



Anti-Money Laundering and Counter-Terrorism Financing (Exemption—Commonwealth Bank of Australia) Exemption 2024 (No. 17)

I, Daniel Mossop, National Manager, Policy, Rules and Guidance Branch of the Australian Transaction Reports and Analysis Centre (AUSTRAC) make the following instrument as a delegate of the AUSTRAC CEO.

Dated 29 October 2024

A handwritten signature in blue ink, appearing to read 'D Mossop', is written over the name of the signatory.

Daniel Mossop
National Manager, Policy, Rules and Guidance Branch
AUSTRAC

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1 Name

This instrument is the *Anti-Money Laundering and Counter-Terrorism Financing (Exemption—Commonwealth Bank of Australia) Exemption 2024 (No. 17)*.

2 Commencement

This instrument commences on the day after it is signed.

3 Cessation

This instrument ceases to have effect 28 days after:

- (1) a judgment or order is made that resolves the Proceedings; or
 - (2) the Proceedings are dismissed or discontinued;
- whichever occurs first.

If an appeal to the Proceedings is commenced, this instrument will cease to have effect 28 days after:

- (1) a judgment or order is made that resolves the appeal; or
 - (2) the appeal is dismissed or discontinued;
- whichever occurs first.

4 Authority

This instrument is:

- (a) made under paragraph 248(1)(a) of the Act; and
- (b) 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) Disclose;
- (b) Person.

In this instrument:

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

Applicants means [REDACTED].

Applicants' Legal Representatives means a person who is:

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

for the purposes of, or in connection with, the Proceedings.

CBA means the Commonwealth Bank of Australia ABN: 48 123 123 124.

CBA Legal Representatives means a person who is:

- (a) a legal practitioner (howsoever described) engaged by or on behalf of, CBA; or
- (b) employed by a person who is engaged by, or on behalf of, CBA under paragraph (a);
for the purposes of, or in connection with, the Proceedings.

Court means

- (a) [REDACTED]; or
- (b) any court where an appeal to the Proceedings is commenced.

Proceedings means

- (a) [REDACTED]; and
- (b) any appeal arising from the Proceedings.

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

6 Application

This instrument applies to the disclosure of Suspicious Matter Material by CBA and CBA Legal Representatives to the following persons for the purposes of, or in connection with the Proceedings (each a **Recipient**):

- (1) the Applicants;
- (2) the Applicants' Legal Representatives;
- (3) a mediator;
- (4) an individual who is asked to provide evidence in the Proceedings; and
- (5) any third-party transcription or other courtroom hearing-related technology service provider.

7 Scope of exemption

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

- (1) CBA are 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 CBA Legal Representatives may only disclose Suspicious Matter Material to a Recipient where a Recipient has signed a confidentiality deed or confidentiality

agreement (hereafter referred to as a **confidentiality agreement**), and prior to entering into a confidentiality agreement, the Recipient has been made aware of the following:

- (a) AUSTRAC is the relevant regulator of the statutory regime that prohibits the disclosure of Suspicious Matter Material; and
- (b) CBA has obtained an exemption from AUSTRAC that allows CBA to disclose Suspicious Matter Material to a Recipient provided that certain conditions are met; and
- (c) Where a Recipient has not signed a confidentiality agreement, CBA is prohibited from disclosing Suspicious Matter Material to a Recipient.

Note: the confidentiality agreement may be a stand-alone agreement or form part of an agreement between CBA and the Recipient(s) for the purpose of, or in connection with the Proceedings, and/or any mediation to resolve the Proceedings.

- (2) The confidentiality agreement must:
 - (a) include the obligations set out in Schedule 1; and
 - (b) be enforceable.
- (3) In circumstances where Suspicious Matter Material is adduced, and the Court admits the material into evidence in the Proceedings, the Suspicious Matter Material is subject to suppression orders made by the Court in the Proceedings prohibiting the publication or other disclosure of the material.

Note: this condition is intended to ensure that the protection of certain material by section 123 of the Act is not compromised, while recognising that it is entirely a matter for the Court to determine whether orders should be made and, if so, the appropriate terms of any such orders.

- (4) CBA 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.

Schedule 1—Confidentiality agreement

Obligations for Recipients

In connection with the Proceedings, a Recipient must:

- (1) keep Suspicious Matter Material confidential at all times; and
- (2) ensure that Suspicious Matter Material is only used for the purpose of, or in connection with the Proceedings and/or mediation to resolve the Proceedings; and
- (3) not make public or disclose Suspicious Matter Material either directly or indirectly to any person, unless the disclosure is permitted by the confidentiality agreement; and
- (4) only disclose Suspicious Matter Material to:
 - (a) CBA; or
 - (b) CBA Legal Representatives, or
 - (c) a Recipient, where the Recipient has first signed a confidentiality agreement for the purpose of, or in connection with the Proceedings; and
- (5) ensure Suspicious Matter Material is securely stored; and
- (6) return or destroy all Suspicious Matter Material in their possession following cessation of the Proceedings and/or mediation to resolve the Proceedings where it is no longer required to be retained for legal requirements.
- (7) If a Recipient is a former CBA employee who has information that engages paragraph 123(1)(a) of the Act and which is relevant to the Proceedings, in addition to the obligations set out in Schedule 1 (1) to (6), the former CBA employee must not make public or disclose that information.
- (8) In circumstances where Suspicious Matter Material is adduced, and the Court admits the material into evidence in the Proceedings, the Suspicious Matter Material is subject to suppression orders made by the Court in the Proceedings prohibiting the publication or other disclosure of the material.

Note: this is intended to ensure that the protection of certain material by section 123 of the Act is not compromised, while recognising that it is entirely a matter for the Court to determine whether orders should be made and, if so, the appropriate terms of any such orders.

In the confidentiality agreement:

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

Applicants means [REDACTED].

Applicants' Legal Representatives means a person who is:

- (a) a legal practitioner (howsoever described) engaged by or on behalf of, the Applicants; or
 - (b) employed by a person who is engaged by, or on behalf of the Applicants under paragraph (a);
- for the purposes of, or in connection with, the Proceedings.

CBA means the Commonwealth Bank of Australia ABN: 48 123 123 124.

CBA Legal Representatives means a person who is:

- (a) a legal practitioner (howsoever described) engaged by or on behalf of, CBA; or
 - (b) employed by a person who is engaged by, or on behalf of, CBA under paragraph (a);
- for the purposes of, or in connection with, the Proceedings.

Court means

- (a) [REDACTED]; or
- (b) any court where an appeal to the Proceedings is commenced.

Proceedings means

- (a) [REDACTED]; and
- (b) any appeal arising from the Proceedings.

Recipient means any of the following persons engaged for the purposes of, or in connection with, the Proceedings:

- (a) the Applicants; or
- (b) the Applicants' Legal Representatives; or
- (c) a mediator; or
- (d) an individual who is asked to provide evidence in the Proceedings; or
- (e) any third-party transcription or other courtroom hearing-related technology service provider.

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

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.