



Anti-Money Laundering and Counter-Terrorism Financing (Exemption— Westpac Banking Corporation – Federal Court Mediation) Instrument 2025 (No. 3)

I, Daniel Mossop, National Manager, make the following instrument as a delegate of the AUSTRAC CEO.

Dated 7 March 2025

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

Daniel Mossop
National Manager, Policy, Rules and Guidance
Australian Transaction Reports and Analysis Centre

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1 Name

This instrument is the *Anti-Money Laundering and Counter-Terrorism Financing (Exemption—Westpac Banking Corporation – Federal Court Mediation) Instrument 2025 (No. 3)*.

2 Commencement

This instrument commences on the day after it is signed.

3 Cessation

This instrument ceases to have effect on the earlier of:

- a) 2 days after the conclusion of a mediation; or
- b) 31 March 2025.

4 Authority

This instrument is made:

- a) 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) person;
- (b) disclose.

In this instrument:

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

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

Applicant's Legal Representatives means a person who is:

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

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

Exempt Person means a person exempt from one or more provisions of the Act under section 7 of this instrument and includes any employee or contractor employed or engaged by the person.

Mediation means a mediation process pursuant to orders by the Federal Court of Australia for the purpose of the Proceedings and facilitated by a mediator that is intended to facilitate the parties to the proceedings resolving one or more of the matters in dispute.

Mediator means a mediator accredited by the Federal Court Mediator Accreditation Scheme, or a mediator nominated by agreement between the parties to the Proceedings.

Proceedings means [REDACTED]
in the Federal Court of Australia.

Recipient means any of the following persons:

- (a) the Applicant; or
- (b) the Applicant's Legal Representatives; or
- (c) a Mediator.

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

Westpac means Westpac Banking Corporation (ABN 33 007 457 141).

Westpac Legal Representatives means a person who is:

- (a) a legal practitioner 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);

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

6 Application

This instrument applies to the disclosure of Suspicious Matter Material by an Exempt Person to a Recipient for the purposes of, or in connection with the Proceedings.

7 Exempt provisions

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

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

8 Conditions

- (1) An Exempt Person may only disclose Suspicious Matter Material to a Recipient for the purpose of a Mediation.
- (2) An Exempt Person may only disclose Suspicious Matter Material to a Recipient where a Recipient has signed a confidentiality agreement (**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) An Exempt Person has obtained an exemption from AUSTRAC that allows the Exempt Person to disclose Suspicious Matter Material to a Recipient provided that certain conditions are met; and

- (c) An Exempt Person has identified the information as Suspicious Matter Material;
and
- (d) Where the Recipient has not signed a confidentiality agreement, the Exempt Person 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 Westpac and the Recipient(s) for the purpose of, or in connection with the Proceedings, and/or any mediation to resolve the Proceedings.

- (3) The confidentiality agreement must:
 - (a) include the obligations set out in Schedule 1; and
 - (b) be enforceable.
- (4) Each Exempt Person must maintain a record of the Suspicious Matter Material that has been disclosed to a recipient under this instrument.
- (5) An Exempt Person must ensure that the recipients return or destroy all Suspicious Matter Material in their possession following the Mediation.
- (6) An Exempt Person 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 Mediation; and
- (3) not cause any of the Suspicious Matter Material disclosed pursuant to this exemption to be admitted into evidence in the Proceedings prior to 31 March 2025.
- (4) 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
- (5) only disclose Suspicious Matter Material to:
 - (a) Westpac; or
 - (b) Westpac Legal Representatives, or
 - (c) The Applicant; or
 - (d) The Applicant’s Legal Representatives; or
 - (e) a Mediator,where the Recipient has first signed a confidentiality agreement; and
- (6) ensure Suspicious Matter Material is securely stored; and
- (7) return or destroy all Suspicious Matter Material in their possession following cessation of the Mediation.

In the confidentiality agreement:

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

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

Applicant’s Legal Representatives means a person who is:

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

Mediation means a mediation process pursuant to orders by the Federal Court of Australia for the purpose of the Proceedings and facilitated by a mediator that is intended to facilitate the parties to the proceedings resolving one or more of the matters in dispute.

Mediator means a mediator accredited by the Federal Court Mediator Accreditation Scheme, or a mediator nominated by agreement between the parties to the Proceedings.

Proceedings means [REDACTED]
in the Federal Court of Australia.

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

- (a) the Applicant; or
- (b) the Applicant's Legal Representatives; or
- (c) a Mediator.

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.

Westpac means the Westpac Banking Corporation (ABN 33 007 457 141).

Westpac Legal Representatives means a person who is:

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

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.