



Anti-Money Laundering and Counter-Terrorism Financing (Exemption—Commonwealth Bank of Australia) Instrument 2024 (No. 13)

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 10 July 2024

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—Commonwealth Bank of Australia) Instrument 2024 (No. 13)*.

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 Fair Work Commission makes a final decision or order to resolve the Fair Work Proceedings; or
 - (2) the Fair Work Proceedings are finally dismissed or discontinued;
- whichever occurs first.

4 Authority

This instrument is:

- (1) made under paragraph 248(1)(a) of the Act; and
- (2) subject to the conditions in section 8 of this instrument, as authorised under paragraph 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.
- (b) Disclose.

In this instrument:

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

Applicant means [REDACTED], the applicant in the Fair Work Proceedings.

Applicant's Legal Representatives means a person who is or works for a legal practitioner engaged by, or on behalf of, the Applicant for the purposes of or in connection with the Fair Work Proceedings.

CBA means Commonwealth Bank of Australia (ABN 48 123 123 124).

CBA Legal Representatives means a person who is or works for a legal practitioner engaged by, or on behalf of, CBA for the purposes of or in connection with the Fair Work Proceedings.

Fair Work Proceedings means REDACTED (matter number REDACTED) between the Applicant and CBA in the Fair Work Commission, and any referral arising from that proceeding.

Suspicious Matter Material means any information relevant to the Fair Work Proceedings, the disclosure of which would, but for the existence of this instrument, contravene subsection 123(1)(b) of the Act, and includes the information identified in Schedule 1 of this instrument.

6 Application

- (1) This instrument applies to the disclosure of Suspicious Matter Material by CBA or CBA Legal Representatives to the following individuals and entities:

- (a) the Applicant;
- (b) the Applicant's Legal Representatives;
- (c) the Fair Work Commission; and
- (d) a court in any referral arising from the Fair Work Proceedings.

for the purposes of or in connection with the Fair Work Proceedings.

- (2) To avoid doubt, if, in accordance with this instrument, CBA or CBA Legal Representatives discloses Suspicious Matter Material to the Fair Work Commission or to a court in any referral arising from the Fair Work Proceedings, the Applicant or the Applicant's Legal Representatives, subsection (1) is not taken to affect whether the information is admissible in evidence.

Note: A document purporting to set out information contained in a report given under subsection 41(2) of the Act is not admissible in evidence in any court or tribunal proceedings (see section 124 of the Act).

7 Scope of exemption

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

- (1) CBA is exempt from paragraph 123(1)(b) of the Act; and
- (2) CBA Legal Representatives are exempt from subsection 123(5A) of the Act.

8 Conditions

This instrument is subject to the following conditions:

- (1) CBA or a CBA Legal Representative must only disclose Suspicious Matter Material to the Applicant or the Applicant's Legal Representatives if each recipient first signs the confidentiality undertaking in the form set out in Schedule 2 to this instrument.
- (2) CBA must obtain orders in substantially the form listed in subsection (3) below from the Fair Work Commission (or comparable orders from a court in any referral arising from the Fair Work Proceedings) before disclosing Suspicious Matter Material to the Applicant or the Applicant's Legal Representatives.

- (3) CBA must seek the following orders from the Fair Work Commission under the *Fair Work Act 2009* (Cth) in the Fair Work Proceedings:
 - (a) an order to prohibit the publication of Suspicious Matter Material such that the information is not made available to the public;
 - (b) an order to conduct the hearing in private when Suspicious Matter Material is being disclosed or discussed; and
 - (c) an order to restrict public access to Suspicious Matter Material (if any) in the record of decision.
- (4) If the Fair Work Commission has not made or does not make the orders listed in subsection (3) above, CBA or CBA Legal Representatives may disclose the following information to the Applicant or the Applicant's Legal Representatives:
 - (a) CBA is prohibited from disclosing Suspicious Matter Material to the Applicant, or the Applicant's Legal Representatives, under section 123 of the Act;
 - (b) AUSTRAC is the relevant regulator of the statutory regime that prohibits the disclosure of Suspicious Matter Material; and
 - (c) CBA wishes to rely on Suspicious Matter Material to defend itself in the Fair Work Proceedings.
- (5) CBA must, in writing, notify the AUSTRAC CEO within 14 days of any event that may affect its ability to comply with this instrument.

Schedule 1—Suspicious Matter Material (Confidential)

1 Suspicious Matter Material

- (1) Any or all of the statements set out in this Schedule are Suspicious Matter Material for the purposes of this instrument.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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 Suspicious Matter Material; and
- (4) only disclose Suspicious Matter Material to:
 - a. CBA and CBA Legal Representatives; and
 - b. any of the Applicant and the Applicant's Legal Representatives, where those persons have first signed an undertaking in this form

for the purposes of or in connection with the Fair Work Proceedings

- (5) return any physical copies of documents containing Suspicious Matter Material to CBA immediately upon request by CBA or CBA Legal Representatives, following cessation of the Fair Work Proceedings; and
- (6) delete all electronic copies of documents containing Suspicious Matter Material immediately upon request by CBA or CBA Legal Representatives, following cessation of the Fair Work Proceedings, except in respect of electronic copies of documents containing Suspicious Matter Material that are stored on a back-up server for security and data recovery purposes and not readily accessible or as required by law to be retained.

For the avoidance of doubt, this undertaking does not preclude me from disclosing Suspicious Matter Material under the *Anti-Money Laundering and Counter-Terrorism Financing (Exemption—Commonwealth Bank of Australia) Instrument 2024 (No. 13)*, or making disclosures that are otherwise permitted by law.

In this undertaking:

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

Applicant means [REDACTED], the applicant in the Fair Work Proceedings.

Applicant's Legal Representatives means a person who is or works for a legal practitioner engaged by, or on behalf of, the Applicant for the purposes of or in connection with the Fair Work Proceedings.

CBA means Commonwealth Bank of Australia (ABN 48 123 123 124).

CBA Legal Representatives means a person who is or works for a legal practitioner engaged by, or on behalf of, CBA for the purposes of or in connection with the Fair Work Proceedings.

Fair Work Proceedings means REDACTED (matter number REDACTED) between the Applicant and CBA in the Fair Work Commission, and any referral arising from that proceeding.

Suspicious Matter Material means any information relevant to the Fair Work Proceedings, the disclosure of which would, but for the existence of this instrument, contravene subsection 123(1)(b) of the Act, and includes the information identified in Schedule 1 of 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.