entitled;
- (c) the Trustee is not restricted or prohibited from taking such action by any order of any competent court or any applicable law.

If the Trustee forms the view that action it has been directed to take is or could be inconsistent with this deed, the Terms or any applicable law or is or could be otherwise objectionable, it may take steps to seek (and, if the court so determines, to obtain) as soon as reasonably practicable a court direction or order to set aside or vary the direction, and, while those steps are underway, the Trustee is not obliged to take any action or proceedings it has been directed to take.

For the avoidance of doubt, the Trustee may take action to enforce this deed or the Terms in any other circumstances and in its absolute discretion but is not obliged to act unless the conditions of this clause are satisfied.

## 7 Powers, duties and discretions of Trustee

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### 7.1 Powers generally

- (a) Subject to this deed, the Trustee has in acting as trustee of the Trust and in relation to all property and rights held on Trust all the powers of a natural person or which it is otherwise possible to confer on a trustee.
- (b) Subject to applicable law, the Trustee may exercise its rights, powers and discretions under this deed in any manner it thinks fit.

### 7.2 Duties

- (a) The Trustee must:
  - (1) comply with its duties under this deed;
  - (2) act honestly and in good faith and comply with all laws in performing its duties and in the exercise of its Powers;
  - (3) exercise such reasonable diligence and prudence as a person qualified to be a trustee in the position of the Trustee would exercise in performing its duties and in the exercise of its Power;
  - (4) if and to the extent the Trustee holds Trust assets, keep accounting records which correctly record and explain all amounts paid and received by the Trustee in its capacity as trustee under this deed and in respect of the procedures under clause 4.7 of this deed being followed the Trustee may procure that the Sale Agent keeps accounting records which correctly record and explain all amounts received by it for the sale of Ordinary Shares, amounts deducted from the proceeds of such sale and amounts paid directly to the Trustee or at the direction of the Trustee; and
  - (5) if and to the extent the Trustee holds Trust assets, keep the assets of the Trust separate from all other assets of the Trustee which are held in a capacity other than trustee under this deed.
- (b) The Trustee has no obligation to exercise or to exercise in a particular way any of its obligations, rights, powers or discretions unless:



- (1) except in the case of the obligation to appoint a Sale Agent under clause 4.7 of this deed, it is directed to do so by a Meeting called under clause 11 of this deed;
  - (2) its liability is limited in a manner consistent with clause 8 of this deed; and
  - (3) it is indemnified to its satisfaction against any expense or liability which it may incur as a result of doing so.
- (c) The Trustee must not interfere with the conduct of the ordinary business of the Issuer unless required to do so in order to comply with its duties under this deed.
- (d) The Trustee has no obligations or duties except those expressly set out in this deed and those imposed on it by any law that cannot be excluded.

### 7.3 Discretions

Subject to this deed, the Trustee may:

- (a) **delegation:** by power of attorney or otherwise, authorise:
- (1) a Related Body Corporate of the Trustee; or
  - (2) any other person (including, without limitation, the Issuer and persons associated with the Issuer),
- to do anything which the Trustee may lawfully do (on such Terms and conditions as the Trustee may think fit) including, without limitation, holding any trust property and executing documents on its behalf;
- (b) **directions:** apply to the Court for directions in relation to any question arising either before or after PERLS VII become;
- (1) repayable and assent to and approve of or oppose any application to the Court made by or at the instance of any Holder or by Issuer; and
  - (2) at any time after the Holder's rights become enforceable, apply to the Court for an order:
    - (A) that the Trust be carried into execution under the direction of the Court; and
    - (B) for any other order or direction in relation to the administration of the Trust hereof as the Trustee may deem expedient.
- (c) **reliance:** rely and act upon (without enquiry) any communication or document that it reasonably believes to be genuine and correct and to have been signed or sent by the appropriate person or persons;
- (d) **expert advice:** rely and act upon (without enquiry) the advice or opinion of or information of any barrister, solicitor, accountant, auditor, actuary, valuer or other consultant or adviser of the Issuer or the Trustee including any Sale Agent (and whether or not such person is engaged or instructed by the Trustee and whether or not the advice or opinion or information is addressed to the Trustee);
- (e) **certificates:** accept as conclusive evidence and act upon any of the following:
- (1) a certificate which purports to be signed by any two directors of the Issuer as to any fact or matter, including without limitation as to whether or not any particular dealing, transaction, step or thing is commercially desirable or detrimental to the interests of the Holders or



whether any circumstances exists entitling the Issuer to Redeem or Exchange PERLS VII early in accordance with the Terms or entitling the Issuer to apply the procedures set out in clause 4.7 of this deed;

- (2) a certificate which purports to be signed by any two directors of the Successor as to any fact or matter;
- (3) any information, report, accounts, certificate or statement supplied by the Issuer, or the auditor or solicitor of the Issuer, including without limitation, any statements or opinions contained therein; and
- (4) any reports required to be provided under a provision of this deed.

The Trustee is not required to call for further evidence or information and is not responsible for any loss occurring as a result of such reliance, except to the extent that its reliance amounts to fraud, negligence or wilful default;

- (f) **documents:** accept as conclusive evidence and act upon, any document, communication, information, report, balance sheet, profit and loss account, certificate or statement supplied by the Issuer or any Subsidiary of the Issuer or by any director, secretary, auditor, solicitor or duly authorised officer of the Issuer or any Subsidiary of the Issuer (including any electronic transmission);
- (g) **statements:** accept as conclusive evidence and act upon, all statements (including statements made or given to the best of knowledge and belief or similarly qualified) contained in any statement, certificate, report, balance sheet or profit and loss account given pursuant to the provisions of, or in any way in relation to, this deed;
- (h) **Trustee determinations:** except as otherwise expressly provided for in this deed, determine as between itself and the Holders all questions and matters of doubt arising in relation to this deed or the Terms and every such determination shall be conclusive and binding on all Holders;
- (i) **Issuer determinations:** accept as conclusive evidence and act upon (without enquiry), any determination by the Issuer, including without limitation, a determination as to:
  - (1) the Market Rate (as defined in the Terms);
  - (2) the existence of circumstances justifying early Redemption of PERLS VII under the Terms due to (without limitation):
    - (A) an inability to frank Distributions;
    - (B) tax reasons; or
    - (C) regulatory reasons;
  - (3) the existence of circumstances justifying any of the procedures set out in clause 4.7 of this deed being followed;
  - (4) the Mandatory Exchange Conditions having been met;
  - (5) the occurrence of a Capital Trigger Event, a Non-Viability Trigger Event or a Change of Control Event under the Terms which requires PERLS VII to be Exchanged; or
  - (6) the need for APRA's written approval prior to the Redemption or Exchange of PERLS VII by the Issuer;
- (j) **exercise of powers:** determine in any manner it thinks fit whether to exercise, and the manner, mode and time of exercise of, the Trustee's Powers. Subject to any law applicable to the Trustee, unless the Trustee is fraudulent, negligent or wilfully defaults, it is not liable in its personal capacity for any loss, cost, claim,



damage or expense which may result from the exercise or failure to exercise any of its rights, powers or discretions; and

- (k) **waiver:** waive, so long as it is in writing, at any time and on any terms or conditions, any breach by the Issuer under this deed or the Terms but where a breach is the failure of the Issuer to Redeem or repay any PERLS VII or to pay any Distribution on any PERLS VII or to Exchange PERLS VII for Ordinary Shares or a failure of the Issuer to issue Ordinary Shares when required in accordance with the Terms, or to the extent required by this deed, the Trustee may waive the breach only if:
- (1) the Holders have consented to or authorised the waiver, or the breach has been remedied; and
  - (2) where required the Issuer must obtain APRA's prior written approval (APRA approval is required where the waiver affects the capital treatment of PERLS VII under APRA's prudential standards at the relevant time).

#### 7.4 Holders bound

- (a) The exercise by the Trustee of the Powers (including the discretions referred to in clause 7.3 of this deed) binds all the Holders, whether or not the Holders gave an instruction or concurred in their exercise.
- (b) Each Holder (and any person claiming through or under a Holder) is bound by and PERLS VII are issued on the condition that each Holder (and any person claiming through or under a Holder) is taken to have notice of and is bound by this deed and the Terms.

## 8 Trustee protections

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### 8.1 Trustee not responsible for certain matters

Except to the extent provided by this deed, the Trustee:

- (a) **(form of documents)** has no responsibility for the form or contents of this deed and will have no liability arising as a result of or in connection with any inadequacy, invalidity or unenforceability of any provision of this deed except insofar as it relates or to any representation or warranty given by the Trustee;
- (b) **(monitoring)** is not required to:
  - (1) provide to any person any information concerning the business, financial condition, status or affairs of the Issuer;
  - (2) investigate the adequacy, accuracy or completeness of any information, confirmations or certificates provided by the Issuer;
  - (3) assess, investigate or keep under review the business, financial condition, status or affairs of the Issuer;
  - (4) monitor compliance by the Issuer of its obligations under this deed or the Terms or to take any steps to ascertain whether any circumstances referred to in this deed or the Terms have occurred or are likely to occur, including without limitation:
    - (A) a Mandatory Exchange Date;



- (B) a Capital Trigger Event;
  - (C) a Non-Viability Trigger Event;
  - (D) a Change of Control Event; or
  - (E) circumstances for any Redemption under the Terms.
- (5) investigate or consider whether any issue of a PERLS VII or any payment in respect of a Note will be an unfair preference or other similar voidable transaction for the purposes of Chapter 5 of the Corporations Act;
- (c) **(notice)** is not required to notify any person of the execution of this deed or breach of this deed or the Terms or any other document relating to PERLS VII; and
- (d) **(notices)** is not required to (and, to avoid doubt, in the case of Confidential Information, must not) provide to the Holders copies of notices, documents or other information received from the Issuer.

## 8.2 Knowledge of the Trustee

The Trustee:

- (a) will only be considered to have knowledge or notice of or be aware of any matter or thing if the Trustee has knowledge, notice or awareness of that matter or thing by virtue of the actual notice or awareness of the officers or employees of the Trustee who have day to day responsibility for the administration of the Trust where that actual notice or awareness arises from the performance of the administration of the Trust; and
- (b) will be taken not to have knowledge of the occurrence of a failure to make a payment of amounts payable in respect of PERLS VII or a failure to issue Ordinary Shares to a Holder under this deed unless the Trustee has received written notice from a Holder or the Issuer stating that such failure has occurred and describing it.

## 8.3 Confidential information

Nothing in this deed requires the Trustee to disclose information or provide documents relating to the Issuer or any other person if the Trustee reasonably believes that to do so would constitute a breach of law or duty of confidentiality.

## 8.4 Capacity as Holder

If the Trustee or an associate of the Trustee is also a Holder, then in its capacity as a Holder it:

- (a) has the same rights and obligations as the other Holders; and
- (b) may exercise those rights and agrees to comply with those obligations independently from its role as Trustee as if it were not the Trustee.

## 8.5 Other dealings with Issuer and Holders

The Trustee and any Related Body Corporate of the Trustee may, without being liable to account to the Issuer or any Holder:

- (a) hold PERLS VII, shares or any other marketable securities issued by the Issuer in any capacity;



- (b) represent or act for, or contract with, individual Holders in any capacity;
- (c) deal in any capacity with the Issuer or any of its Related Bodies Corporate or associates; or
- (d) act in any capacity in relation to any other trusts.

## 8.6 Indemnity for Trustee

- (a) Without prejudice to any right of indemnity by any applicable law given to trustees, the Trustee and every person appointed by it pursuant to this deed is indemnified by the Issuer in respect of all liabilities including any fines or penalties in respect of a charge and expenses including legal fees (charged at the usual commercial rates charged by the provider of the legal services) incurred by it in the execution of the trusts, authorities, discretions or Powers constituted or conferred by this deed or an amendment to this deed, and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted in any way relating to this deed, or any amendment to this deed, other than:
  - (1) a claim arising out of the Trustee's fraud, negligence or wilful default and;
  - (2) any Taxes (excluding any Indirect Tax) imposed on the Trustee's remuneration for its services as Trustee.
- (b) The Trustee may retain and pay out of any moneys in its hands in priority to any claim by a Holder, all sums necessary to effect and satisfy such indemnity or an amount due and payable to the Trustee under clause 9 of this deed.

## 8.7 Continuing indemnity

The indemnity contained in clause 8.6(a) above is a continuing and independent obligation of the Issuer and survives:

- (a) winding up or termination of the Trust under this deed;
- (b) the retirement or removal of the Trustee as trustee; and
- (c) the substitution of the Issuer for a Successor under clause 18.1 or 18.2 of this deed, subject to clause 18.3.

## 8.8 Exclusions of liability

Neither the Trustee nor any of its directors, officers, employees, agents or attorneys or Related Bodies Corporate will be responsible for or liable to the Issuer or any Holder or any other person for loss caused by:

- (a) the Trustee's acts or omissions in accordance with the Terms of this deed in reliance on:
  - (1) the Register;
  - (2) information or documents supplied by the Issuer or any agent of the Issuer;
  - (3) the authenticity of any document it reasonably believes to be genuine and correct;
  - (4) opinion, advice or information of any consultant or adviser of the Trustee;





- (5) acting on any instruction or direction properly given to it by the Issuer or Holders under this deed;
- (b) any loss arising due to the acts or omissions of any delegate, attorney or agent of the Trustee (other than a Related Body Corporate of the Trustee), unless the Trustee fails to use reasonable care in selecting and monitoring them or the act or omission was caused or contributed to by the Trustee's negligence, wilful misconduct or fraud;
- (c) any act, omission, neglect or default of the Issuer or any other person under or in connection with this deed or PERLS VII;
- (d) any act or omission required by law or by any court of competent jurisdiction;
- (e) anything required to be done or omitted to be done in accordance with an instruction or direction given to it by the Holders at a Meeting;
- (f) any act or omission of an operator of any securities title, transfer or holding system or any absence of, or defect in, the title of the Issuer to any asset;
- (g) any payment having been made to any fiscal authority;
- (h) the Trustee waiving or excusing, subject to any conditions that the Trustee thinks fit, any breach by the Issuer of the Issuer's obligations under this deed;
- (i) the subscription of moneys by applicants for PERLS VII or to see to the application of those moneys; or
- (j) the form or contents of this deed and will have no liability arising as a result of or in connection with any inadequacy, invalidity or unenforceability of any provision of this deed insofar as it applies to the Trustee or to any representation or warranty given by the Trustee.

## 8.9 Limitation of liability

- (a) The Trustee enters this deed as trustee of the Trust and in no other capacity.
- (b) Subject to clause 8.9(e) below, a liability of the Trustee to the Holders arising under or in connection with this deed is limited to and can be enforced by the Holders against the Trustee only to the extent to which it can be satisfied out of the property of the Trust against which the Trustee is actually indemnified in respect of the liability incurred by it as trustee of the Trust. This limitation of the Trustee's liability applies despite any other provision of this deed (subject to clause 8.9(e) below) and extends to all Obligations in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (c) The Issuer and the Holders may not
  - (1) have recourse to the Trustee, or enforce their rights against the Trustee arising from breach or non-performance of the Obligations by the Trustee, beyond the Assets against which the Trustee is actually indemnified; or
  - (2) seek the appointment of a receiver, a liquidator, an administrator or any other similar person to the Trustee (except in relation to property of the Trust) or prove in any liquidation of or affecting the Trustee (exception in relation to the property of the Trust).
- (d) The Holders and the Issuer may only enforce any rights they may have against the Trustee arising from the breach or non-performance of the Obligations only to the extent to which it can be satisfied out of the Assets against which the



Trustee is actually indemnified in respect of the liability incurred by it as trustee of the Trust.

- (e) The provisions of clause 8.8 of this deed and this clause 8.9 will not apply to any obligation or liability of the Trustee to the extent arising or not satisfied as a result of the Trustee's fraud, negligence or wilful default.
- (f) The Issuer acknowledges that it is responsible under this deed and the Terms for performing a variety of obligations under this deed and the Terms. No act or omission of the Trustee (including any related failure to satisfy its obligations or breach of representation or warranty under this deed) will be considered fraud, negligence or wilful default of the Trustee to the extent to which the act or omission was caused or contributed to by any failure of the Issuer or any other person (other than a Related Body Corporate of the Trustee) to fulfil its obligations relating to the Trust or by any other act or omission of the Issuer or any other person (other than a Related Body Corporate of the Trustee).
- (g) For the purposes of this clause 8.9:
  - (1) Obligations means all obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, the Trustee under or in respect of this deed; and
  - (2) Assets includes all assets, property and rights, real and personal of any value whatsoever.

## 8.10 Trustee capacity

In this deed, except where expressly provided to the contrary:

- (a) a reference to the Trustee is a reference to the Trustee in its capacity as trustee of the trust created by this deed only, and in no other capacity; and
- (b) a reference to the undertaking, assets, business, money or any other thing of or in relation to the Trustee is a reference to such undertaking, assets, business, money or other thing of or in relation to the Trustee only in its capacity as trustee of the trust created by this deed, and in no other capacity.

## 8.11 Notice of this deed

For the avoidance of doubt, the Trustee is not bound to give notice to any person of the execution of this deed.

# 9 Trustee's remuneration and expenses

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## 9.1 Remuneration

- (a) The Issuer must pay to the Trustee by way of remuneration for its services as trustee under this Deed a fee or such other remuneration as may be agreed between the parties, and in the manner notified by the Trustee to the Issuer, from time to time.
- (b) If the Trustee is required at any time to appoint a Sale Agent or deal with unclaimed money in accordance with the procedures set out in clause 4.7 of this deed, then its reasonable out of pocket Costs properly incurred by or on behalf of the Trustee in connection with clause 4.7 of this deed will be taken out of the Proceeds of sale of the Ordinary Shares or paid in accordance with any



other provision or arrangement providing for payment of amounts to the Trustee or any replacement arrangements put in place by a Successor or alternative arrangements between a Successor and the Trustee, if applicable.

- (c) If the Trustee is required at any time to:
- (1) undertake duties which relate to the enforcement of the terms of this deed by the Trustee upon a default by any other party under the terms of this deed or otherwise participate in legal proceedings to which it has been joined as a party;
  - (2) undertake activities outside of the normal day to day scope of the Trustee's duties in respect of Corporate Transactions;
  - (3) appoint a Sale Agent or deal with unclaimed money under clause 4.7 of this deed; or
  - (4) undertake duties which are agreed by the Issuer to be of an exceptional nature or otherwise outside the scope of the normal duties of the Trustee,

then the Trustee is entitled to additional remuneration as may be agreed between the Trustee and the Issuer or, failing agreement, determined by reference to the reasonable time and attendance costs at the prevailing hourly rates for legal work or executive time (exclusive of GST) of the Trustee's employees required in respect of such activities to the extent outside the normal day-to-day scope of the Trustee's duties.

In this clause 9.1, **Corporate Transactions** means a transaction or proposed transaction affecting the Issuer or the CBA Group that involves:

- (5) equity raisings;
- (6) mergers and acquisitions;
- (7) divestments;
- (8) significant restructures;
- (9) responding to significant regulatory inquiries; and
- (10) debt refinancing.

## 9.2 Reimbursement

- (a) The Issuer must pay to the Trustee on demand all reasonable out of pocket Costs properly incurred by or on behalf of the Trustee in connection with:
- (1) the negotiation, preparation and execution of this deed, registration, stamping, administration and any subsequent consent, agreement, approval, waiver or amendment required under this deed;
  - (2) the carrying out or exercise or the purported carrying out or exercise by the Trustee of any duty, obligation or power imposed or conferred expressly or impliedly by this deed on the Trustee or upon Holders or by law;
  - (3) the exercise, preservation of, or enforcement of, any rights in connection with any breach or default in the observance or performance by the Issuer of any of the covenants, obligations, conditions and provisions of this deed or the performance by the Trustee of its powers, duties and discretions under clause 7 of this deed;



- (4) the service of Notices to any Holder, the convening and holding of any Meeting and the carrying out of any proper directions or resolutions of Holders; or
  - (5) all actions taken under this deed in relation to complying with any notice, request or requirement of any Government Agency and any investigation by any Government Agency into the affairs of the Issuer.
- (b) If the Issuer or any of its assets are placed in liquidation, the Trustee is entitled (as between itself, the Issuer and the Holders) to claim and receive from any receiver, receiver and trustee, official trustee, liquidator, administrator or similar official amounts by way of reimbursement of all costs, charges, fees and expenses incurred by the Trustee (including on its own account) in connection with any enforcement or other action taken by it as trustee of the Trust.

### **9.3 No indemnity by Holders**

Except as otherwise agreed with any Holder or Holders in connection with the taking of any action by the Trustee, the Trustee is not entitled to be indemnified by any Holder personally.

### **9.4 GST**

The Issuer must pay to the Trustee on demand any goods and services tax, value added tax or any like tax (**GST**) which is payable as a consequence of any supply made or deemed to be made or other matter or thing done under or in connection with this deed by the Trustee (together with any fine, penalty or interest payable because of a default by the Issuer). The amount paid by the Issuer to the Trustee on account of the GST must be sufficient to ensure that the economic benefit to the Trustee of this deed remains the same whether or not GST applies. The Trustee will give the Issuer a tax invoice.

### **9.5 Priority and survival**

All remuneration and expenses referred to in this clause 9 shall be paid in priority to any claim by any Holder and continue to be payable until paid notwithstanding that this deed or the Trust may be terminated, or the Trust may be wound up or subject to administration by or under the order of any court.

## **10 Retirement and removal of Trustee**

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### **10.1 Retirement**

Subject to compliance with the relevant statutory requirements for the time being, the Trustee may retire by giving notice to the Issuer, but such retirement will not be effective until the last to occur of the following:

- (a) the day which is 60 days after the date of the notice (or such shorter period as the Trustee and the Issuer may agree); and
- (b) the day upon which the appointment of a new Trustee becomes effective under clause 10.3 of this deed.

## 10.2 Removal

- (a) Subject to compliance with the relevant statutory requirements for the time being, the Trustee must retire as trustee for the Holders under this deed and the Issuer may by written notice remove the Trustee if:
- (1) the Trustee is in material breach of its obligations under this deed and has not rectified the breach within 10 Business Days of receiving a written notice from the Issuer to rectify the breach;
  - (2) the Trustee ceases or refuses to act as trustee under this deed;
  - (3) the Trustee ceases to carry on business;
  - (4) the Trustee has not been validly appointed;
  - (5) the Trustee is placed in liquidation or is wound up or dissolved;
  - (6) a receiver, receiver and trustee, official trustee, liquidator, administrator or similar official is appointed to the Trustee;
  - (7) any licence, consent, Authorisation, permit or similar thing the Trustee is required to hold to carry out its obligations and duties under or in respect of this deed is revoked or not renewed; or
  - (8) the Issuer is authorised or requested to do so by a Meeting of the Holders called in accordance with clause 11 of this deed;
- (b) Any removal of the Trustee by the Issuer under this clause 10.2 will only take effect upon the appointment of a new Trustee under clause 10.3 below.
- (c) On the retirement or removal of the Trustee, the Trustee must at the cost of the Issuer do all such things and execute all such deeds and assurances as are necessary for the purpose of vesting in a new trustee all money, property, rights, powers, authorities and discretions vested in the Trustee under this deed.

## 10.3 Appointment of new Trustee

- (a) The Issuer may appoint a Trustee to be a new Trustee following the retirement or removal of the Trustee in accordance with this clause 10, but if the Issuer fails to do so within 60 days after receiving a notice from the Trustee under clause 10.1 above then the Trustee may appoint a new Trustee (or, if possible, apply to the court for the appointment of a new Trustee). The new Trustee cannot be the Issuer or a Related Body Corporate of the Issuer.
- (b) A new Trustee may be appointed by deed executed under seal by the new Trustee and the Issuer or the Trustee (as applicable) and such execution shall by force of this clause 10.3 vest in the new Trustee all Powers and all right title and interest of the Trustee in this deed and the Terms.

## 10.4 Release

- (a) When the Trustee retires or is removed, the Trustee is by force of this clause 10.4 discharged and released from its obligations, covenants and liabilities under this deed arising after the date it retires or is removed. The Issuer must then, if required by the Trustee, execute a confirmation of release in favour of the Trustee in a form and substance reasonably acceptable to the Trustee.
- (b) The retirement, removal or departure of the Trustee does not prejudice any accrued right or obligation of the Trustee (including, without limitation, its right of



indemnity or entitlement to be paid fees that continue to accrue up to the date of appointment of the new trustee).

## 10.5 Obligations of Trustee

On the retirement or removal of the Trustee, the Trustee must do all such things and execute all such deeds and assurances as are reasonably necessary for the purpose of vesting in a new trustee all money, property, rights, powers, authorities and discretions vested in the Trustee under this deed.

# 11 Meetings of Holders

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## 11.1 Meetings of Holders

- (a) The Trustee or the Issuer may at any time convene a Meeting.
- (b) The provisions in Schedule 4 of this deed apply to any Meeting of Holders.
- (c) The Issuer must convene a Meeting on receipt of a direction in writing by Holders who hold 10% or more of PERLS VII stating the object of the Meeting and the of any proposed resolution. The Issuer must serve a copy of the direction on the Trustee together with all other relevant information.
- (d) The Trustee may do all things (including executing documents) it reasonably considers necessary or desirable under or in connection with any Ordinary Resolution or Special Resolution.

## 11.2 Power of Holders

Subject to this deed and the Terms, the Holders may by Ordinary Resolution:

- (a) give a direction to the Trustee as to; or
- (b) authorise, ratify or confirm anything done or not done by the Trustee in respect of,

the performance or exercise of any of the duties, rights, powers and remedies of the Trustee under or relating to this deed or PERLS VII, and may by Special Resolution approve any amendment to the Trust Deed or the Terms in accordance with clause 14 of this deed or do anything else for which the Trust Deed or the Terms provide for a Special Resolution.

## 11.3 Passing of resolution

A resolution passed at a Meeting held in accordance with this deed is binding on all Holders.

# 12 Register

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## 12.1 Maintenance of the Register

- (a) The Issuer must establish and maintain (or cause to be established and maintained) a Register and enter (or cause to be entered) on the Register:



- (1) the terms and conditions of PERLS VII;
  - (2) the name and address of the Holder and the amount of PERLS VII held to be recorded in the Register;
  - (3) any payment instructions or account details notified by the relevant Holder (or by the Issuer in respect of the relevant Holder) to the Registrar, for the purpose of receiving payments in relation to PERLS VII held by such Holder; and
  - (4) any other particulars which the Issuer thinks fit or that it is required to include on the Register under this deed.
- (b) The Issuer must promptly, on receipt of details of any change of name or address of a Holder notified in writing and accompanied, in the case of change of name, by any evidence which the Issuer may reasonably require, alter (or cause to be altered) the details recorded on the Register in respect of that Holder.
- (c) On giving a notice by advertisement or otherwise as may be required by law, or the requirements of the Listing Rules, the Issuer may from time to time close the Register for any period or periods not exceeding in any one year the maximum period permitted by law or those requirements in aggregate in any calendar year.
- (d) No notice of any trust (whether express, implied or constructive) will be entered in the Register except as may be ordered by a court of competent jurisdiction.
- (e) At any time the Issuer may (on such terms as it thinks fit) appoint a person to establish and maintain a Register and may terminate such appointment, however the Issuer will remain responsible for maintaining or ensuring that there is maintained a Register and the Trustee may rely on such Register as conclusive evidence of PERLS VII issued under this deed.
- (f) The Issuer must give a copy of the Register to the Trustee within 48 hours of a request by the Trustee for a copy of such Register. A Holder must advise the Issuer of any change to the information noted in the Register in respect of that Holder.
- (g) The Trustee and the Issuer are entitled to accept the correctness of all information contained in a Register without investigation and are not liable to any person for any error in it.
- (h) The Issuer may at any time rectify any error in the Register. None of the Issuer or the Trustee is liable for any loss, Costs or liability incurred by any person as a result of doing so.
- (i) Where a Holder transfers some but not all of its PERLS VII, the transfer may be recorded in the Register in respect of any of the Holder's PERLS VII.

## 12.2 Joint Holders

Where two or more persons are registered as the holders of PERLS VII (**Joint Holders**) they are deemed to hold PERLS VII as joint tenants, on the following conditions:

- (a) the Joint Holders are jointly and severally liable in respect of all payments, including payment of any Tax, which ought to be made in respect of PERLS VII;
- (b) on the death of a Joint Holder, the survivor or survivors are the only person or persons whom the Issuer or the Trustee will recognise as having any title to PERLS VII, but the Issuer or the Trustee may require any evidence of death which it thinks fit;



- (c) any one of the Joint Holders may give an effective receipt which will discharge the Issuer or the Trustee in respect of any payment;
- (d) the Joint Holders of a PERLS VII are counted as a single holder of PERLS VII for the purposes of calculating the number of Holders or requisitioners who have applied for a Meeting;
- (e) only the person whose name appears first in the applicable Register as one of the Holders is entitled to delivery of any notices, cheques or other communications from the Issuer or the Trustee, and any notice, cheque or other communication given to that person is deemed to be given to all the Joint Holders;
- (f) If more than one address is notified to the Issuer, the address recorded in the Register will be the address of the Joint Holder whose name first appears in the Register; and
- (g) a payment to any one of the Joint Holders will discharge the Issuer's liability with respect to that payment.

### **12.3 Register conclusive**

Each in the Register of a person as a Holder constitutes:

- (a) conclusive evidence of that person's:
  - (1) absolute ownership of that PERLS VII;
  - (2) entitlement to the other benefits given to Holders under the Terms and this deed in respect of the PERLS VII; and
- (b) an undertaking by the Issuer to pay amounts in accordance with the Terms, subject to correction of the Register for fraud or error.

### **12.4 Holding statements**

- (a) The Issuer or the Register (as applicable) must issue to each Holder a holding statement as soon as reasonably practicable after the issue of PERLS VII.
- (b) Any holding statement in respect of PERLS VII is no guarantee that any amounts will be paid to the Holder.

## **13 Transfers**

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### **13.1 Transfer**

- (a) PERLS VII may be transferred in accordance with the Terms.
- (b) A transferor of PERLS VII remains the Holder until the transfer is registered and the name of the transferee is entered in the applicable Register in respect of PERLS VII.

### **13.2 Transaction advice after transfer**

If the Issuer accepts a transfer under this clause 13, the Issuer may issue a transaction advice for:

- (a) PERLS VII which have been transferred; and





- (b) the balance of any PERLS VII which were not transferred.

### **13.3 Participation in transfer systems**

If PERLS VII are lodged or approved for entry on CHES, then ASX Settlement Operating Rules prevail to the extent of any inconsistency with clause 12 of this deed or this clause 13.

## **14 Amendments to deed**

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### **14.1 Amendment of Terms**

The Terms may only be amended in accordance with those Terms.

### **14.2 Amendment without consent**

Subject to clause 14.1 above and complying with the Corporations Act and all applicable laws, the Issuer may by deed poll and without the consent or approval of the Holders or the Trustee, amend the Terms or this deed from the date specified by the Issuer to the Trustee if such amendment is, in the opinion of the Issuer:

- (a) of a formal, minor or technical nature;
- (b) made to cure any ambiguity or correct any manifest error or supplement any defective provisions of the Terms or amend any provision of the Trust Deed;
- (c) necessary or expedient for the purpose of:
  - (1) enabling PERLS VII to be listed for quotation, or to retain quotation, on any securities exchange or to be offered for subscription or for sale under the laws for the time being in force in any place;
  - (2) complying with the provisions of any statute or the requirements of any statutory authority or the ASX Listing Rules or the listing or quotation requirements of any securities exchange on which the Issuer may propose to seek a listing or quotation of PERLS VII; or
  - (3) enabling a substitution of the Issuer for a Successor in accordance with clause 18 of this deed;
- (d) made to amend any date or time period stated, required or permitted in connection with any Exchange or Redemption (including, without limitation, when the proceeds of Redemption are to be reinvested in a new security to be issued by the Issuer or a Related Body Corporate); or
- (e) not materially prejudicial to the interests of Holders as a whole.

### **14.3 Amendments with consent**

Without limiting clause 14.2 above, at any time and from time to time, the Issuer may by deed poll amend the Terms or this deed with the consent of the Trustee (such consent not to be unreasonably withheld) if such amendment is approved by a Special Resolution. In this case, the Terms of all PERLS VII will be amended from the date specified in the Special Resolution or otherwise notified to the Holders (provided such date is permitted by the terms of the Special Resolution).



#### 14.4 Amendments

In this clause 14 'amend' includes modify, cancel, alter or add to and 'amendment' has a corresponding meaning.

#### 14.5 APRA approval of amendments

Prior to any amendment under the Terms being effective, where required the Issuer must obtain APRA's prior written approval (APRA approval is required where the amendment affects the capital treatment of PERLS VII under APRA's prudential standards at the relevant time) and any consent or approval required under any applicable law, regulation or ASX Listing Rule.

### 15 Termination and release

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#### 15.1 Termination of trust

This deed terminates on the earlier of:

- (a) if no PERLS VII have been issued, any date specified by the Issuer by notice to the Trustee;
- (b) if PERLS VII have been issued, the date the last of the following occurs:
  - (1) the Redemption or Exchange of all PERLS VII or the date on which the Proceeds are distributed to the relevant Holders in accordance with clause 4.7 of this deed;
  - (2) payment of all amounts due and payable on PERLS VII under the Terms;
  - (3) payment of all Costs reasonably and properly incurred by the Trustee; and
  - (4) payment of all other amounts payable by the Issuer to the Trustee or Holders;
- (c) the date on which Holders unanimously determine that the Trust be wound up; or
- (d) the date required by law.

#### 15.2 Disposal of assets

If the Trust is terminated in accordance with clause 15.1 above, the Trustee must distribute the balance of any income and capital in accordance with clause 2.3 of this deed.

#### 15.3 Confirmation of release

- (a) At any time after the Issuer's obligations have been discharged under clause 15.1 above, either party (**Released Party**) may request the other to execute in favour of the Released Party, certification that the Released Party is released from the obligations under this deed and the other party must provide the Released Party with the confirmation and release so requested.



- (b) Without limiting the generality of clause 7.3(e) of this deed, where the Trust terminates following satisfaction of the conditions in clause 15.1(a), neither party is required to execute a release in favour of the Released Party unless and until the Issuer has procured an auditor of the Issuer to certify the satisfaction of the conditions specified in clause 15.1(a) (**Termination Certificate**), and the Trustee may rely and act on the Termination Certificate.

## 16 Confidentiality

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### 16.1 Confidential information

The Trustee acknowledges that all Confidential Information is confidential to the Issuer and must not be disclosed to any person except as permitted by clause 16.2 of this deed.

### 16.2 Permitted disclosure

The Trustee may disclose Confidential Information:

- (a) to the extent required by this deed or by law, but only to the extent so required;
- (b) to its officers, employees and professional advisers, but only to the extent that such disclosure is considered by the Trustee appropriate or necessary in order for the Trustee to perform its obligations (including exercising the Powers) under this deed; or
- (c) with the prior written consent of the Issuer (which may be given or withheld in its absolute discretion).

### 16.3 Disclosure to third parties

The Trustee must use its best endeavours to ensure that every person to whom it provides Confidential Information under clause 16.2 of this deed is informed in writing of the terms of this clause 16.

## 17 Representations and warranties

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The Trustee and the Issuer each represents and warrants to the other that as at the date of this deed:

- (a) **incorporation:** it is duly incorporated and has the power to own its property and to carry on its business as it is now being conducted;
- (b) **authority:** it has full power and authority to enter into, deliver and perform its obligations under this deed;
- (c) **authorisations:** it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms; and
- (d) **documents binding:** this deed constitutes (or will, when signed and delivered constitute) legal, valid and binding obligations enforceable against it in accordance with its terms, subject to stamping and any necessary registration and except as such enforceability may be limited by any applicable bankruptcy, insolvency, reorganisation, moratorium or trust or general principles of equity or other similar laws affecting creditors' rights generally; and



- (e) **no misrepresentation:** in the case of the Issuer only, to the best of its information, knowledge and belief after having made due inquiry, all written information provided by the Issuer to the Trustee is true in all material respects at the date it was provided or as at the date (if any) it was stated and that neither that information nor its conduct and the conduct of anyone on its behalf in relation to the transactions contemplated by this deed or PERLS VII, was or is misleading in a material respect, by omission or otherwise.

Each representation and warranty in this clause is deemed to be repeated by the Issuer and the Trustee on the date PERLS VII are issued with reference to the facts and circumstances existing on that date.

## 18 Substitution of Issuer for a NOHC

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### 18.1 Successor may substitute Issuer

The Issuer may, provided that the Substitution Conditions are satisfied, without the approval of the Trustee or the Holders and by giving notice to ASX and the Holders:

- (a) substitute for itself a NOHC (the **Full Successor**) in place of the Issuer as the principal debtor under this deed; or
- (b) substitute for itself a NOHC (**Partial Successor**) as the issuer of the Ordinary Shares on Exchange

and a reference to the **Successor** shall be a reference to the Full Successor or the Partial Successor, as applicable. The notice shall specify the date on which the substitution is to take effect (**Date of Substitution**)

### 18.2 Substitution Conditions

The Substitution Conditions are:

- (a) in the case of the Full Successor:
- (1) the Full Successor or another entity (which is a parent entity) subscribes for Ordinary Shares or other capital instruments acceptable to APRA in such amount as may be necessary, or takes other steps acceptable to APRA, to ensure that capital position of the Issuer Level 1 Group and Issuer Level 2 Group will not be adversely affected;
  - (2) the Full Successor will expressly assume the Issuer's obligations under the Terms and this deed by entering into a deed poll for the benefit of the Holders (a **Successor Deed Poll** substantially in the form of Schedule 2 of this deed) providing that, among other things, it agrees:
    - (A) to comply with the restrictions in clause 2.7 of the Terms (with all necessary modifications); and
    - (B) to deliver fully paid ordinary shares in its capital under all circumstances when the Issuer would otherwise have been required to deliver Ordinary Shares, subject to the Terms (with all necessary modifications);
- (b) in the case of the Partial Successor:

- (1) the Partial Successor agrees with effect on and from the Date of Substitution, by entering into a Successor Deed Poll substantially in the form of Schedule 3 of this deed, to deliver fully paid ordinary shares in its capital under all circumstances when the Issuer would otherwise have been required to deliver Ordinary Shares, subject to the same terms and conditions as set out in the Terms (with all necessary modifications); and
  - (2) the Partial Successor agrees that in all circumstances where the Patrial Successor delivers fully paid ordinary shares in its capital under the Successor Deed Poll in clause 18.2(b)(1), the Partial Successor or another entity (which is a parent entity) will subscribe for Ordinary Shares in such amount as may be necessary, or takes other steps acceptable to APRA, to ensure that the capital position of the CBA Level 1 Group and CBA Level 2 Group is equivalent to the position if the Successor Deed Poll had not been entered into and CBA was required to issue the Ordinary Shares; and
- (c) in the case of either the Full Successor or the Partial Successor (as applicable):
- (1) the Successor's ordinary shares are or are to be quoted on the ASX, and the Successor agrees to use all reasonable endeavours and furnish all such documents, information and undertakings as may be reasonably necessary in order to procure quotation of ordinary shares issued under the Terms on the securities exchanges on which the Successor's ordinary shares are quoted at the time of delivery;
  - (2) the Successor delivers to the Trustee:
    - (A) a certificate signed by two directors of the Successor stating that the Successor Deed Poll complies with this clause 18 and the Terms, that all required conditions precedent have been satisfied and that the Successor will be solvent immediately after such substitution; and
    - (B) opinions from reputable legal counsel of recognised standing in the jurisdiction of incorporation of the Successor, and in such other jurisdictions as are relevant and in relation to the governing law of this deed confirm that the Successor Deed Poll is the legal, valid and binding obligation of the Successor and is enforceable in accordance with its terms;
  - (3) the Successor and the Issuer have obtained APRA approval and all other necessary authorisations, regulatory and governmental approvals and consents for such substitution and for the performance by the Successor of its obligations under PERLS VII and the documents effecting substitution;
  - (4) if the Successor does not have a place of business in New South Wales, the Successor has appointed a process agent in New South Wales to receive service of process on its behalf in relation to any legal proceedings arising out of or in connections with PERLS VII;
  - (5) the Successor has, in the reasonable opinion of CBA, the financial capacity to satisfy its obligations under the Successor Deed Poll;
  - (6) the Issuer has used all reasonable endeavours to give an irrevocable notice to the Holders as soon as reasonably practicable before a NOHC Event but no later than 10 days before the NOHC Event occurs specifying the amendments to PERLS VII which will be made in accordance with the Terms in connection with the substitution of the



Successor as the issuer of the ordinary shares on Exchange in accordance with the Terms; and

- (7) the Trustee and the Issuer may jointly by an instrument in writing and without the authority, assent or approval of Holders, amend this deed to the extent such amendment is, necessary or expedient for the purpose of complying with the provisions of Chapter 2L of the Corporations Act.

### **18.3 Effect of substitution of Full Successor**

Upon the Issuer satisfying the Trustee that the requirements set out in clauses 18.1 and 18.2 above have been completed, on and from the Date of Substitution:

- (a) the Full Successor will assume all of the obligations of, succeed to, and be substituted for, and may exercise every right and power of, the Issuer under this deed as the principal debtor in place of the Issuer and the Terms with the same effect as if the Successor had been named as the Issuer in the Terms and this deed; and
- (b) the Issuer (or any corporation which has previously assumed the obligations of the Issuer) will be released from its liability as the Issuer under this deed and the Terms:
- (c) references to the Issuer in any other provisions of this deed or the Terms will be taken to be references to the Full Successor only; and
- (d) if the Issuer gives a notice to Holders under clause 18.2(c)(6), the amended Terms will have the effect on and from the date specified in the notice.

### **18.4 Effect of substitution of Partial Successor**

If the relevant requirements set out in clauses 18.1 and 18.2 above relating to a substitution under clause 18.1(b) have been completed, on and from the Date of Substitution:

- (a) the Issuer (or any corporation which has previously assumed the obligations of the Issuer) will be released from any obligation it would otherwise have under the Terms to issue Ordinary Shares to Holders upon Exchange; and
- (b) if the Issuer gives a notice to Holders under clause 18.2(c)(6), the amended Terms will have effect on and from the date specified in the notice.

## **19 General**

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### **19.1 Notices**

Any notice or other communication including, but not limited to, any demand, consent or approval to or by a party under this deed or the Terms:

- (a) must be in legible writing and in English addressed as shown below:
- (1) if to the Issuer:
- |            |   |
|------------|---|
| Address:   | Level 25 Tower 1, 201 Sussex Street, Sydney<br>NSW 2000 |
| Attention: | Head of Capital and Regulatory Strategy                 |



- Facsimile: (02) 9118 1014  
Email: [capitalandregulatorystrategy@cba.com.au](mailto:capitalandregulatorystrategy@cba.com.au)
- (2) if to the Trustee:
- Address: Level 12, Angel Place, 123 Pitt Street, Sydney, NSW 2000, Australia
- Attention: "Manager, Retail Securities - Perpetual Corporate Trust"
- Facsimile: [+61 2 8256 1414](tel:+61282561414)  
Email: [csf.team@perpetual.com.au](mailto:csf.team@perpetual.com.au)

or to any other address specified to the sender by any party by notice;

- (b) must be signed by an officer of the sender;
- (c) is deemed to be given by the sender and received by the addressee:
- (1) when delivered by hand to the street address during the hours of 9.00 am to 5.00 pm on a Business Day;
  - (2) within Australia, on the day following the day on which the envelope containing the same was posted with postage prepaid to the postal address and, outside Australia, on the seventh day following the day on which the envelope containing the same was posted with postage prepaid to the postal address; and
  - (3) if sent by facsimile transmission, when receipt of a legible transmission has been acknowledged, unless that local time is not on a Business Day, or is after 5.00 pm on a Business Day, when that communication is taken to be received at 9.00 am on the next Business Day; and
  - (4) if sent by email, on production of a report by the system by which the email is sent indicating that the email has been transmitted to the correct electronic address and without error. However, if the time of the deemed receipt is after 5:00 pm local time on a Business Day at the address of the recipient it is deemed to have been received at the commencement of business on the next Business Day; or
  - (5) if a notice is published in a newspaper, on the first date that publication has been made in all the required newspapers.
- (d) any information provided by the Issuer to the Trustee under clause 5 of this deed may be sent by email to the Trustee's email address specified in clause 19.1(a) above. In addition, any communication (including notices, consents, approvals, requests and demands) under or in connection with this deed to the Issuer or the Trustee may be given by email where the recipient has separately agreed in writing that such communication or communications of that type may be given by email. Any communication sent by email in accordance with this clause 19.1(d) is deemed to have been received on the date the email is received (unless the sender receives notice that there has been an error with the transmission of the email to the intended electronic address). However, if the time of the deemed receipt is after 5:00 pm local time on a Business Day at the address of the recipient it is deemed to have been received at the commencement of business on the next Business Day.



## **19.2 Service of Notices by the Issuer or the Trustee to any Holder**

A notice given to a Holder by the Issuer or the Trustee must comply with the notice provisions of the Terms of PERLS VII.

## **19.3 Service of Notices by the Holders to the Issuer or the Trustee**

A notice given by a Holder to the Issuer or the Trustee must:

- (a) be in writing and signed by a person duly authorised by the sender; and
- (b) be left at, or sent by prepaid post (airmail if posted from a place outside Australia) to the address set out in clause 19.1 or the address last notified by the Issuer or the Trustee (as applicable), or sent by facsimile transmission or email to the fax number or email set out in clause 19.1 or the fax number or email last notified by the Issuer or the Trustee (as applicable).
- (c) Notices are considered to be received at the times set out in clause 19.1(c) and 19.1(d).

## **19.4 Notice to Transferor Binds Transferee**

Every person who, by operation of law, transfer or any other means, becomes entitled to be registered as the Holder is bound by every notice which, prior to the person's name and address being entered in the Register, was properly given to the person from whom the person derived title to those PERLS VII.

## **19.5 Notices when Issuer is in liquidation**

If the Issuer or any of its assets are placed in liquidation, then the receiver, receiver and trustee, official trustee, liquidator, administrator or similar official appointed to the Issuer or its assets (as applicable) must:

- (a) if the Trustee has not already done so, notify the Holders of the receiver's, receiver and trustee's, official trustee's, liquidator's, administrator's or similar official's appointment; and
- (b) provide regular updates to the Trustee and the Holders as to the status of the liquidation and any other material developments affecting the Issuer or its assets.

## **19.6 Service on Deceased Holders**

A notice served in accordance with this clause 19 is (despite the fact that the Holder is then dead and whether or not the Issuer has notice of the Holder's death) considered to have been properly served in respect of any of PERLS VII, whether held solely or jointly with other persons by the Holder, until some other person is registered in the Holder's place as the Holder or joint Holder. The service is sufficient service of the notice or document on the Holder's legal personal representative and any person jointly interested with the Holder in PERLS VII.

## **19.7 Prohibition and enforceability**

- (a) Any provision of, or the application of any provision of, this deed which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.





- (b) If any clause is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in this deed.

### **19.8 Governing law and submission to jurisdiction**

- (a) This deed is governed by the laws of New South Wales.
- (b) The Issuer and the Trustee each submit to the non-exclusive jurisdiction of the courts of New South Wales for the purpose of any legal proceedings arising out of this deed.

### **19.9 Waivers**

- (a) Waiver of any right arising from a breach of this deed or of any Power arising upon default under this deed must be in writing and signed by the party granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of:
  - (1) a right arising from a breach of this deed; or
  - (2) a Power created or arising upon default under this deed,does not result in a waiver of that right or Power.
- (c) A party is not entitled to rely on a delay in the exercise or non exercise of a right or Power arising from a breach of this deed or on a default under this deed as constituting a waiver of that right or Power.
- (d) A party may not rely on any conduct of another party as a defence to exercise of a right or Power by that other party.

### **19.10 Cumulative rights**

The rights, powers, authorities, discretions and remedies arising out of or under this deed are cumulative and do not exclude any other right, power, authority, discretion or remedy.

### **19.11 Further assurances**

Each party must do all things and execute at the Issuer's cost all further documents necessary to give full effect to this deed.

### **19.12 To the extent not excluded by law**

The rights, duties and remedies granted or imposed under the provisions of this deed operate to the extent not excluded by law.

### **19.13 Counterparts**

This deed may be executed in any number of counterparts. All counterparts, taken together, constitute one instrument. A party may execute this deed by signing any counterpart.



## Schedules

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# Schedule 1

## Terms of PERLS VII

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### Terms of CommBank PERLS VII Capital Notes

#### 1 Form of PERLS VII and ranking

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##### 1.1 Form

- (a) PERLS VII are perpetual, subordinated, unsecured notes of CBA, acting through its New Zealand branch, issued in registered form by entry in the Register.
- (b) Each entry in the Register evidences a separate and independent obligation which CBA owes to the relevant Holder, which that Holder may enforce without joining any other Holder or any previous Holder.
- (c) No certificates will be issued to Holders unless CBA is required to provide certificates by any applicable law or regulation.

##### 1.2 Initial Face Value

Each PERLS VII is issued fully paid with an Initial Face Value of A\$100.

##### 1.3 CHESS

While PERLS VII remain in CHESS, all dealings (including transfers and payments) in relation to PERLS VII within CHESS, and the rights and obligations of each Holder, are subject to the rules and regulations of CHESS. To the extent there are inconsistencies between the rules and regulations of CHESS and the Terms, the Terms prevail.

##### 1.4 ASX quotation

CBA must use all reasonable endeavours to procure that PERLS VII are quoted on ASX on or as soon as possible after the Issue Date.

##### 1.5 Payment and ranking in a winding up of CBA

- (a) If an order is made by a court of competent jurisdiction (other than an order successfully appealed or permanently stayed within 30 days), or an effective resolution is passed, for the winding up of CBA in Australia, CBA must redeem each PERLS VII for its Face Value in accordance with this clause.
- (b) Neither the Trustee nor any Holder has any right to prove in a winding up of CBA in respect of PERLS VII, other than a right to prove in a winding up of CBA in Australia as permitted under clauses 1.5(c) and 1.5(d).
- (c) Each PERLS VII ranks for payment in a winding up of CBA in Australia:
  - (i) after the claims of all holders of Senior Ranking Obligations;
  - (ii) equally with each Holder and holders of Equal Ranking Securities; and

- (iii) ahead of holders of Junior Ranking Securities.
- (d) In order to give effect to the ranking specified in clause 1.5(c), in any winding up of CBA in Australia, the claims of Holders are limited to the extent necessary to ensure that:
  - (i) all holders of Senior Ranking Obligations receive payment in full before any payment is made to Holders; and
  - (ii) Holders of PERLS VII and holders of any Equal Ranking Securities receive payments on a pro-rata basis.
- (e) Nothing in this clause limits the ability of CBA to, in its absolute discretion from time to time, issue further Senior Ranking Obligations or Equal Ranking Securities.
- (f) Neither the Trustee nor any Holder may exercise voting rights as a creditor in respect of PERLS VII in a winding up of CBA to defeat the subordination in this clause.
- (g) PERLS VII are perpetual and the terms of PERLS VII do not include events of default or any other provisions entitling the Trustee or the Holders to require that PERLS VII be Redeemed other than under this clause 1.5. Neither the Trustee nor any Holder has any right to apply for the winding up or administration of CBA, or to cause a receiver, or receiver and manager, to be appointed in respect of CBA, on the ground of CBA's failure to pay Distributions or for any other reason.
- (h) To avoid doubt but subject to clause 4.6, if a Capital Trigger Event or Non-Viability Trigger Event has occurred, Holders (or if applicable the Trustee) will rank for payment in a winding up of CBA in Australia as holders of the number of Ordinary Shares to which they became entitled under clauses 4.1 or 4.2.

#### **1.6 No set off**

- (a) CBA has no right to set-off any amounts owing by it to a Holder in respect of PERLS VII against any claims owing by the Holder to it or to any member of the CBA Group.
- (b) No Holder has any right to set-off any amounts, merge accounts or exercise any other rights the effect of which is or may be to reduce the amount payable by CBA in respect of PERLS VII to the Holder.

#### **1.7 Not deposit liabilities of CBA**

- (a) PERLS VII are not deposit liabilities or "protected accounts" of CBA for the purpose of the Banking Act.
- (b) No member of the CBA Group guarantees PERLS VII and no member of the CBA Group, other than CBA, has any liability for PERLS VII.

#### **1.8 No other rights**

Before Exchange, PERLS VII confer no rights on a Holder:

- (a) to attend or vote at any meeting of CBA members;
- (b) to subscribe for new securities of CBA or to participate in any bonus issues of securities of CBA; or
- (c) to otherwise participate in the profits or property of CBA, except by receiving payments as set out in these Terms.

## 2 Distributions

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### 2.1 Distributions

- (a) Each PERLS VII bears interest on its Face Value during each Distribution Period from (and including) the Issue Date to (but excluding) the Exchange Date or Redemption Date for that PERLS VII, at the Distribution Rate.
- (b) Interest on each PERLS VII is payable in arrears on each Distribution Payment Date.
- (c) Payment of interest on each PERLS VII is subject to clauses 2.5, 2.6 and 9.

### 2.2 Distribution Rate determination

The Distribution Rate (expressed as a percentage per annum) for each Distribution Period is the rate calculated according to the following formula:

$$\text{Distribution Rate} = (\text{Market Rate} + \text{Margin}) \times (1 - \text{Tax Rate})$$

where:

**Market Rate** means the rate (expressed as a percentage per annum) which is the average mid-rate for Bills for a term of 90 days as displayed on the “BBSW” page of the Reuters Monitor System (or any page that replaces that page) on the first Business Day of the Distribution Period. However, if the average mid-rate is not displayed by 10:30 am on that day, or if it is displayed but CBA determines that there is a manifest error in that rate, **Market Rate** means the rate specified by CBA in good faith at or around 10:30 am on that day, having regard, to the extent possible, to:

- (a) the rates otherwise bid and offered for Bills of a term of 90 days at or around that time on that day (including any displayed on the “BBSW” page of the Reuters Monitor System (or its successor or replacement page)); and
- (b) if bid and offer rates for Bills of a term of 90 days are not otherwise available, the rates otherwise bid and offered for funds of a term of 90 days at or around that time on that day;

**Bill** has the meaning it has in the Bills of Exchange Act 1909 (Cth);

**Margin** means the rate (expressed as a percentage per annum) determined under the Bookbuild; and

**Tax Rate** means the Australian corporate tax rate on the relevant Distribution Payment Date (expressed as a decimal).

### 2.3 Calculation of Distributions

The Distribution payable on each PERLS VII for each Distribution Period is calculated according to the following formula:

$$\text{Distribution payable} = \frac{\text{Distribution Rate} \times \text{Face Value} \times N}{365}$$

365

where:

**N** means, in respect of a Distribution Period, the number of days in that Distribution Period.

## 2.4 Adjustment to calculation of Distributions if not fully franked

If any Distribution is not franked to 100% under Part 3-6 of the Tax Act, the Distribution will be calculated according to the following formula:

$$\text{Distribution payable} = \frac{D}{1 - [T \times (1 - F)]}$$

Where:

**D** means the Distribution calculated under clause 2.3;

**T** means the Australian corporate tax rate on the relevant Distribution Payment Date (expressed as a decimal); and

**F** means the franking percentage (as defined in Part 3-6 of the Tax Act) applicable to the franking account of CBA on the relevant Distribution Payment Date (expressed as a decimal).

## 2.5 Distribution payment conditions

The payment of any Distribution on any Distribution Payment Date is subject to:

- (a) CBA, in its absolute discretion, making the Distribution to Holders;
- (b) the payment of the Distribution not resulting in a breach of CBA's capital requirements under APRA's prudential standards as they are applied to the CBA Level 1 Group or the CBA Level 2 Group or both at the time of the payment;
- (c) the payment of the Distribution not resulting in CBA becoming, or being likely to become, Insolvent; and
- (d) APRA not otherwise objecting to the payment of the Distribution.

CBA must notify ASX at least five Business Days before the relevant Record Date (or, if later, as soon as it decides not to make the Distribution) if payment of any Distribution will not be made because of this clause.

## 2.6 Distributions are discretionary and non-cumulative

Distributions are discretionary and non-cumulative. If payment of any Distribution is not made for any reason, CBA has no liability to pay that unpaid Distribution.

## 2.7 Dividend and capital restrictions in the event of non-payment

- (a) Subject to clause 2.7(b), if any Distribution is not paid to Holders in full on the relevant Distribution Payment Date, then CBA must not, without the approval of a Special Resolution:
  - (i) declare or determine a dividend; or
  - (ii) return any capital or undertake any buy-backs or repurchases,(together **Restricted Actions**) in relation to any Ordinary Shares, unless the amount of any unpaid Distribution is paid in full within five Business Days of that date. If, on a subsequent Distribution Payment Date, a Distribution is paid in full, or if all PERLS VII have been Exchanged or Redeemed, then these restrictions cease to apply.
- (b) Clause 2.7(a) does not apply to:



- (i) Restricted Actions which CBA is legally obliged to pay or complete at the time any Distribution is not paid in full to Holders on a relevant Distribution Payment Date; or
- (ii) Restricted Actions in connection with:
  - (A) any employment contract, employee share scheme, employee rights or option plan, or similar arrangement with, or for the benefit of, any one or more employees, officers, directors or consultants of CBA or its Related Bodies Corporate; or
  - (B) CBA or any of its Related Bodies Corporate purchasing Ordinary Shares in connection with transactions for the account of customers of CBA or customers of any of its Related Bodies Corporate.

## **2.8 Notification of Distribution Rate, Distribution payable and other items**

- (a) CBA must notify ASX of the Distribution Rate, amount of Distribution payable and Distribution Payment Date for each Distribution Period.
- (b) CBA must give notice under this clause as soon as practicable after it makes its calculations and by no later than the fourth Business Day of the relevant Distribution Period.
- (c) CBA may amend its calculation or determination of any date, rate or amount (or make appropriate alternative arrangements by way of adjustment) including as a result of the extension or reduction of the Distribution Period or calculation period without prior notice but must notify ASX promptly after doing so.

## **2.9 Determination final**

CBA's determination of all dates, rates and amounts under these Terms is, in the absence of wilful default, bad faith or manifest error, final and binding on the Trustee, CBA, the Registry and each Holder.

## **2.10 Calculations**

For the purposes of any calculations required under these Terms:

- (a) all percentages resulting from the calculations must be rounded, if necessary, to the nearest one hundred-thousandth of a percentage point (with 0.000005% being rounded up to 0.00001%);
- (b) all figures must be rounded to four decimal places (with 0.00005 being rounded up to 0.0001); and
- (c) all amounts that are due and payable must be rounded to the nearest one Australian cent (with one half of an Australian cent being rounded up to one Australian cent).

# **3 Mandatory Exchange**

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## **3.1 Mandatory Exchange**

Subject to clause 5, CBA must Exchange all (but not some) PERLS VII on issue on the date that is the earlier of:



- (a) 15 December 2024 (**Scheduled Mandatory Exchange Date**); and
  - (b) the first Distribution Payment Date after the Scheduled Mandatory Exchange Date,
- (each a **Mandatory Exchange Date**) on which the Mandatory Exchange Conditions are satisfied.

### 3.2 Mandatory Exchange Conditions

- (a) The Mandatory Exchange Conditions for each Mandatory Exchange Date are:
  - (i) the VWAP on the 25<sup>th</sup> Business Day on which trading in Ordinary Shares took place immediately preceding (but not including) the Mandatory Exchange Date is greater than 56.00% of the Issue Date VWAP (**First Mandatory Exchange Condition**);
  - (ii) the VWAP during the period of 20 Business Days on which trading in Ordinary Shares took place immediately preceding (but not including) the Mandatory Exchange Date is greater than 50.51% of the Issue Date VWAP (the **Second Mandatory Exchange Condition**); and
  - (iii) Ordinary Shares have not been Delisted as at the Mandatory Exchange Date (**Third Mandatory Exchange Condition**).
- (b) If the First Mandatory Exchange Condition is not satisfied, CBA will announce to ASX between the 25<sup>th</sup> and the 21<sup>st</sup> Business Day before the Mandatory Exchange Date that Exchange will not proceed on the Mandatory Exchange Date.
- (c) If the Second Mandatory Exchange Condition or Third Mandatory Exchange Condition is not satisfied, CBA will notify Holders on or as soon as practicable after the Mandatory Exchange Date that Exchange did not occur.

## 4 Early Exchange

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### 4.1 Capital Trigger Event

- (a) A **Capital Trigger Event** occurs when:
  - (i) CBA determines; or
  - (ii) APRA notifies CBA in writing that it believes,that either or both the CBA Level 1 Common Equity Tier 1 Capital Ratio or CBA Level 2 Common Equity Tier 1 Capital Ratio is equal to or less than 5.125%. CBA must immediately notify APRA in writing if it makes a determination under clause 4.1(a)(i).
- (b) If a Capital Trigger Event occurs, CBA must Exchange such number of PERLS VII (or, if it so determines, such percentage of the Face Value of each PERLS VII) as is sufficient (taking into account any conversion or write down of Relevant Securities as referred to in paragraph (c) below) to return either or both the CBA Level 1 Common Equity Tier 1 Capital Ratio or CBA Level 2 Common Equity Tier 1 Capital Ratio, as the case may be, to above 5.125%.
- (c) In determining the number of PERLS VII, or percentage of the Face Value of each PERLS VII, which must be Exchanged in accordance with this clause, CBA will:





- (i) first, convert or write down the face value of any Relevant Securities whose terms require or permit, or are taken by law to require or permit, them to be converted or written down before Exchange of PERLS VII; and
  - (ii) secondly, if conversion or write down of those Relevant Securities is not sufficient, Exchange (in the case of PERLS VII) or convert or write down (in the case of any other Relevant Securities) on a pro-rata basis or in a manner that is otherwise, in the opinion of CBA, fair and reasonable, PERLS VII and any Relevant Securities whose terms require or permit, or are taken by law to require or permit, them to be Exchanged, converted or written down in that manner (subject to such adjustment as CBA may determine to take into account the effect on marketable parcels and whole numbers of Ordinary Shares and any PERLS VII or other Relevant Securities remaining on issue),  
but such determination will not impede the immediate Exchange of the relevant number of PERLS VII or percentage of the Face Value of each PERLS VII (as the case may be).
- (d) For the purposes of clauses 4.1(b) and 4.1(c), where the specified currency of the face value of Relevant Securities and/or PERLS VII is not the same, CBA may treat them as if converted into a single currency of CBA's choice at such rate of exchange as CBA in good faith considers reasonable.
- (e) If a Capital Trigger Event occurs:
- (i) the relevant number of PERLS VII, or percentage of the Face Value of each PERLS VII, must be Exchanged immediately upon occurrence of the Capital Trigger Event in accordance with clause 4.5 and 7 and the Exchange will be irrevocable;
  - (ii) CBA must give notice as soon as practicable that Exchange has occurred to ASX and the Holders; and
  - (iii) the notice must specify the date on which the Capital Trigger Event occurred; and
  - (iv) the notice must specify the details of the Exchange process, including any details which were taken into account in relation to the effect on marketable parcels and whole numbers of Ordinary Shares, and the impact on any PERLS VII remaining on issue.

Failure to undertake any of the steps in clauses 4.1(e)(ii) to (iv) does not prevent, invalidate or otherwise impede Exchange.

#### 4.2 Non-Viability Trigger Event

- (a) A **Non-Viability Trigger Event** occurs when APRA notifies CBA in writing that it believes:
- (i) Exchange of all or some PERLS VII, or conversion or write down of capital instruments of the CBA Group, is necessary because, without it, CBA would become non-viable; or
  - (ii) a public sector injection of capital, or equivalent support, is necessary because, without it, CBA would become non-viable.



APRA may specify an aggregate face value of capital instruments which must be Exchanged, converted or written down (as applicable).

- (b) If a Non-Viability Trigger Event occurs, CBA must Exchange such number of PERLS VII (or, if it so determines, such percentage of the Face Value of each PERLS VII) as is equal (taking into account any conversion or write down of Relevant Securities as referred to in paragraph (c) below) to the aggregate face value of capital instruments which APRA has notified CBA must be Exchanged, converted or written down (or, if APRA has not so notified CBA, such number or, if CBA so determines, such percentage of the Face Value of each PERLS VII, as is necessary to satisfy APRA that CBA will no longer be non-viable). If a Non-Viability Trigger Event occurs under clause 4.2(a)(ii) CBA must Exchange all PERLS VII.
- (c) In determining the number of PERLS VII, or percentage of the Face Value of each PERLS VII, which must be Exchanged in accordance with this clause, CBA will:
- (i) first, convert or write down the face value of any Relevant Securities whose terms require or permit, or are taken by law to require or permit, them to be converted or written down before Exchange of PERLS VII; and
  - (ii) secondly, if conversion or write down of those securities is not sufficient, Exchange (in the case of PERLS VII) or convert or write down (in the case of any other Relevant Securities), on a pro-rata basis or in a manner that is otherwise, in the opinion of CBA, fair and reasonable, PERLS VII and any Relevant Securities whose terms require or permit, or are taken by law to require or permit, them to be Exchanged, converted or written down in that manner (subject to such adjustments as CBA may determine to take into account the effect on marketable parcels and whole numbers of Ordinary Shares and any PERLS VII or other Relevant Securities remaining on issue),
- but such determination will not impede the immediate Exchange of the relevant number of PERLS VII or percentage of the Face Value of each PERLS VII (as the case may be).
- (d) For the purposes of clauses 4.2(b) and 4.2(c), where the specified currency of the face value of Relevant Securities and/or PERLS VII is not the same, CBA may treat them as if converted into a single currency of CBA's choice at such rate of exchange as CBA in good faith considers reasonable.
- (e) If a Non-Viability Trigger Event occurs:
- (i) the relevant number of PERLS VII, or percentage of the Face Value of each PERLS VII, must be Exchanged immediately upon occurrence of the Non-Viability Trigger Event in accordance with clause 4.5 and 7 and the Exchange will be irrevocable;
  - (ii) CBA must give notice as soon as practicable that Exchange has occurred to the ASX and the Holders;
  - (iii) the notice must specify the date on which the Non-Viability Trigger Event occurred; and
  - (iv) the notice must specify the details of the Exchange process, including any details which were taken into account in relation to the effect on marketable

parcels and whole numbers of Ordinary Shares, and the impact on any PERLS VII remaining on issue.

Failure to undertake any of the steps in clauses 4.2(e)(ii) to (iv) does not prevent, invalidate or otherwise impede Exchange.

#### **4.3 Mandatory Exchange Conditions do not apply to Capital Trigger Event or Non-Viability Trigger Event**

For the avoidance of doubt, the Mandatory Exchange Conditions do not apply to Exchange as a result of a Capital Trigger Event or Non-Viability Trigger Event occurring.

#### **4.4 Priority of Early Exchange Obligations**

An Exchange required because of a Capital Trigger Event or a Non-Viability Trigger Event takes place notwithstanding anything in clause 3.

#### **4.5 Automatic Exchange upon the occurrence of a Capital Trigger Event or Non-Viability Trigger Event**

If a Capital Trigger Event or Non-Viability Trigger Event has occurred and all or some PERLS VII (or percentage of the Face Value of each PERLS VII) are required to be Exchanged in accordance with clauses 4.1 or 4.2, then:

- (a) Exchange of the relevant PERLS VII or percentage of the Face Value of each PERLS VII will occur in accordance with clause 7 immediately upon the date of occurrence of the Capital Trigger Event or Non-Viability Trigger Event; and
- (b) the entry of the corresponding PERLS VII in each relevant Holder's holding in the Register will constitute an entitlement of that Holder (or, if applicable, of the Trustee) to the relevant number of Ordinary Shares (and, if applicable, also to any remaining balance of PERLS VII or remaining percentage of the Face Value of each PERLS VII), and CBA will recognise the Holder (or, if applicable, the Trustee) as having been issued the relevant Ordinary Shares for all purposes,

in each case without the need for any further act or step by CBA, the Holder or any other person (and CBA will, as soon as possible thereafter and without delay on the part of CBA, take any appropriate procedural steps to record such Exchange, including updating the Register and the Ordinary Share register and seek quotation of Ordinary Shares issued on Exchange).

For the avoidance of doubt, nothing in this clause allows a payment to be made to a Holder upon Exchange.

#### **4.6 No further rights if Exchange cannot occur**

If, for any reason, Exchange of any PERLS VII (or a percentage of the Face Value of any PERLS VII) required to be Exchanged under clause 4.1 or 4.2 fails to take effect under clause 4.5(a) and 4.5(b) and CBA is not otherwise able to issue the Ordinary Shares required to be issued in respect of such Exchange within five Business Days after the date of the occurrence of the Capital Trigger Event or Non-Viability Trigger Event, then the relevant Holders' rights (including to payment of the Face Value and Distributions) in relation to such PERLS VII or percentage of the Face Value of PERLS VII are immediately and irrevocably terminated.

#### 4.7 Change of Control Event

- (a) A **Change of Control Event** occurs when:
- (i) a takeover bid is made for Ordinary Shares (A) acceptance of which is recommended by the Board and which is or has become unconditional or (B) which is or has become unconditional and the voting power of the offeror in CBA is or has become greater than 50%; or
  - (ii) in respect of a scheme of arrangement under Part 5.1 of the Corporations Act which would result (if implemented) in a person having voting power in more than 50% of CBA, the earlier of (A) a court approving the scheme, and (B) the Board determining that such event should be treated as a Change of Control Event for the purposes of this clause,
- provided that clause 4.7(a)(ii) does not include a scheme of arrangement which would result in a NOHC Event.
- (b) If a Change of Control Event occurs, then:
- (i) CBA must Exchange all (but not some) PERLS VII;
  - (ii) CBA must give notice as soon as practicable and in any event within 10 Business Days after becoming aware of that event occurring to ASX and the Holders;
  - (iii) the notice must specify a date on which it is proposed Exchange will occur (**proposed Exchange Date**) being:
    - (1) in the case of a Change of Control Event under clause 4.7(a)(i), no later than the Business Day prior to the then announced closing date of the relevant takeover bid;
    - (2) in the case of a Change of Control Event under clause 4.7(a)(ii)(A), a date no later than the record date for participation in the relevant scheme of arrangement; or
    - (3) in the case of a Change of Control Event under clause 4.7(a)(ii)(B), a date no later than 25 Business Days following the date the notice is given, or the record date for participation in the relevant scheme of arrangement, whichever is earlier; and
  - (iv) the notice must specify the details of the Exchange process including any details to take into account the effect on marketable parcels and whole numbers of Ordinary Shares; and
  - (v) on the proposed Exchange Date, all PERLS VII will Exchange in accordance with clause 7.
- (c) The Second Mandatory Exchange Condition and Third Mandatory Exchange Condition apply if a Change of Control Event occurs as though the proposed Exchange Date were a Mandatory Exchange Date for the purposes of clause 4 (except that in the case of a Change of Control Event, the Second Mandatory Exchange Condition will apply as if it referred to 20.20% of the Issue Date VWAP).
- (d) If either the Second Mandatory Exchange Condition or Third Mandatory Exchange Condition is not satisfied on the proposed Exchange Date:

- (i) PERLS VII must Exchange on the next Distribution Payment Date on which the Second Mandatory Exchange Condition and Third Mandatory Exchange Condition are satisfied; and.
- (ii) CBA will notify Holders as soon as practicable after the proposed Exchange Date that Exchange did not occur.

## **5 Early Redemption**

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### **5.1 Early Redemption at the option of CBA on the Call Date**

CBA may at its option Redeem all or some PERLS VII on the Call Date for their Face Value.

However, CBA may only Redeem under this clause if CBA has given notice of its election to do so at least 20 Business Days (and no more than 60 Business Days) before the Call Date to ASX and the Holders.

If only some (but not all) PERLS VII are to be Redeemed under this clause, those PERLS VII to be Redeemed will be specified in the notice and selected:

- (a) in a manner that is, in the opinion of CBA, fair and reasonable; and
- (b) in compliance with any applicable law, directive or requirement of ASX.

### **5.2 Early Redemption for inability to frank Distributions**

If, there is a material risk that as a result of any change in, or amendment to, the laws of Australia, or their application or official or judicial interpretation or administration (including any announcement of a prospective change or amendment which has been or will be introduced), which change or amendment was not expected by CBA as at the Issue Date and has or is expected to become effective on or after the Issue Date, any Distribution would not be a frankable distribution within the meaning of Division 202 of the Tax Act, CBA may Redeem all (but not some) PERLS VII for their Face Value.

However, CBA may only Redeem under this clause if:

- (a) CBA has given notice of its election to do so at least 20 Business Days (and no more than 60 Business Days) before the proposed Redemption Date to the ASX and the Holders;
- (b) the proposed Redemption Date is a Distribution Payment Date; and
- (c) the notice of Redemption is not given earlier than 60 Business Days before the Distribution Payment Date occurring immediately before the earliest date on which a Distribution would not be a frankable Distribution.

### **5.3 Early Redemption for other tax reasons**

If CBA receives an opinion from reputable legal counsel or other tax adviser in Australia or New Zealand, experienced in such matters, to the effect that there is a material risk that as a result of a change in the laws of Australia or New Zealand (including following any announcement of a prospective change or amendment which has been or will be introduced) CBA would be exposed to a more than de minimis adverse tax consequence in

relation to PERLS VII other than a tax consequence that CBA expected as at the Issue Date, CBA may Redeem all (but not some) PERLS VII for their Face Value.

However, CBA may only Redeem under this clause if:

- (a) CBA has given notice of its election to do so at least 20 Business Days (and no more than 60 Business Days) before the proposed Redemption Date to ASX and the Holders;
- (b) the proposed Redemption Date is a Distribution Payment Date; and
- (c) the notice of Redemption is not given earlier than 60 Business Days before the Distribution Payment Date occurring immediately before the earliest date on which CBA would be subject to the adverse tax consequence.

#### **5.4 Early redemption for regulatory reasons**

If, at any time after the Issue Date, CBA determines that as a result of a change in the laws of Australia or a change in APRA's prudential standards (including following any announcement of a prospective change or amendment which has been or will be introduced) all, some or a proportion of all or some PERLS VII are not or will not be treated as Tier 1 Capital of the CBA Group under APRA's prudential standards (as amended from time to time), other than as a result of a change of treatment expected by CBA as at the Issue Date, CBA may Redeem all (but not some) PERLS VII for their Face Value.

However, CBA may only Redeem under this clause if:

- (a) CBA has given notice of its election to do so at least 20 Business Days (and no more than 60 Business Days) before the proposed Redemption Date to ASX and the Holders;
- (b) the proposed Redemption Date is a Distribution Payment Date; and
- (c) the notice of Redemption is not given earlier than 60 Business Days before the Distribution Payment Date occurring immediately before the earliest date on which all, some or a proportion of all or some PERLS VII will cease to be treated as Tier 1 Capital.

#### **5.5 APRA approval to Redeem**

CBA may only Redeem under this clause 5 if:

- (a) either:
  - (i) before or concurrently with Redemption, CBA replaces PERLS VII with a capital instrument which is of the same or better quality (for the purposes of APRA's prudential standards as they are applied to the CBA Group at the relevant time) than PERLS VII and the replacement of PERLS VII is done under conditions that are sustainable for the income capacity of the CBA Group; or
  - (ii) CBA obtains confirmation from APRA that APRA is satisfied, having regard to the capital position of the CBA Group, that CBA does not have to replace PERLS VII; and
- (b) APRA has given its prior written approval to the Redemption. Approval is at the discretion of APRA and may or may not be given.

## 5.6 Final Distribution

For the avoidance of doubt, Redemption may occur even if CBA, in its absolute discretion, does not make the Distribution for the final Distribution Period.

## 5.7 No Redemption at the option of the Holders

Holders do not have a right to request Redemption of their PERLS VII at any time.

## 5.8 Effect of notice of Redemption

Any notice of Redemption given under this clause 5 is irrevocable and CBA must (subject to clause 9.3) Redeem PERLS VII on the Redemption Date specified in that notice.

## 6 Resale on the Call Date

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- (a) CBA may elect that Resale occur in relation to all or some PERLS VII by giving a Resale Notice at least 20 Business Days (and no more than 60 Business Days) before the Call Date to ASX and the Holders.

If only some (but not all) PERLS VII are to be Resold under this clause, the number of PERLS VII to be Resold will be specified in the notice and selected:

- (i) in a manner that is, in the opinion of CBA, fair and reasonable; and
  - (ii) in compliance with any applicable law, directive or requirement of ASX.
- (b) If CBA issues a Resale Notice:
- (i) each Holder is taken irrevocably to offer to sell the relevant number of their PERLS VII to the Purchaser on the Call Date for a cash amount per PERLS VII equal to the Face Value (and to have appointed CBA as its agent and attorney to do and execute all things and documents which CBA considers may be necessary or desirable in connection with that offer and any resulting sale);
  - (ii) subject to payment by the Purchaser of the Face Value to Holders, all right, title and interest in the relevant number of PERLS VII will be transferred from the Holders to the Purchaser on the Call Date; and
  - (iii) if the Purchaser does not pay the Face Value to the relevant Holders on the Call Date, the relevant number of PERLS VII will not be transferred to the Purchaser and a Holder has no claim on CBA as a result of that non-payment.
- (c) Clause 9 will apply to payments by the Purchaser as if the Purchaser was CBA. If any payment to a particular Holder is not made or treated as made on the Call Date because of any error by or on behalf of the Purchaser, the relevant PERLS VII of that Holder will not be transferred until payment is made but the transfer of all other relevant PERLS will not be affected by the failure.

## 7 General provisions applicable to Exchange

### 7.1 Exchange

On the Exchange Date, subject to clauses 4.6 and 7.10, the following will apply:

- (a) CBA will allot and issue the Exchange Number of Ordinary Shares for each PERLS VII held by the Holder. The **Exchange Number** is calculated according to the following formula, and subject always to the Exchange Number being no greater than the Maximum Exchange Number:

$$\text{Exchange Number for each PERLS VII} = \frac{\text{Face Value}}{0.99 \times \text{VWAP}}$$

where:

**VWAP** (expressed in dollars and cents) means the VWAP during the VWAP Period.

**Maximum Exchange Number** means a number calculated according to the following formula:

$$\text{Maximum Exchange Number} = \frac{\text{Face Value}}{\text{Relevant Percentage} \times \text{Issue Date VWAP}}$$

where:

**Relevant Percentage** means:

- (i) if Exchange is occurring on a Mandatory Exchange Date, 0.50; and
  - (ii) if Exchange is occurring at any other time, 0.20.
- (b) Each Holder's rights (including to payment of Distributions) in relation to each PERLS VII that is being Exchanged will be immediately and irrevocably terminated for an amount equal to the Face Value and CBA will apply the Face Value of each PERLS VII by way of payment for the subscription for the Ordinary Shares to be allotted and issued under clause 7.1(a). Each Holder is taken to have irrevocably directed that any amount payable under this clause 7.1 is to be applied as provided for in this clause and no Holder has any right to payment in any other way.
- (c) If the total number of additional Ordinary Shares to be allotted and issued in respect of a Holder's aggregate holding of PERLS VII includes a fraction of an Ordinary Share, that fraction of an Ordinary Share will be disregarded.

### 7.2 Adjustments to VWAP generally

For the purposes of calculating VWAP under clause 7.1:

- (a) where, on some or all of the Business Days in the relevant VWAP Period, Ordinary Shares have been quoted on ASX as *cum* dividend or *cum* any other distribution or entitlement and PERLS VII will be Exchanged for Ordinary Shares after that date and those Ordinary Shares will no longer carry that dividend or any other distribution or entitlement, then the VWAP on the Business Days on which those Ordinary Shares have been quoted *cum* dividend or *cum* any other distribution or entitlement will be reduced by an amount (**Cum Value**) equal to:





- (i) in the case of a dividend or other distribution, the amount of that dividend or other distribution;
  - (ii) in the case of any other entitlement that is not a dividend or other distribution under clause 7.2(a)(i) which is traded on ASX on any of those Business Days, the volume weighted average price of all such entitlements sold on ASX during the VWAP Period on the Business Days on which those entitlements were traded (excluding trades of the kind that would be excluded in determining VWAP under the definition of that term); or
  - (iii) in the case of any other entitlement which is not traded on ASX during the VWAP Period, the value of the entitlement as reasonably determined by the Board; and
- (b) where, on some or all of the Business Days in the VWAP Period, Ordinary Shares have been quoted as ex dividend or ex any other distribution or entitlement, and PERLS VII will be Exchanged for Ordinary Shares which would be entitled to receive the relevant dividend, distribution or entitlement, the VWAP on the Business Days on which those Ordinary Shares have been quoted ex dividend or ex any other distribution or entitlement will be increased by the Cum Value.

### 7.3 Adjustments to VWAP for capital reconstruction

- (a) Where during the relevant VWAP Period there is a change to the number of Ordinary Shares on issue because the Ordinary Shares are reconstructed, consolidated, divided or reclassified (not involving any payment or other compensation to or by the holders of Ordinary Shares) (**Reclassification**) into a lesser or greater number, the daily VWAP for each day in the VWAP Period which falls before the date on which trading in Ordinary Shares is conducted on a post Reclassification basis will be adjusted by the following formula:

$$\frac{A}{B}$$

Where:

**A** means the aggregate number of Ordinary Shares immediately before the Reclassification; and

**B** means the aggregate number of Ordinary Shares immediately after the Reclassification.

- (b) Any adjustment made by CBA in accordance with clause 7.3(a) will be effective and binding on Holders under these Terms and these Terms will be construed accordingly.
- (c) For the avoidance of doubt, nothing in this clause allows a cash payment or other distribution to be made to or by a Holder as part of a Reclassification or as a result of a Reclassification.

### 7.4 Adjustments to Issue Date VWAP generally

For the purposes of determining the Issue Date VWAP under clause 7.1, adjustments will be made in accordance with clause 7.2 and clause 7.3 during the VWAP Period for the Issue Date VWAP. On and from the Issue Date, adjustments to the Issue Date VWAP:

- (a) may be made by CBA in accordance with clauses 7.5 to 7.7 (inclusive);



- (b) if so made, will correspondingly affect the application of the Mandatory Exchange Conditions and cause an adjustment to the Maximum Exchange Number; and
- (c) if so made, will be effective and binding on Holders under these Terms and these Terms will be construed accordingly.

### **7.5 Adjustments to Issue Date VWAP for bonus issues**

- (a) Subject to clauses 7.5(b) and 7.5(c), if CBA makes a pro-rata bonus issue of Ordinary Shares to holders of Ordinary Shares generally, the Issue Date VWAP will be adjusted immediately in accordance with the following formula:

$$V = V_o \times RD / (RD + RN)$$

Where:

- V means the Issue Date VWAP applying immediately after the application of this formula;
  - V<sub>o</sub> means the Issue Date VWAP applying immediately prior to the application of this formula;
  - RD means the number of Ordinary Shares on issue immediately prior to the allotment of new Ordinary Shares pursuant to the bonus issue; and
  - RN means the number of Ordinary Shares issued pursuant to the bonus issue.
- (b) Clause 7.5(a) does not apply to Ordinary Shares issued as part of a bonus share plan, employee or executive share plan, executive option plan, share top up plan, share purchase plan or a dividend reinvestment plan.
  - (c) For the purposes of this clause, an issue will be regarded as a bonus issue notwithstanding that CBA does not make offers to some or all holders of Ordinary Shares with registered addresses outside Australia (or offer to whom are otherwise subject to foreign securities laws), provided that in so doing CBA is not in contravention of the ASX Listing Rules.

### **7.6 Adjustments to Issue Date VWAP for capital reconstruction**

If at any time after the Issue Date there is a change to the number of Ordinary Shares on issue because of a Reclassification into a lesser or greater number, the Issue Date VWAP will be adjusted by multiplying the Issue Date VWAP applicable on the Business Day immediately before the date of any such Reclassification by the following formula:

$$\frac{A}{B}$$

where:

**A** means the aggregate number of Ordinary Shares on issue immediately before the Reclassification; and

**B** means the aggregate number of Ordinary Shares on issue immediately after the Reclassification.

### **7.7 No adjustment to Issue Date VWAP in certain circumstances**

Despite the provisions of clauses 7.5 and 7.6, no adjustment will be made to the Issue Date VWAP where any such adjustment (rounded if applicable) would be less than one percent of the Issue Date VWAP then in effect.

### **7.8 Announcement of adjustments to Issue Date VWAP**

CBA will notify any adjustment to the Issue Date VWAP under this clause to ASX and the Holders within 10 Business Days of CBA determining the adjustment (or such shorter period as is required by the ASX Listing Rules) and the adjustment will be final and binding.

### **7.9 Status and listing of Ordinary Shares**

- (a) Ordinary Shares issued or arising from Exchange will rank equally with all other fully paid Ordinary Shares provided that the rights attaching to the Ordinary Shares issued or arising from Exchange do not take effect until 5.00pm (Sydney time) on the Exchange Date (or such other time required by APRA).
- (b) CBA will use all reasonable endeavours to list the Ordinary Shares issued on Exchange of PERLS VII on ASX.
- (c) Holders acknowledge that any ASX trades in PERLS VII that have not settled on the Exchange Date will continue to settle in accordance with the normal ASX settlement process, although the seller will be treated as having delivered and the buyer will be treated as having acquired, the number of Ordinary Shares into which PERLS VII have been Exchanged.

### **7.10 Exchange where the Holder does not wish to receive Ordinary Shares or is an Ineligible Holder**

If PERLS VII of a Holder are required to be Exchanged and:

- (a) the Holder has notified CBA that it does not wish to receive Ordinary Shares as a result of Exchange, which notice may be given at any time on or after the Issue Date and prior to the Exchange Date;
- (b) the Holder is an Ineligible Holder; or
- (c) CBA has not received (for any reason whether or not due to the fault of that Holder) any information required by it in accordance with the Terms so as to impede CBA issuing the Ordinary Shares to a Holder on the Exchange Date,

then, on the Exchange Date, the Holder's rights (including to payment of Distributions) in relation to each such PERLS VII being Exchanged are immediately and irrevocably terminated and CBA will issue the Exchange Number of Ordinary Shares to the Trustee for no additional consideration to hold on trust for sale for the benefit of the relevant Holder (unless, because the Holder is an Ineligible Holder, the Trustee is deemed to be an Ineligible Holder, in which case such issue shall occur as soon as practicable after the Trustee ceases to be an Ineligible Holder). At the first opportunity to sell the Ordinary Shares, the Trustee will arrange for their sale and pay the proceeds less selling costs to the relevant Holder.

If Exchange is occurring because of the occurrence of a Capital Trigger Event or Non-Viability Trigger Event and the Exchange fails to take effect and CBA is not otherwise able

to issue Ordinary Shares to the Trustee within five Business Days, then Holders' rights will be immediately and irrevocably terminated under clause 4.6.

### **7.11 Final Distribution**

For the avoidance of doubt, Exchange may occur even if CBA, in its absolute discretion, does not make the Distribution for the final Distribution Period.

### **7.12 No Exchange after winding up commences**

If before the Exchange Date an order is made by a court, or an effective resolution is passed, for the winding up of CBA in Australia, then Exchange will not occur and clause 1.5 will apply, except where Exchange is required for a Capital Trigger Event or Non-Viability Trigger Event (in which case such Exchange shall occur (subject to clause 4.6) in accordance with clause 4.1 or 4.2 (as applicable) and clause 4.5).

### **7.13 Exchange of a percentage of Face Value**

If under these Terms it is necessary to Exchange a percentage of the Face Value, this clause 7 will apply to the Exchange as if references to the Face Value were references to the relevant percentage of the Face Value to be Exchanged.

## **8 Title and transfer of PERLS VII**

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### **8.1 Effect of entries in Register**

Each entry in the Register of a person as a Holder constitutes:

- (a) conclusive evidence of that person's:
  - (i) absolute ownership of that PERLS VII; and
  - (ii) entitlement to the other benefits given to Holders under these Terms and the Trust Deed in respect of PERLS VII; and
- (b) an undertaking by CBA to pay Distributions and any other amount in accordance with these Terms,

subject to correction of the Register for fraud or error.

### **8.2 Non-recognition of interests**

Except as required by law, CBA, the Trustee and the Registry must treat the person whose name is entered in the Register as a Holder as the absolute owner of that PERLS VII. This clause applies despite any notice of ownership, trust or interest in that PERLS VII. No recognition of any trust, encumbrance or interest shall be entered on the Register.

### **8.3 Joint holders**

Where two or more persons are entered in the Register as joint Holders, they are taken to hold that PERLS VII as joint tenants with rights of survivorship and subject to the terms of the Trust Deed but the Registry is not bound to register more than three persons as joint Holders of any PERLS VII.

### **8.4 Transfers**

- (a) A Holder may transfer PERLS VII:



- (i) while PERLS VII are registered with CHESS, in accordance with the rules and regulations of CHESS; or
- (ii) at any other time:
  - (A) by a proper transfer under any other applicable computerised or electronic system recognised by the Corporations Act; or
  - (B) by any proper or sufficient instrument of transfer of marketable securities under applicable law, provided such instrument is delivered to the Registry with any evidence the Registry reasonably requires to prove title to or the right to transfer PERLS VII.
- (b) Title to PERLS VII passes when details of the transfer are entered in the Register.
- (c) PERLS VII may be transferred in whole but not in part.
- (d) CBA must comply with all Applicable Regulations and any other relevant obligations imposed on it in relation to the transfer of PERLS VII.
- (e) CBA must not charge any fee on the transfer of PERLS VII.
- (f) The Holder is responsible for any stamp duty or other similar taxes which are payable in any jurisdiction in connection with a transfer, assignment or other dealing with PERLS VII.
- (g) Upon registration and entry of the transferee in the Register, the transferor ceases to be entitled to future benefits under these Terms and the Trust Deed in respect of the transferred PERLS VII.
- (h) Subject to Applicable Regulations, CBA may determine that transfers of some or all PERLS VII will not be registered during any period reasonably specified by it prior to the Exchange Date, Redemption Date or Resale Date of such PERLS VII.

### **8.5 Refusal to register**

CBA may only refuse to register a transfer of PERLS VII if permitted by, or if such registration would contravene or is forbidden by, Applicable Regulations or the Terms.

If CBA refuses to register a transfer, CBA must give the lodging party notice of the refusal and the reasons for it within five Business Days after the date on which the transfer was delivered to the Registry.

### **8.6 Transmission**

A person becoming entitled to PERLS VII as a consequence of the death, bankruptcy, liquidation or a winding-up of a Holder or of a vesting order by a court or other body with power to make the order, or a person administering the estate of a Holder, may, upon providing evidence as to that entitlement or status, and if CBA so requires an indemnity in relation to the correctness of such evidence, as CBA considers sufficient, become registered as the Holder of those PERLS VII.

## **9 Payments**

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### **9.1 Payments to registered Holder**

- (a) Payment of Distributions will be made to the person registered at 7.00pm on the Record Date as the Holder.
- (b) Payment of any other amount in accordance with these Terms will be made to the person registered as the Holder on the relevant date for payment.
- (c) A payment to any one of joint Holders will discharge CBA's liability in respect of the payment.

### **9.2 Payments subject to law**

All payments are subject to applicable law.

### **9.3 Payments on Business Days**

If any payment:

- (a) is due on a day which is not a Business Day, then the due date for payment will be the next Business Day; or
- (b) is to be made to an account on a Business Day on which banks are not open for general banking business in the place in which the account is located, then the due date for payment will be the next day on which banks are open for general banking business in that place.

No additional amount is payable in respect of any delay in payment. Nothing in this clause 9.3 applies to any payment referred to in clause 7.1(b).

### **9.4 Payments to accounts**

Monies payable by CBA to a Holder may be paid by crediting an Australian dollar bank account maintained in Australia with a financial institution and nominated in writing by the Holder by close of business on the relevant Record Date or in any other manner CBA decides.

### **9.5 Unsuccessful attempts to pay**

- (a) If the Holder has not notified the Registry of a bank account for the purposes of payment under clause 9.4 or the transfer of any amount does not complete for any reason (other than an error made by or on behalf of CBA), CBA will be treated as having paid the amount on the date on which it would otherwise have made the payment.
- (b) CBA will send a notice to the registered address of the Holder advising of the unsuccessful payment and the amount of the unsuccessful payment will be held on deposit in a non-interest bearing bank account maintained by CBA or the Registry until the Holder nominates an Australian dollar bank account maintained in Australia for crediting with the payment (or nominates a new bank account as the case may be) or the claim becomes void under clause 13.1.
- (c) No additional amount is payable in respect of any delay in payment.
- (d) For the avoidance of doubt, nothing in this clause 9.5 obliges CBA to make a payment it has not otherwise determined to make under clause 2.

## 9.6 Withholdings and Deductions

- (a) All payments in respect of PERLS VII must be made without any withholding or deduction in respect of taxes, unless the withholding or deduction is required by law or permitted by this clause 9.6. CBA shall pay the full amount deducted to the relevant revenue authority within the time allowed for such payment without incurring penalty under the applicable law and shall, if required by any Holder, deliver to that Holder the relevant receipt issued by the revenue authority without delay after it is received by CBA.
- (b) Subject to clause 2.4, if (and to the extent that):
- (i) a law of any Relevant Jurisdiction (other than Australia) requires CBA to deduct any amount on account of tax from any Distribution which is payable to a Holder under clause 2.1, so that a Holder would not receive the full amount which is so payable; and
  - (ii) the relevant deduction is required to be made on a basis other than:
    - (A) the Holder having a connection with the Relevant Jurisdiction (other than the mere holding of the PERLS VII or receipt of a payment in respect of it) or holding PERLS VII jointly with a person having such a connection;
    - (B) the Holder:
      - (1) not having provided relevant information to CBA;
      - (2) not having made a declaration or similar claim which could have avoided such a deduction;
      - (3) not having satisfied a reporting requirement which could have avoided such a deduction;
    - (C) on account of stamp duty, estate duty or similar transaction duty;
    - (D) on account of resident withholding tax imposed in accordance with the laws of New Zealand,

subject to clause 9.6(d), the amount of the Distribution that is payable will be increased so that, after making the relevant deduction, the Holder receives the amount that the Holder would have received if no deduction had been required.

- (c) CBA intends to register PERLS VII for the purposes of the Approved Issuer Levy. Where CBA is lawfully able to pay the Approved Issuer Levy in respect of any Distribution payable to a Holder, CBA will pay the amount of such levy to the New Zealand Inland Revenue (or other appropriate government authority) and will not deduct an amount on account of such levy from the relevant Distribution.
- (d) CBA, in its absolute discretion, may withhold or deduct payments to a Holder where it is required to do so under or in connection with FATCA, or where it has reasonable grounds to suspect that the Holder or a beneficial owner of PERLS VII may be subject to FATCA, and may deal with such payment and the Holder's PERLS VII in accordance with FATCA. If any withholding or deduction arises under or in connection with FATCA, CBA will not be required to pay any further amounts on account of such withholding or deduction or otherwise reimburse or compensate, or

make any payment to, a Holder or a beneficial owner of PERLS VII for or in respect of any such withholding or deduction.

- (e) Each Holder will, within 10 Business Days of request by CBA, supply to CBA such forms, documentation or other information relating to its status under FATCA as CBA reasonably requests for the purposes of the CBA Group's compliance with FATCA.

## 10 Tax File Number withholdings

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- (a) CBA will withhold an amount from payments of Distributions on PERLS VII at the highest marginal tax rate plus the highest Medicare levy if a Holder has not supplied an appropriate tax file number, Australian business number or exemption details.
- (b) If a Holder supplies exemption details and CBA subsequently determines that the relevant exemption was not available, CBA may recover the amount that should have been deducted from the relevant Holder and may deduct that amount from any subsequent payment due to that Holder in respect of PERLS VII.

## 11 Obligations of the New Zealand Branch

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- (a) Subject to clause 12, although PERLS VII are issued by CBA acting through its New Zealand branch, the obligations of CBA are not limited to the New Zealand branch assets of CBA. If CBA is unable to make a payment under PERLS VII from the New Zealand branch, it may make the payment from some other branch (including CBA itself) on behalf of the New Zealand branch.
- (b) Subject to receiving APRA's prior written approval, CBA may, by notice to Holders, change the branch through which it elects to act in respect of PERLS VII from the New Zealand branch to another branch, including CBA itself.
- (c) CBA will not change the branch through which it elects to act in respect of PERLS VII if the issue or performance of PERLS VII would be illegal in the jurisdiction in which the proposed new branch is located.

## 12 Substitution of CBA

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### 12.1 Substitution

CBA may, without the consent of Holders and provided that the Substitution Conditions are satisfied, by giving notice to ASX and the Holders:

- (a) substitute for itself a NOHC as the debtor in respect of PERLS VII (**Full Successor**);  
or
- (b) substitute for itself a NOHC as the issuer of the Ordinary Shares on Exchange (**Partial Successor**),

and a reference to the **Successor** shall be a reference to the Full Successor or the Partial Successor, as applicable. The notice shall specify the date on which the substitution is to take effect (**Date of Substitution**).



## 12.2 Substitution Conditions

The **Substitution Conditions** are:

- (a) in the case of the Full Successor:
  - (i) the Full Successor or another entity (which is a parent entity) subscribes for Ordinary Shares or other capital instruments acceptable to APRA in such amount as may be necessary, or takes other steps acceptable to APRA, to ensure that the capital position of the CBA Level 1 Group and CBA Level 2 Group will not be adversely affected;
  - (ii) the Full Successor will expressly assume CBA's obligations under these Terms and the Trust Deed by entering into a deed poll for the benefit of Holders (**Successor Deed Poll**) under which it agrees (among other things):
    - (A) to comply with the restrictions in clause 2.7 of these Terms (with all necessary modifications); and
    - (B) to deliver fully paid ordinary shares in its capital under all circumstances when CBA would otherwise have been required to deliver Ordinary Shares, subject to the same terms and conditions as set out in these Terms (with all necessary modifications);
- (b) in the case of the Partial Successor:
  - (i) the Partial Successor agrees with effect on and from the Date of Substitution, by entering into a Successor Deed Poll, to deliver fully paid ordinary shares in its capital under all circumstances when CBA would otherwise have been required to deliver Ordinary Shares, subject to the same terms and conditions as set out in these Terms (with all necessary modifications); and
  - (ii) the Partial Successor agrees that in all circumstances where the Partial Successor delivers fully paid ordinary shares in its capital under the Successor Deed Poll in clause 12.2(b)(i), the Partial Successor or another entity (which is a parent entity) will subscribe for Ordinary Shares in such amount as may be necessary, or take other steps acceptable to APRA, to ensure that the capital position of the CBA Level 1 Group and CBA Level 2 Group is equivalent to the position if the Successor Deed Poll had not been entered into and CBA was required to issue the Ordinary Shares; and
- (c) in the case of either the Full Successor or the Partial Successor (as applicable):
  - (i) the Successor's ordinary shares are or are to be quoted on ASX, and the Successor agrees to use all reasonable endeavours and furnish all such documents, information and undertakings as may be reasonably necessary in order to procure quotation of ordinary shares issued under these Terms on the securities exchanges on which the Successor's ordinary shares are quoted at the time of delivery;
  - (ii) the Successor and CBA have obtained APRA approval and all other necessary authorisations, regulatory and governmental approvals and consents for such substitution and for the performance by the Successor of its obligations under PERLS VII and the documents effecting substitution;



- (iii) if the Successor does not have a place of business in New South Wales, the Successor has appointed a process agent in New South Wales to receive service of process on its behalf in relation to any legal proceedings arising out of or in connection with PERLS VII;
- (iv) the Successor has, in the reasonable opinion of CBA, the financial capacity to satisfy its obligations under the Successor Deed Poll;
- (v) CBA has used all reasonable endeavours to give an irrevocable notice to the Holders as soon as practicable before a NOHC Event occurs but no later than 10 days before the NOHC Event occurs specifying the amendments to PERLS VII which will be made under these Terms in connection with the substitution of a NOHC as the issuer of ordinary shares on Exchange; and
- (vi) CBA may, by an instrument in writing and without the authority, assent or approval of Holders, amend these Terms if such amendment is necessary or expedient for the purposes of complying with the provisions of Chapter 2L of the Corporations Act.

### **12.3 Effect of Substitution of Full Successor**

If the relevant requirements set out in clauses 12.1 and 12.2 relating to a substitution under clause 12.2(a) have been completed, on and from the Date of Substitution:

- (a) the Full Successor will assume all of the obligations of, succeed to, and be substituted for, and may exercise every right and power of, CBA under these Terms and the Trust Deed (as may be amended from time to time) with the same effect as if the Successor had been named as CBA in these Terms and the Trust Deed;
- (b) CBA (or any corporation which has previously assumed the obligations of CBA) will be released from its liability under the Terms and the Trust Deed;
- (c) if CBA gives a notice to Holders under clause 12.2(c)(v), the amended terms will have effect on and from the date specified in the notice; and
- (d) references to CBA in these Terms and the Trust Deed will be taken to be references to the Full Successor.

### **12.4 Effect of Substitution of Partial Successor**

If the relevant requirements set out in clauses 12.1 and 12.2 relating to a substitution under clause 12.1(b) have been completed, on and from the Date of Substitution:

- (a) CBA (or any corporation which has previously assumed the obligations of CBA) will be released from any obligation it would otherwise have under these Terms to issue Ordinary Shares to Holders upon Exchange; and
- (b) if CBA gives a notice to Holders under clause 12.2(c)(v), the amended terms will have effect on and from the date specified in the notice.

## **13 General**

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### **13.1 Time limit for claims**

A claim against CBA for a payment under PERLS VII is void unless made within five years from the date on which payment became due.

### **13.2 Voting**

The Trust Deed contains provisions for convening meetings of Holders to consider any matter affecting their interests including certain variations of these Terms which require the Holders' consent. Resolutions passed in accordance with such provisions will be binding on all Holders.

### **13.3 Amendments without consent**

At any time, but subject to compliance with the Corporations Act and all other applicable laws, CBA may by deed poll, without the consent of the Holders, amend these Terms or the Trust Deed, from the date specified by CBA, if CBA is of the opinion that such alteration is:

- (a) of a formal, technical or minor nature;
- (b) made to cure any ambiguity, correct any manifest error or correct or supplement any defective provision of the Terms or amend any provision of the Trust Deed;
- (c) necessary or expedient for the purpose of:
  - (i) enabling PERLS VII to be listed for quotation, or to retain quotation, on any securities exchange or to be offered for subscription or for sale under the laws for the time being in force in any place;
  - (ii) complying with the provisions of any statute, the requirements of any statutory authority, ASX Listing Rules or the listing or quotation requirements of any securities exchange on which CBA may propose to seek a listing or quotation of PERLS VII; or
  - (iii) facilitating a substitution in accordance with clause 12.1 (including satisfying any requirement of APRA in connection with such a substitution);
- (d) made to amend any date or time period stated, required or permitted in connection with any Exchange or Redemption (including, without limitation, when the proceeds of Redemption are to be reinvested in a new security to be issued by CBA or a Related Body Corporate); or
- (e) not materially prejudicial to the interests of Holders as a whole.

The Terms of all PERLS VII will be amended from the date specified by CBA.

### **13.4 Amendments with consent**

Without limiting clause 13.3, CBA may by deed poll amend these Terms or the Trust Deed if such alteration is approved by a Special Resolution.

In this case, the Terms of all PERLS VII will be amended from the date specified in the Special Resolution or otherwise notified to the Holders (provided such date is permitted by the terms of the Special Resolution).

### 13.5 Meaning of amend

In clauses 13.3 and 13.4, **amend** includes modify, cancel, alter or add to and **amendment** has a corresponding meaning.

### 13.6 APRA approval of amendments

Prior to any amendment under clauses 13.3 and 13.4 being effective, where required CBA must obtain APRA's prior written approval (APRA approval is required where the amendment affects the capital treatment of PERLS VII under APRA's prudential standards at the relevant time) and any consent or approval required under any applicable law, regulation or ASX Listing Rule.

### 13.7 Notices

#### (a) To Holders

Subject to clauses 4.1(e) and 4.2(e), unless otherwise specified, all notices and other communications to Holders must be in writing and either (i) sent by prepaid post (airmail if appropriate) to or left at the address of the Holders (as shown in the Register at the close of business on the day which is three Business Days before the date of the notice or communication), (ii) (if available) issued to Holders through CHESS in accordance with any applicable rules and regulations of CHESS, or (iii) announced to ASX. An accidental or inadvertent failure to give notice to a particular Holder will not invalidate a notice otherwise properly given to Holders.

#### (b) To CBA, Trustee and Registry

Subject to clauses 4.1(e) and 4.2(e), all notices and other communications to all or any of CBA, the Trustee and the Registry must be in writing and sent by prepaid post (airmail if appropriate) to or left at the address of CBA, the Trustee and the Registry, as applicable.

#### (c) When effective

Subject to clauses 4.1(e) and 4.2(e), notices and other communications take effect from the time they are taken to be received unless a later time is specified in them.

#### (d) Receipt

- (i) If sent by post, notices or other communications are taken to be received three Business Days after posting (or five Business Days after posting if sent to or from a place outside Australia).
- (ii) If left at the address, notices or other communications are taken to be received when given unless received after 5.00 pm in the place of receipt or on a non-Business Day, in which case they are taken to be received at 9.00 am on the next Business Day.
- (iii) Notices given to Holders by being announced to ASX are taken to be received on the date of announcement.

### 13.8 Ability to trade

CBA or any member of the CBA Group may, to the extent permitted by applicable laws and regulations and with APRA's prior written approval (where required), at any time buy or sell

PERLS VII in the open market, by tender to all or some of the Holders, by private agreement or in any other manner, at any price.

### **13.9 Governing law**

These Terms are governed by and must be governed in accordance with the law in force in New South Wales, Australia.

### **13.10 Jurisdiction**

CBA submits, and each Holder is taken to have irrevocably and unconditionally submitted, to the non-exclusive jurisdiction of the courts of New South Wales and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to these Terms.

### **13.11 Trust Deed**

CBA's obligations in respect of PERLS VII are constituted by and subject to the Trust Deed. Each Holder is taken to have notice of, and be bound by, the provisions of the Trust Deed.

### **13.12 Waiver of immunity**

CBA irrevocably and unconditionally waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 13.10.

## **14 Interpretation and definitions**

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### **14.1 Interpretation**

In these Terms, except where the contrary intention appears:

- (a) a reference to:
  - (i) an agreement or instrument includes any variation, supplement, replacement or novation of that agreement or instrument;
  - (ii) a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
  - (iii) any thing is a reference to the whole and each part of it;
  - (iv) one gender includes every other gender;
  - (v) a document includes all schedules or annexes to it;
  - (vi) a clause or paragraph is to a clause or paragraph of these Terms;
  - (vii) "Australian dollars", "A\$" or "Australian cent" is a reference to the lawful currency of Australia; and
  - (viii) a statute, ordinance, code, rule, directive or law (however described) includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

- (b) the singular includes the plural and vice versa;
- (c) the word "person" includes a firm, body corporate, an unincorporated association, or governmental or local authority or agency or other entity;
- (d) the word "law" includes common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) any reference to time is to Sydney time;
- (f) headings are inserted for convenience and do not affect the interpretation of these Terms;
- (g) another grammatical form of a defined word or expression has a corresponding meaning;
- (h) if an event under these Terms must occur on a stipulated day which is not a Business Day, then, for an event other than a Capital Trigger Event or Non-Viability Trigger Event, the stipulated day will be taken to be the next Business Day, unless a contrary intention is expressed;
- (i) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
- (j) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (k) any provisions which refer to APRA requirements of or any other prudential regulatory requirements will apply to CBA only if CBA is an entity, or the holding company of an entity, or is a direct or indirect subsidiary of an entity (including a NOHC) subject to regulation and supervision by APRA at the relevant time;
- (l) any provisions which require APRA's consent or approval (written or otherwise) will apply only if APRA requires that such consent or approval be given at the relevant time; and
- (m) any provisions in these Terms requiring prior APRA approval for a particular course of action to be taken by CBA do not imply that APRA has given its consent or approval to the particular action as of the Issue Date.

## 14.2 Definitions

In these Terms, except where the contrary intention appears:

<b>Term</b>	<b>Meaning</b>
<b>ADI</b>	means an Authorised Deposit-taking Institution under the Banking Act;
<b>Applicable Regulation</b>	means the ASX Listing Rules, the ASX Settlement Operating Rules, the rules and regulations of CHESS, the Corporations Act and any rules or regulations made under or pursuant to them;
<b>Approved Issuer Levy</b>	means, in relation to a Distribution, the levy payable in accordance with section 86J of the Stamp and Duties Act 1971 (NZ) or any similar levy.

<b>APRA</b>	means the Australian Prudential Regulation Authority;
<b>ASX</b>	means ASX Limited ABN 98 008 624 691 or the securities market operated by it, as the context requires;
<b>ASX Listing Rules</b>	means the listing rules of ASX from time to time with any applicable modification or waiver granted by ASX;
<b>ASX Settlement Operating Rules</b>	means the settlement operating rules of ASX from time to time with any applicable modification or waiver granted by ASX;
<b>Banking Act</b>	means the Banking Act 1959 (Cth);
<b>Bill</b>	has the meaning given in clause 2.2;
<b>Board</b>	means either the board of directors of CBA or a committee appointed by the board of directors of CBA;
<b>Bookbuild</b>	means the process conducted before the Offer opens where brokers and investors bid for PERLS VII and, on the basis of those bids, CBA sets the final Margin and announces it on ASX;
<b>Business Day</b>	means a day which is (i) a business day within the meaning of the ASX Listing Rules, and (ii) for the purposes of calculation or payment of a Distribution, a date on which banks are open for general business in Sydney;
<b>Call Date</b>	means 15 December 2022;
<b>Capital Trigger Event</b>	has the meaning given in clause 4.1;
<b>CBA</b>	means Commonwealth Bank of Australia ABN 48 123 123 124, including foreign branches of Commonwealth Bank of Australia;
<b>CBA Group</b>	means CBA (or any NOHC that is the holding company of CBA) and its Subsidiaries;
<b>CBA Level 1 Common Equity Tier 1 Capital Ratio</b>	means, in respect of the CBA Level 1 Group, the ratio of the Common Equity Tier 1 of the CBA Level 1 Group to the risk weighted assets of the CBA Level 1 Group, calculated in accordance with APRA's prudential standards (as amended from time to time);
<b>CBA Level 1 Group</b>	means: <ul style="list-style-type: none"> <li>(a) CBA; or</li> <li>(b) the "extended licensed entity" which is comprised of CBA and each Subsidiary of CBA as specified in any approval granted by APRA in accordance with APRA's prudential standards (as amended from time to time);</li> </ul>
<b>CBA Level 2 Common Equity Tier 1 Capital Ratio</b>	means, in respect of the CBA Level 2 Group, the ratio of the Common Equity Tier 1 of the CBA Level 2 Group to the risk weighted assets of the CBA Level 2 Group, calculated in accordance with APRA's prudential standards (as amended from time to time);
<b>CBA Level 2 Group</b>	means CBA and each Subsidiary that is recognised by APRA as part of CBA's Level 2 group in accordance with APRA's prudential standards (as amended from time to time);
<b>Change of Control Event</b>	has the meaning given in clause 4.7;
<b>CHESS</b>	means the Clearing House Electronic Subregister System operated by ASX Settlement Pty Limited ABN 49 008 504 532;

<b>Common Equity Tier 1</b>	means, in respect of each of the CBA Level 1 Group and the CBA Level 2 Group, has the meaning determined for that term or its equivalent by APRA;
<b>Corporations Act</b>	means the Corporations Act 2001 (Cth);
<b>Delisted</b>	means, in relation to an Exchange Date, that Ordinary Shares are not listed or admitted to trading on a securities exchange on that date;
<b>Distribution</b>	means interest payable on PERLS VII under these Terms;
<b>Distribution Payment Date</b>	means, in respect of each PERLS VII, 15 March, 15 June, 15 September and 15 December each year until that PERLS VII has been Exchanged or Redeemed, and also the Exchange Date or Redemption Date. If any of these Distribution Payment Dates is not a Business Day, then the payment will be made in accordance with clause 9.3. The first Distribution Payment Date is 15 December 2014;
<b>Distribution Period</b>	means each period commencing on (and including) a Distribution Payment Date and ending on (but excluding) the next Distribution Payment Date. However: <ul style="list-style-type: none"><li>(a) the first Distribution Period commences on (and includes) the Issue Date; and</li><li>(b) the final Distribution Period ends on (but excludes) the Exchange Date or Redemption Date, as applicable;</li></ul>
<b>Distribution Rate</b>	means the interest rate (expressed as a percentage per annum) calculated or determined in accordance with clause 2.2;
<b>Equal Ranking Securities</b>	means each of: <ul style="list-style-type: none"><li>(a) PERLS VI;</li><li>(b) PERLS VII; and</li><li>(c) any preference shares in the capital of CBA or any other securities which rank or are expressed to rank equally with PERLS VII in a winding up of CBA, present and future, excluding any Junior Ranking Securities;</li></ul>
<b>Exchange</b>	means, the exchange of all, some or a proportion of each PERLS VII for Ordinary Shares under these Terms and <b>Exchanged</b> has a corresponding meaning;
<b>Exchange Date</b>	means the applicable: <ul style="list-style-type: none"><li>(a) Mandatory Exchange Date;</li><li>(b) date for Exchange specified in accordance with clause 4.1(e)(iii);</li><li>(c) date for Exchange specified in accordance with clause 4.2(e)(iii);</li><li>(d) date for Exchange specified in accordance with clause 4.7(b)(iii) or otherwise determined under clause 4.7(d);</li></ul>
<b>Exchange Number</b>	has the meaning given in clause 7.1;
<b>Face Value</b>	means A\$100 per PERLS VII ( <b>Initial Face Value</b> ) reduced (if applicable) by the amount of Face Value per PERLS VII which has previously been Exchanged or the amount of Face Value per PERLS VII for which Holders' rights have been irrevocably terminated;
<b>FATCA</b>	means Sections 1471 through 1474 of the United States Internal Revenue Code of 1986, as amended (or any consolidation, amendment, re-



	enactment or replacement of those sections and including any current or future regulations or official interpretations issued, agreements entered into or non-US laws enacted in relation to those sections);
<b>Foreign Holder</b>	means a Holder whose address in the Register is a place outside Australia or who CBA otherwise believes may not be a resident of Australia and CBA is not satisfied that the laws of the Holder's country of residence permit the offer, holding or acquisition of Ordinary Shares to the Holder (but CBA will not be bound to enquire into those laws), either unconditionally or after compliance with conditions which CBA, in its absolute discretion, regards as acceptable and not unduly onerous;
<b>Holder</b>	means a person whose name is entered in the Register as a holder of PERLS VII;
<b>Ineligible Holder</b>	means a Holder who is prohibited or restricted by any applicable law or regulation in force in Australia (including but not limited to Chapter 6 of the Corporations Act, the Foreign Acquisitions and Takeovers Act 1975 (Cth), the Financial Sector (Shareholdings) Act 1998 (Cth) and Part IV of the Competition and Consumer Act 2010) from being offered, holding or acquiring Ordinary Shares (provided that if the relevant prohibition or restriction only applies to the Holder in respect of some of its PERLS VII, it shall only be treated as an Ineligible Holder in respect of those PERLS VII and not in respect of the balance of its PERLS VII), and includes a Foreign Holder. CBA will be entitled to treat a Holder as not being an Ineligible Holder unless the Holder has otherwise notified it after the Issue Date and prior to the Exchange Date;
<b>Insolvent</b>	means insolvent under section 95A of the Corporations Act;
<b>IRS</b>	means the United States Internal Revenue Service;
<b>Issue Date</b>	means the date on which PERLS VII are issued;
<b>Issue Date VWAP</b>	means the VWAP during the period of 20 Business Days on which trading in Ordinary Shares took place immediately preceding but not including the Issue Date, as adjusted in accordance with clauses 7.4 to 7.7;
<b>Junior Ranking Securities</b>	means all Ordinary Shares, present and future;
<b>Level 1, Level 2 and Level 3</b>	means those terms as defined by APRA from time to time;
<b>Mandatory Exchange Conditions</b>	means the conditions in clause 3.2;
<b>Mandatory Exchange Date</b>	15 December 2024 or such other date as determined under clause 3.1;
<b>Margin</b>	has the meaning given in clause 2.2;
<b>Market Rate</b>	has the meaning given in clause 2.2;
<b>Maximum Exchange Number</b>	has the meaning given in clause 7.1
<b>Meeting Provisions</b>	means the provisions for meetings of Holders set out in schedule 4 of the Trust Deed;
<b>NOHC</b>	means a "non-operating holding company" within the meaning of the Banking Act;
<b>NOHC Event</b>	occurs when the Board initiates a restructure of the CBA Group and a NOHC becomes the ultimate holding company of CBA;

<b>Non-Viability Trigger Event</b>	has the meaning given in clause 4.2;
<b>Offer</b>	means the invitation by CBA in the Prospectus to subscribe for PERLS VII;
<b>Ordinary Share</b>	means a fully paid ordinary share in the capital of CBA;
<b>PERLS VI</b>	means Perpetual Exchangeable Resaleable Listed Securities issued by CBA in October 2012;
<b>PERLS VII</b>	means CommBank PERLS VII Capital Notes issued by CBA under these Terms;
<b>Prospectus</b>	means the prospectus relating to the offer of PERLS VII dated on or about 18 August 2014;
<b>Purchaser</b>	means one or more third parties selected by CBA in its absolute discretion (which cannot be CBA, a member of the CBA Group or a Related Body Corporate of CBA);
<b>Reclassification</b>	has the meaning given in clause 7.3;
<b>Record Date</b>	means, for payment of Distributions: <ul style="list-style-type: none"> <li>(a) date that is eight calendar days prior to the relevant Distribution Payment Date; or</li> <li>(b) such other date determined by CBA in its absolute discretion and communicated to ASX,</li> </ul> or in either case such other date as may be required by, or agreed with, ASX;
<b>Redemption</b>	means the redemption of all or some PERLS VII for their Face Value under these Terms and <b>Redeem</b> and <b>Redeemed</b> have corresponding meanings;
<b>Redemption Date</b>	means, in respect of each PERLS VII, the date specified by CBA as the Redemption Date in accordance with clause 5;
<b>Register</b>	means the register of Holders established and maintained under clause 12 of the Trust Deed and, where appropriate, the term Register includes: <ul style="list-style-type: none"> <li>(a) a sub-register maintained by or for CBA in CHESSE; and</li> <li>(b) any branch register;</li> </ul>
<b>Registry</b>	means Link Market Services Limited ABN 54 083 214 537 or any other person appointed by CBA to maintain the Register;
<b>Related Body Corporate</b>	means a related body corporate as defined in the Corporations Act, or an entity over which CBA, or a future parent entity of CBA, exercises control or significant influence;
<b>Relevant Jurisdiction</b>	means any country, or political subdivision of one or more countries, or any federation or association of countries: <ul style="list-style-type: none"> <li>(a) in which CBA (or a Successor) is incorporated, resident or domiciled for any tax purpose or carries on business; or</li> <li>(b) from which, or through which, any Distribution is paid.</li> </ul>
<b>Relevant Security</b>	means a security forming part of the Tier 1 Capital of CBA on a Level 1 basis or Level 2 basis;
<b>Resale</b>	means the sale of PERLS VII by Holders to the Purchaser in accordance with clause 6 and <b>Resell</b> and <b>Resold</b> have corresponding meanings;
<b>Resale Notice</b>	means a notice issued in accordance with clause 6;
<b>Senior Ranking Obligations</b>	means all deposits and other liabilities, securities (including Tier 2 Capital securities) and other obligations of CBA other than Equal Ranking

	Securities or Junior Ranking Securities;
<b>Special Resolution</b>	<p>means:</p> <p>(a) a resolution passed at a meeting of Holders duly called and held under the Meeting Provisions:</p> <p style="padding-left: 40px;">(i) by at least 75% of Holders voting on a show of hands (unless paragraph (b) below applies); or</p> <p style="padding-left: 40px;">(ii) if a poll is duly demanded, by at least 75% of the votes cast; or</p> <p>(b) a resolution passed by postal ballot or written resolution by Holders of at least 75% of the aggregate Face Value of PERLS VII then outstanding;</p>
<b>Subsidiary</b>	has the meaning given in the Corporations Act;
<b>Tax</b>	<p>means:</p> <p>(a) any tax, including GST, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding; or</p> <p>(b) any income, stamp or transaction duty, tax or charge, which is assessed, levied, imposed or collected by any governmental agency and includes, but is not limited to, any interest, fine, penalty, charge, fee or other amount imposed on or in respect of any of the above.</p>
<b>Tax Act</b>	means the Income Tax Assessment Act 1936 (Cth) and, where applicable, the Income Tax Assessment Act 1997 (Cth) (both as amended from time to time);
<b>Terms</b>	means these terms and conditions of PERLS VII, as set out in schedule 1 of the Trust Deed;
<b>Tier 1 Capital</b>	means the Tier 1 Capital of CBA on the relevant Level 1 or Level 2 basis, as defined by APRA from time to time;
<b>Tier 2 Capital</b>	means the Tier 2 Capital of CBA on the relevant Level 1 or Level 2 basis, as defined by APRA from time to time;
<b>Trust Deed</b>	means the deed entitled "PERLS VII Trust Deed" between CBA, acting through its New Zealand branch, and the Trustee and dated on or about 15 August 2014;
<b>Trustee</b>	means The Trust Company (Australia) Limited (or any replacement trustee under the Trust Deed, who cannot be CBA, a member of the CBA Group or a Related Body Corporate of CBA)
<b>VWAP</b>	means the average of the daily volume weighted average prices of Ordinary Shares traded on ASX during the relevant VWAP Period, subject to any adjustments made under clauses 7.2 and 7.3, but the trades taken into account in determining such daily volume weighted average prices will exclude special crossings, crossings prior to the commencement of normal trading or during the closing phase or after hours adjustment phase, overnight crossings, overseas trades, trades pursuant to the exercise of options over Ordinary Shares, or any other trade determined by the Board in its discretion not to be reflective of normal trading in Ordinary Shares; and
<b>VWAP Period</b>	<p>means:</p> <p>(a) in the case of an Exchange resulting from a Capital Trigger Event, or a Non-Viability Trigger Event, the period of 5 Business Days on which trading in Ordinary Shares took place immediately preceding (but not including) the Exchange Date; and</p> <p>(b) in the case of any other Exchange, the period of 20 Business</p>



- (c) Days on which trading in Ordinary Shares took place immediately preceding (but not including) the Exchange Date; or otherwise, the period for which the VWAP is to be calculated in accordance with these Terms.



## Schedule 2

### Deed poll – Substitution of the Issuer – Full Successor (Clause 18.1(a))

---

This deed poll is given by:

---

**CBA** Commonwealth Bank of Australia, New Zealand Branch  
[•]

---

**NOHC** [•]  
ABN [•] of [•]  
*[Insert details of NOHC, if relevant]*

---

In favour of:

---

**Trustee** The Trust Company (Australia) Limited  
Part of Perpetual Limited group  
ABN 21 000 000 993 of [•]

---

**Background**

- 1 CBA and the Trustee have entered into a trust deed (**Trust Deed**) dated 15 August 2014 for the purpose of issuing subordinated, unsecured PERLS VII (**PERLS VII**) under the Trust Deed.
- 2 The Trustee agreed to act as trustee on behalf of the Holders of PERLS VII on the terms and conditions contained in the Trust Deed.
- 3 The NOHC wishes to become the Issuer under the Trust Deed on the terms and conditions set out in this deed poll.

---

**The parties agree** as set out in the operative part of this agreement, in consideration of, among other things, the mutual promises contained in this agreement.

## 1 Interpretation

---

Words and phrases defined in the Trust Deed (including by incorporation) have the same meaning when used in this deed poll and **Substitution** has the meaning in clause 2 of this deed poll.



## 2 Status of NOHC

---

- (a) The NOHC agrees that, with effect from the date that CBA satisfies the requirements in clause 18.2 of the Trust Deed it irrevocably becomes a principal debtor under, and the “Issuer”, as defined in, and for all purposes under, the Trust Deed and the Terms in place of CBA as if named in and as a party to the Trust Deed and the Terms, and accordingly is bound by the Trust Deed and the Terms as Issuer and becomes subject to all obligations of the Issuer as the case requires in the Trust Deed and the Terms or any provision or arrangement providing for the payment of amounts to the Trustee or any replacement arrangements put in place by the NOHC or alternative arrangements between the NOHC and the Trustee as are agreed (**Substitution**).
- (b) Upon Substitution all references to “Issuer” or “CBA” in the Trust Deed and the Terms will be deemed to be a reference to the “NOHC” and any reference to the “Ordinary Shares” of the Issuer or CBA will be deemed to be a reference to the “ordinary shares” of the NOHC.
- (c) If the NOHC is not incorporated in Australia, the NOHC agrees to pay additional amounts in respect of any deduction or withholding on account of Tax on payments on PERLS VII to the same extent that those additional amounts would be payable if references to ‘Australia’ in the definition of Relevant Jurisdiction and clause 9 of the Terms were references to the jurisdiction in which the NOHC is incorporated.
- (d) The NOHC agrees that if the Trustee and the Issuer have not amended the Trust Deed as contemplated by clause 18.2(c)(7) with effect prior to or as at the date of substitution, the NOHC (as Issuer) and the Trustee may amend the Trust Deed as provided in clause 14.2(c)(2) of the Trust Deed to the extent such amendment is, necessary or expedient for the purpose of complying with the provisions of Chapter 2L of the Corporations Act. APRA approval is required where the amendment affects the capital treatment of PERLS VII under APRA’s prudential standards at the relevant time.

## 3 Amendment, termination and release

---

- (a) This deed poll may be amended to the same extent and in the same circumstances as provided in clause 14 of the Trust Deed and as if references in that clause to the Trust Deed included references to this deed poll.
- (b) This deed poll and the obligations of the Issuer and the NOHC terminate on the date the Trust Deed is terminated under clause 15 of the Trust Deed.

## 4 Governing law

---

This deed poll is governed by the laws of New South Wales.



## 5 Benefit of deed poll

---

This deed poll is given in favour of and for the benefit of each Holder and the Trustee and their respective successors and permitted assigns.

## 6 Address for notices

---

(a) The details for the NOHC service of notices are:

Address: [•]

Attention: [•]

Facsimile: [•]

(b) The details for [ ] service of notices are:

Address: [•]

Attention: [•]

Facsimile: [•]

## 7 Attorneys

---

Each of the attorneys executing this deed poll states that the attorney has no notice of the revocation of the power of attorney appointing that attorney.



Executed as a deed poll:

---

Signed sealed and delivered for

by its attorney

*sign here* ► \_\_\_\_\_  
Attorney

*print name* \_\_\_\_\_

in the presence of

*sign here* ► \_\_\_\_\_  
Witness

*print name* \_\_\_\_\_

---

Signed sealed and delivered for

by its attorney

*sign here* ► \_\_\_\_\_  
Attorney

*print name* \_\_\_\_\_

in the presence of

*sign here* ► \_\_\_\_\_  
Witness

*print name* \_\_\_\_\_

---





## Schedule 3

### Deed poll – Substitution of the Issuer – Partial Successor (Clause 18.1(b))

---

This deed poll is given by:

---

**CBA** Commonwealth Bank of Australia, New Zealand branch



---

**NOHC**



ABN [ ] of [ ]

*[Insert details of NOHC, if relevant]*

---

In favour of:

---

**Trustee** The Trust Company (Australia) Limited

Part of Perpetual Limited group ABN 21 000 000 993 of [ ]

---

- Background
- 1 CBA and the Trustee have entered into a trust deed (**Trust Deed**) dated 15 August 2014 for the purpose of issuing subordinated, unsecured PERLS VII (**PERLS VII**) under the Trust Deed.
  - 2 The Trustee agreed to act as trustee on behalf of the Holders of PERLS VII on the terms and conditions contained in the Trust Deed.
  - 3 The NOHC wishes to assume the obligations of the Issuer under the Terms to deliver Ordinary Shares on Exchange by instead delivering fully paid ordinary shares in its capital to Holders and accordingly the NOHC wishes to assume certain obligations of the Issuer under the Trust Deed on the terms and conditions set out in this deed poll.
- 

The parties agree as set out in the operative part of this agreement, in consideration of, among other things, the mutual promises contained in this agreement.



## 1 Interpretation

---

Words and phrases defined in the Trust Deed (including by incorporation) have the same meaning when used in this deed poll and **Substitution** has the meaning in clause 2 of this deed poll.

## 2 Status of NOHC

---

- (a) The NOHC agrees that, with effect from the date that CBA satisfies the requirements in clause 18.2 of the Trust Deed it irrevocably agrees to deliver fully paid ordinary shares in its capital to Holders under all circumstances when CBA would otherwise have been required to deliver Ordinary Shares (these circumstances being the **Exchange Provisions**), subject to the same terms and conditions as set out in the Terms (with all necessary modifications) as if named in and as a party to the Trust Deed and the Terms in respect of the Exchange Provisions, and accordingly is bound by the Trust Deed and the Terms and becomes subject to the obligations of the Issuer as the case requires in the Trust Deed and the Terms in respect of the Exchange Provisions (**Substitution**).
- (b) Upon Substitution all references to “Issuer” or “CBA” in the Trust Deed and the Terms as issuer or deliverer of Ordinary Shares in the Exchange Provisions will be deemed to be a reference to the “NOHC” and any reference to the “Ordinary Shares” of the Issuer or CBA will be deemed to be a reference to the “ordinary shares” of the NOHC.
- (c) The NOHC agrees that if the Trustee and the Issuer have not amended the Trust Deed as contemplated by clause 18.2(c)(7) with effect prior to or as at the date of substitution, CBA (as Issuer) and the Trustee may amend the Trust Deed as provided in clause 14.2(c)(2) of the Trust Deed to the extent such amendment is, necessary or expedient for the purpose of complying with the provisions of Chapter 2L of the Corporations Act. APRA approval is required where the amendment affects the capital treatment of PERLS VII under APRA’s prudential standards at the relevant time

## 3 Amendment, termination and release

---

- (a) This deed poll may be amended to the same extent and in the same circumstances as provided in clause 14 of the Trust Deed and as if references in that clause to the Trust Deed included references to this deed poll.
- (b) This deed poll and the obligations of the Issuer and the NOHC terminate on the date the Trust Deed is terminated under clause 15 of the Trust Deed.

## 4 Governing law

---

This deed poll is governed by the laws of New South Wales.



## 5 Benefit of deed poll

---

This deed poll is given in favour of and for the benefit of each Holder and the Trustee and their respective successors and permitted assigns.

## 6 Address for notices

---

(a) The details for the NOHC service of notices are:

Address: [•]

Attention: [•]

Facsimile: [•]

(b) The details for [ ] service of notices are:

Address: [•]

Attention: [•]

Facsimile: [•]

## 7 Attorneys

---

Each of the attorneys executing this deed poll states that the attorney has no notice of the revocation of the power of attorney appointing that attorney.



Executed as a deed poll:

---

Signed sealed and delivered for

by its attorney

*sign here* ► \_\_\_\_\_  
Attorney

*print name* \_\_\_\_\_

in the presence of

*sign here* ► \_\_\_\_\_  
Witness

*print name* \_\_\_\_\_

---

Signed sealed and delivered for

by its attorney

*sign here* ► \_\_\_\_\_  
Attorney

*print name* \_\_\_\_\_

in the presence of

*sign here* ► \_\_\_\_\_  
Witness

*print name* \_\_\_\_\_

---



## Schedule 4

### Meetings of Holders

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#### 1 Notice of Meeting

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- (a) At least 15 Business Days notice in writing of any Meeting must be given to the Trustee, the Issuer and the Holders by the party convening the Meeting.
- (b) If a Holder does not receive notice, the Meeting is still valid.
- (c) The party convening the Meeting must notify the Trustee, the Issuer and Holders (as the case requires) in writing of:
  - (1) the place, day and time of the Meeting ; and
  - (2) the nature of the business to be transacted.
- (d) If either the Issuer or the Trustee omits to give notice under paragraph 1(c) of this schedule 4 or if either does not receive notice, the Meeting is invalid unless the person who did not receive notice waives the notice requirement.
- (e) For the purposes of any Meeting, or for determining whether any resolution is passed without holding a Meeting, any PERLS VII held by the Issuer or any Related Body Corporate of the Issuer shall be treated as not being on issue, unless those PERLS VII are held in connection with any wealth management business (including life company business), as a trustee, as the holder of an Australian Financial Services licence or in any circumstances imposing on the holder a duty to act having regard to the interests of any third party.

#### 2 Who may attend and address Meeting

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Each Holder of PERLS VII is entitled to attend and vote at any Meeting or any rescheduled Meeting (which was adjourned pursuant to paragraph 3(c) of this schedule 4).

The Trustee, the Issuer, any person invited by any of them and the Auditor is entitled to attend and address a Meeting or rescheduled Meeting.

#### 3 Quorum

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- (a) No business may be transacted at any Meeting unless a quorum of Holders of PERLS VII is present at the time when the Meeting proceeds to business.
- (b) A quorum for any Meeting is at least 5 persons holding or representing by attorney, representative or proxy at least 10% of PERLS VII.



- (c) If a quorum is not present within half an hour from the time appointed for the Meeting must be adjourned as the chair directs.
- (d) At a rescheduled Meeting (which was adjourned pursuant to paragraph 3(c) of this schedule 4) the Holders with at least 5% of PERLS VII who are present either in person or by proxy constitute a quorum and are entitled to pass the resolution.

## 4 Chair

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- (a) A nominee of the Trustee (if any) may preside as chair at a Meeting.
- (b) If the Trustee does not appoint a person to be chairperson of a meeting, or the person does not appear within 15 minutes from the time appointed for the Meeting or is unwilling to act, the Holders present must elect one of their number to preside as chair.
- (c) The chair:
  - (1) need not be a Holder; and
  - (2) may be an officer or employee of the Issuer or the Trustee.

## 5 Voting

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- (a) Subject to Holders being entitled to vote, any question submitted to a Meeting must be decided in the first instance by a show of hands, but a poll will be taken in any case where:
  - (1) it is required by this deed or by law that the question be decided by a majority which is to be measured by a percentage of the votes cast by those present; or
  - (2) either before or immediately after any question is put to a show of hands a poll is demanded by the chair of the Meeting, the Trustee, the Issuer, or at least 5 Holders of PERLS VII, present personally or by proxy, representative or attorney, holding or representing by proxy, representative or attorney at least 5% of PERLS VII.
- (b) In the case of equality of votes, the chair of a Meeting has a casting vote in addition to his votes (if any) as a Holder both on a show of hands and on a poll.

## 6 Votes

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At a Meeting:

- (a) on a show of hands each Holder present personally or by proxy, attorney or representative with the right to vote at that Meeting has one vote; and
- (b) on a poll each Holder present personally or by proxy, attorney or representative with a right to vote at that Meeting is entitled to one vote for each PERLS VII.



## 7 Voting by joint holders

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- (a) If PERLS VII are held jointly, the most senior Holder's vote either in person or by proxy is accepted to the exclusion of the other joint holders.
- (b) The most senior Holder is the person whose name appears first on the Register.

## 8 Voting by corporation

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- (a) A corporation who is a Holder may vote through a representative authorised in writing.
- (b) The corporation's representative is regarded as a Holder and has the same rights as a Holder.

## 9 Voting by person of unsound mind

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If a Holder is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, the Holder's committee or Trustee or other person who properly has the management of the Holder's estate may exercise any rights of the Holder in relation to a Meeting as if the committee, Trustee or other person were the Holder.

## 10 Objection to voter's qualification

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- (a) An objection may be raised to the qualification of a voter only at the Meeting where the vote objected to is given or tendered.
- (b) An objection must be referred to the chair whose decision is final.
- (c) The chair may consult with any representative of the Issuer and the Trustee present at the Meeting.
- (d) A vote allowed at a Meeting is valid for all purposes.

## 11 Proxies

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A Holder is entitled to appoint another person as his proxy to attend and vote at a Meeting. Any person including a Holder may act as a proxy, and that proxy has the same rights as the appointer to vote whether on a show of hands, to speak, and be reckoned in the quorum.



## 12 Proxy instrument

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- (a) If the appointer of a proxy is an individual, the instrument of appointment must be in writing and signed by the appointer or the appointer's attorney authorised in writing.
- (b) If the appointer of a proxy is a corporation, the instrument of appointment must be:
  - (1) under its common seal; or
  - (2) under the hand of an officer or attorney who has been authorised by the corporation.

## 13 Voting authority to be deposited with Issuer

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- (a) The instrument appointing a proxy or a facsimile copy of it and the original or certified copy of the power of attorney or authority under which it is signed or a facsimile copy of it must be deposited with the Issuer at least 48 hours, or any shorter period determined by the Issuer from time to time, before the time appointed for the Meeting at which the proxy proposes to vote. The original of any facsimile instrument provided under this paragraph 13(a) must be deposited with the Issuer before the time appointed for the Meeting.
- (b) If paragraph 13(a) of this schedule 4 is not complied with, the proxy is invalid.
- (c) An instrument appointing a proxy is only valid for 12 months from its execution date.

## 14 Effect of death or insanity on vote under proxy

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- (a) A vote given under an instrument of proxy is valid even though the principal is insane at the time, has died or has revoked the proxy or the authority under which the proxy was executed.
- (b) Paragraph 14(a) of this schedule 4 does not apply if the Issuer has notice in writing of the death, insanity or revocation before the Meeting at which the proxy is to be used.

## 15 Adjournments

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The chair may adjourn a Meeting with the consent of the majority of Holders present.

## 16 Declaration by chair of voting

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Unless a poll has been demanded, a declaration by the chair that a resolution has been carried or lost by a particular majority is conclusive evidence of that fact.





## 17 Demand for a poll and manner of poll

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- (a) A poll is to be conducted as directed by the chair at the Meeting or any adjournment of the Meeting.
- (b) The demand for a poll may be withdrawn by the person who demanded it.
- (c) The demand for a poll does not discontinue the Meeting except to decide the question for which the poll is demanded.
- (d) The result of the poll is regarded as the resolution of the Meeting.

## 18 Poll on election of chair or question of adjournment

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A poll demanded on the election of a chair (where a nominee of the Trustee is not appointed to preside at the Meeting) or on a question of adjournment must be taken forthwith.

## 19 Effect of resolution

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A resolution passed at a Meeting held in accordance with this deed is binding upon all the Holders.

## 20 Minutes

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- (a) The chair must ensure that minutes of proceedings at a Meeting are taken and entered in a minute book provided by the Issuer.
- (b) The signature by the chair of minutes of a Meeting is conclusive evidence of the matters stated in the minutes.
- (c) Unless there is proof to the contrary a minuted Meeting is regarded as properly held and a resolution passed at the Meeting is regarded as properly passed.

## 21 Resolution by Postal Ballot

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- (a) A resolution of Holders may be passed by the Holders completing, signing and returning copies of a written resolution, which has been sent by the Issuer with the approval of the Trustee, within a period specified by the Issuer.
- (b) In respect of such a resolution each Holder is entitled to have one vote for each PERLS VII held.

## 22 Powers

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- (a) Without derogating from the powers conferred on the Trustee by this deed, a Meeting may exercise the following powers by Special Resolution:
- (1) power to authorise the Trustee to take or to refrain from taking any action which may be taken by the Trustee under any express or implied power or authority howsoever conferred;
  - (2) power to sanction the release by the Trustee or the Issuer from any obligation under this deed either unconditionally or upon such conditions as the Trustee may arrange with the Issuer;
  - (3) power to sanction agreement by the Trustee to any modification or compromise of any of the rights of all the Holders against the Issuer;
  - (4) power to authorise the Trustee to agree to the postponement of the repayment of the Face Value in respect of any part of PERLS VII beyond their due dates and to the suspension or postponement of the payment of Distributions on any part of PERLS VII;
  - (5) power to authorise the Trustee to sanction on behalf of all the Holders any scheme for reconstruction of the Issuer or for the amalgamation of the Issuer with any other corporation;
  - (6) power to authorise the Trustee to accept on behalf of the Holders any other property or securities instead of any part of the Holder's rights and in particular any debt securities of the Issuer;
  - (7) power to approve the appointment of a new trustee in accordance with the provisions of this deed;
  - (8) power to give any release or waiver in respect of anything done or omitted by the Trustee or any breach or default by the Issuer,
- and, in the case of any of the foregoing paragraphs of this paragraph 22(a), where required the Issuer must obtain APRA's prior written approval (only where the modification or waiver affects the capital treatment of PERLS VII under APRA's prudential standards).
- (b) Without derogating from the powers conferred on the Trustee by this deed, a Meeting may, by Holder Resolution, do anything for which a Special Resolution is not required.




## Signing page

Executed as a deed

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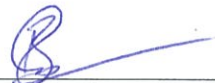
### Issuer

Signed sealed and delivered for  
**Commonwealth Bank of Australia,  
New Zealand Branch**  
by its attorney

sign here ►   
\_\_\_\_\_  
Attorney

print name Andrew Jamie Woodward

in the presence of

sign here ►   
\_\_\_\_\_  
Witness

print name BEN COLLIER

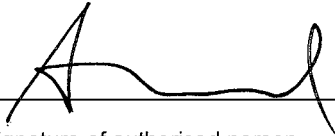
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**Trustee**

**Executed and delivered**

for and on behalf of The Trust Company (Australia) Limited (ABN 21 000 000 993)  
by its attorney under power of attorney dated 14 July 2014,  
who state that they have received no notice of revocation of the power of attorney:

  
\_\_\_\_\_

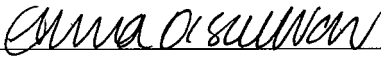
Signature of authorised person

ALEXANDER PAMPEL

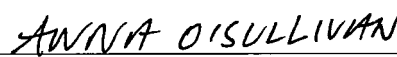
\_\_\_\_\_  
Name of authorised person

Senior Manager

\_\_\_\_\_  
Position of authorised person

  
\_\_\_\_\_

Signature of authorised person

  
\_\_\_\_\_

Name of authorised person

  
\_\_\_\_\_

Position of authorised person