



## **Anti-Money Laundering and Counter-Terrorism Financing (Exemption—H.E.S.T Australia Limited) Instrument 2024 (No. 8)**

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I, Daniel Mossop, National Manager - Reform Policy and Mutual Evaluation of the Australian Transaction Reports and Analysis Centre (AUSTRAC), make the following instrument as delegate of the AUSTRAC CEO.

Dated 9 May 2024

A handwritten signature in blue ink, appearing to read 'Daniel Mossop', is positioned above the printed name.

Daniel Mossop  
National Manager – Reform Policy and Mutual Evaluation  
AUSTRAC

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## 1 Name

This instrument is the *Anti-Money Laundering and Counter-Terrorism Financing (Exemption—H.E.S.T Australia Limited) Instrument 2024 (No. 8)*.

## 2 Commencement

This instrument commences on the day after it is signed.

## 3 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## 4 Cessation

This instrument ceases to have effect:

- (1) 3 years from the date the instrument is signed; or
  - (2) when the Investigation has concluded;
- whichever occurs first.

## 5 Authority

This instrument is:

- (3) made under subsection 248(1)(a) of the Act; and
- (4) subject to the conditions in section 8 of this instrument, made under subsection 248(2)(b) of the Act.

## 6 Definitions

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

- (a) Person.
- (b) Disclose.

In this instrument:

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

**Contractor** means a person that is contracted from one of the following companies to undertake activities in connection with the Investigation:

- (a) Ethan Global Pty Ltd ABN: 93 099 503 456
- (b) Protiviti Pty Ltd ABN: 27 108 473 909
- (c) Astralas Pty Ltd ABN: 84 634 189 281
- (d) Grow Super Ops Pty Ltd ABN: 83 617 346 568.

**HESTA** means H.E.S.T Australia Limited ABN: 66 006 818 695.

**Investigation** means activities conducted for the purposes of, or in connection with, an investigation [REDACTED] concerning the detection, investigation, and/or remediation of HESTA's internal processes and systems, to address operational risk [REDACTED].

**Suspicious Matter Material** means any information the disclosure of which would, but for the existence of this instrument, engage subsection 123(1)(b) of the Act.

## 7 Application

This instrument applies to the disclosure of Suspicious Matter Material by HESTA, made for the purposes of, or in connection with, the Investigation.

## 8 Scope of exemption

Subject to the conditions specified in section 8 of this instrument:

- (1) HESTA are exempt from subsection 123(1)(b) of the Act insofar as the disclosure of Suspicious Matter Material is to a Contractor for the purposes of, or in connection with, the Investigation.

## 9 Conditions

This instrument is subject to the following conditions:

- (1) Prior to the disclosure of Suspicious Matter Material to a Contractor, HESTA must ensure that the Contractor has signed a confidentiality undertaking or deed (hereafter referred to as the **confidentiality undertaking**).
- (2) The confidentiality undertaking must:
  - (a) include the obligations set out in Schedule 1; and
  - (b) remain in force:
    - a. for the period during which the Contractor is engaged for the purposes of, or in connection with, the Investigation; and
    - b. until the Contractor is not in possession of Suspicious Matter Material; and
  - (c) be enforceable.
- (3) HESTA must make and retain a record of the confidentiality undertakings given in compliance with subsection 8(2) of this Instrument, using the form set out in Schedule 2.
- (4) HESTA must provide the AUSTRAC CEO with a copy of the confidentiality undertakings obtained under subsection 8(2) of this instrument, if requested to do so, within 5 business days of the request being made by AUSTRAC in writing.
- (5) HESTA must, in writing, notify the AUSTRAC CEO within 14 days of becoming aware of any event that may affect its ability to comply with this instrument.

## **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. This exemption is specific to, or is based on an assessment of the:
  - information or documents provided by, or on behalf of, the person to AUSTRAC in support of the application made under subsection 248(1) of the Act; and
  - facts and circumstances relevant to the application, including the nature and type of business activities the person undertakes at the time of the application.
3. Under sections 136 and 137 of the Act, it is an offence to provide false or misleading information or documents to the AUSTRAC CEO. 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.
4. The person granted the exemption may request the AUSTRAC CEO to revoke or vary the exemption at any time.
5. 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.
6. This exemption does not preclude the person from making communications or disclosures that are otherwise permitted by law.

# SCHEDULE 1 - Confidentiality Undertaking

## Obligations for Contractors

- (1) In connection with the investigations, the Contractor must:
- (a) keep Suspicious Matter Material confidential at all times;
  - (b) ensure that Suspicious Matter Material is only used for the purpose of the Investigation;
  - (c) ensure Suspicious Matter Material is securely stored;
  - (d) put in place adequate safeguards to protect Suspicious Matter Material from unauthorised use or disclosure;
  - (e) notify HESTA of any breaches of the confidentiality undertaking within 14 days of becoming aware of the breach;
  - (f) return or destroy all Suspicious Matter Material in their possession after completion of the Investigation; and
  - (g) comply with the Privacy Act at all times in respect of any personal information that has been disclosed.
- (2) For the avoidance of doubt, this undertaking:
- (a) does not preclude the Contractor from making communications or disclosures that are otherwise permitted by law.

In the undertaking:

**Contractor** means a person that is contracted from one of the following companies to undertake activities in connection with the Investigation:

- (a) Ethan Global Pty Ltd ABN: 93 099 503 456;
- (b) Protiviti Pty Ltd ABN: 27 108 473 909;
- (c) Astralas Pty Ltd ABN: 84 634 189 281; or
- (d) Grow Super Ops Pty Ltd ABN: 83 617 346 568.

**HESTA** means H.E.S.T Australia Limited ABN: 66 006 818 695.

**Investigation** means activities conducted for the purposes of, or in connection with, an investigation [REDACTED] concerning the detection, investigation, and/or remediation of HESTA's internal processes and systems, to address operational risk [REDACTED].

**Suspicious Matter Material** means any information the disclosure of which would, but for the existence of this instrument, engage subsection 123(1)(b) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth).

**Privacy Act** means the *Privacy Act 1988* (Cth).

## SCHEDULE 2 - Confidentiality Undertaking Table

Name	Position	Employing entity	Date of undertaking

### **SCHEDULE 3—Repeals**

#### ***Anti-Money Laundering and Counter-Terrorism Financing (Exemption—H.E.S.T Australia Limited) Instrument 2024 (No. 6)***

##### **1 The whole of the instrument**

Repeal the instrument