



## **Anti-Money Laundering and Counter-Terrorism Financing (Exemption—Westpac Banking Corporation) Instrument 2020 (No. 1)**

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I, Kathryn Haigh, National Manager, Legal and Policy Branch, of the Australian Transaction Reports and Analysis Centre (AUSTRAC), make the following instrument as a delegate of the AUSTRAC CEO.

Dated 24/2/20

A handwritten signature in black ink, appearing to read 'K Haigh', written in a cursive style.

Kathryn Haigh  
National Manager, Legal and Policy Branch  
AUSTRAC

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## 1 Name

This instrument is the *Anti-Money Laundering and Counter-Terrorism Financing (Exemption—Westpac Banking Corporation) Instrument 2020 (No. 1)*.

## 2 Commencement

This instrument commences on the day after it is signed.

## 3 Cessation

This instrument ceases to have effect 28 days after:

- (1) the Court makes a final judgement or order to resolve the Court Proceedings; or
  - (2) the Court Proceedings are dismissed or discontinued;
- whichever is later.

## 4 Authority

This instrument is made under paragraphs 248(1)(a) and 248(2)(b) of the Act.

## 5 Definitions

Note: A number of expressions used in this instrument are defined in section 5 of the Act, including the following:

- (a) person.

In this instrument:

**Act** means the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

**Court** means the Federal Court of Australia.

**Court Proceedings** means:

- (a) the proceedings in the Court in File Number VID1373/2019 between Edmund How Fen Yong and Westpac; and
- (b) any appeal arising from the proceedings referred to in paragraph (a).

**Legal Practitioner** means a person who is:

- (a) a legal practitioner (howsoever described) engaged by, or on behalf of, Westpac; or
- (b) employed by a person who is engaged by, or on behalf of, Westpac under paragraph (a);

in connection with the Court Proceedings.

**related bodies corporate** has the same meaning as in section 50 of the *Corporations Act 2001*.

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***specified person*** means:

- (a) Westpac; or
- (b) a related body corporate of Westpac; or
- (c) a Legal Practitioner; or
- (d) a Third Party Expert.

***Suspicious Matter Material*** means any information relevant to the Court Proceedings, the disclosure of which would, but for the existence of this instrument, engage subsections 123(1), (2) or (3) of the Act.

***Third Party Expert*** means an expert appointed by Westpac or a Legal Practitioner in connection with the Court Proceedings.

***Westpac*** means the Westpac Banking Corporation ACN 007 457 141.

## **6 Application**

This instrument applies to communications or the disclosure of Suspicious Matter Material by:

- (1) Westpac; or
- (2) a related body corporate of Westpac; or
- (3) a Legal Practitioner;

which are made in connection with the Court Proceedings to a specified person.

## **7 Scope of exemption**

- (1) Westpac and its related bodies corporate are exempt from subsections 123(1), (2) and (3) of the Act.
- (2) A Legal Practitioner is exempt from subsection 123(5A) of the Act.

## **8 Conditions**

This instrument is subject to the following conditions:

- (1) Westpac and a Legal Practitioner each must:
  - (a) maintain a list in the form of the confidentiality table set out in Schedule 1 of all persons who are to receive Suspicious Matter Material; and
  - (b) update the list as soon as is practicable after each communication or disclosure of Suspicious Matter Material to an additional person; and
  - (c) send the updated list to the AUSTRAC CEO within 14 days after the communication or disclosure is made; and

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- (d) prior to making the first communication or disclosure of Suspicious Matter Material to a person who has not signed a confidentiality undertaking, require the person receiving the Suspicious Matter Material to sign the confidentiality undertaking in the form set out in Schedule 2 ; and

Note: A person is not required to sign a confidentiality undertaking for each subsequent communication or disclosure of Suspicious Matter Material.

- (e) take all reasonable steps after the conclusion of the Court Proceedings to:
- (i) obtain all physical copies of Suspicious Matter Material held by each specified person; and
  - (ii) request the deletion of all electronic copies of Suspicious Matter Material in the possession (actual or constructive) of each specified person; and
- (f) take all reasonable steps to ensure that Suspicious Matter Material is not disclosed outside of Australia; and
- (g) notify the AUSTRAC CEO in writing within 14 days of any event that may affect their ability to comply with this instrument;
- (2) Westpac must comply with subsection 8(1) on behalf of its related bodies corporate as if the conditions applied to the related bodies corporate.

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## Schedule 1—Confidentiality Table

Name	Position	Address	Date that name was provided to AUSTRAC

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## Schedule 2—Confidentiality Undertaking

I, \_\_\_\_\_,

of \_\_\_\_\_

undertake to AUSTRAC to:

- (1) keep Suspicious Matter Material confidential at all times; and
- (2) not make public or disclose Suspicious Matter Material either directly or indirectly to any person unless the disclosure is permitted by this undertaking; and
- (3) securely store any record of any Suspicious Matter Material; and
- (4) only disclose Suspicious Matter Material to:
  - (a) a Legal Practitioner engaged by, or on behalf of, Westpac who has signed an undertaking in this form; or
  - (b) a Third Party Expert who has signed an undertaking in this form; and
- (5) return any physical copies of documents containing Suspicious Matter Material to Westpac or Gilbert + Tobin immediately upon request; and
- (6) delete all electronic copies of documents containing Suspicious Matter Material immediately upon request by Westpac or Gilbert + Tobin, except in respect of electronic copies of documents containing Suspicious Matter Material that is stored on a back-up server for security and data recovery purposes that is not readily accessible.

For the avoidance of doubt, this undertaking does not preclude me from making communications or disclosures that are otherwise permitted by law.

In this undertaking:

**Gilbert + Tobin** means Gilbert + Tobin ABN 88 775 098 848 and includes any lawyer, employee, contractor, agent or legal counsel of Gilbert + Tobin engaged by, or on behalf of, Westpac in connection with the Court Proceedings.

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### **Important Notice to the person named in this instrument**

1. Under subsection 248(3) of the Act, a person granted an exemption subject to one or more conditions must comply with the conditions specified in the instrument. Failure to comply with subsection 248(3) is a civil penalty provision and may result in any or all of the following:
  - the exemption ceasing to apply to the person during any period in which the person does not comply with the relevant condition/s;
  - the exemption being revoked;
  - the AUSTRAC CEO applying to the Federal Court of Australia for a civil penalty order requiring the person to pay a pecuniary penalty in respect of the breach.
2. Under sections 136 and 137 of the Act, it is an offence to provide false or misleading information or documents. If any of the information submitted by the applicant or its representatives is found to be false or misleading, the exemption may be revoked and action initiated against the applicant.
3. The person granted the exemption may request the AUSTRAC CEO to revoke or vary the exemption at any time.
4. Any request to vary or extend this exemption must be submitted to the AUSTRAC CEO or an approved delegate no later than 90 days before the date the change is requested to commence.
5. This exemption does not preclude the person from making communications or disclosures that are otherwise permitted by law.