



Anti-Money Laundering and Counter-Terrorism Financing (Exemption—Westpac) Instrument 2021 (No. 1 of 2021)

I, Alex Elith, of the Australian Transaction Reports and Analysis Centre (AUSTRAC), make the following instrument as a delegate of the AUSTRAC CEO.

Dated 5 JANUARY 2021

Alex Elith
Acting National Manager, Legal and Enforcement
AUSTRAC

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1 Name

This instrument is the *Anti-Money Laundering and Counter-Terrorism Financing (Exemption—Westpac) Instrument 2021 (No. 1 of 2021)*.

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 occurs first.

4 Authority

This instrument is made under paragraph 248(1)(a) 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.

Phi Finney means Phi Finney McDonald Pty Ltd ABN 59 618 727 905 and includes any lawyer, employee, legal contractor, agent or legal counsel engaged

by, or on behalf of, Phi Finney McDonald in connection with the Court Proceedings.

specified person means:

- (a) a Legal Practitioner; or
- (b) Phi Finney.

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), (3) or (5A) of the Act.

Third Party Expert means an expert appointed by Phi Finney 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 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) The Legal Practitioners are exempt from subsection 123(5A) of the Act.

8 Conditions

This instrument is subject to the following conditions:

- (1) In respect of a proposed communication or disclosure of Suspicious Matter Material:
 - (a) by Westpac or the Legal Practitioner to an individual falling under paragraph (b) of the definition of “specified person”; or
 - (b) by an individual falling under paragraph (b) of the definition of “specified person” to another individual falling under paragraph (b) of the definition of “specified person” or to a Third Party Expert;

each recipient to whom it is proposed the Suspicious Matter Material be communicated or disclosed must sign a confidentiality undertaking in the form set out in Schedule 2 before the first communication or disclosure is made; and

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

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- (2) Westpac and the specified persons will each maintain a list in the form of the confidentiality table set out in Schedule 1 of all individuals falling under paragraph (b) of the definition of “specified person” and all Third Party Experts, who they communicate or disclose Suspicious Matter Material to, and will:
 - (a) update their list as soon as is practicable after each communication or disclosure of Suspicious Matter Material to an additional person; and
 - (b) send their list to AUSTRAC (exemptions@austrac.gov.au) within 14 days after the communication or disclosure is made; and
 - (3) Each specified person falling under paragraph (b) of the definition of “specified person” and each Third Party Expert will take all reasonable steps after the conclusion of the Court Proceedings to:
 - (a) obtain and return to Westpac or to a Legal Practitioner all physical copies of Suspicious Matter Material held by them; and
 - (b) delete all electronic copies of Suspicious Matter Material in their possession (actual or constructive); and
 - (4) Each specified person and each Third Party Expert will take all reasonable steps to ensure that Suspicious Matter Material is not disclosed, or caused to be disclosed, outside of Australia; and
 - (5) Westpac and each specified person will notify the AUSTRAC CEO in writing within 14 days of any event that contravenes, or may affect their ability to comply with, this instrument.

Schedule 1—Confidentiality Table

Name	Position	Address	Date that name was provided to AUSTRAC

Schedule 2—Confidentiality Undertaking

I, _____,

of _____

undertake to AUSTRAC to:

- (1) keep Suspicious Matter Material disclosed to me confidential at all times; and
- (2) not make public or disclose, and not cause to be made public or disclosed, Suspicious Matter Material either directly or indirectly to any person unless the disclosure is in accordance with the terms of this undertaking; and
- (3) securely store any record, including copies, of any Suspicious Matter Material disclosed to me or which I otherwise have access to; and
- (4) only disclose Suspicious Matter Material to:
 - (a) a Legal Practitioner engaged by, or on behalf of, Westpac in connection with the Court Proceedings; or
 - (b) a lawyer, employee, legal contractor, agent or legal counsel engaged by, or on behalf of, Phi Finney in connection with the Court Proceedings; or
 - (c) a Third Party Expert who has signed an undertaking in this form;in connection with the Court Proceedings; and
- (5) after the conclusion of the Court Proceedings, return any physical copies of documents containing Suspicious Matter Material to Westpac immediately upon request by Westpac or a Legal Practitioner engaged by, or on behalf of, Westpac in connection with the Court Proceedings; and
- (6) after the conclusion of the Court Proceedings, delete all electronic copies of documents containing Suspicious Matter Material immediately upon request by Westpac or a Legal Practitioner engaged by, or on behalf of, Westpac in connection with the Court Proceedings, 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:

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

Court means the Federal Court of Australia.

Court Proceedings means:

- (c) the proceedings in the Court in File Number VID1373/2019 between Edmund How Fen Yong and Westpac; and
- (d) 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.

Phi Finney means Phi Finney McDonald Pty Ltd ABN 59 618 727 905 and includes any lawyer, employee, legal contractor, agent or legal counsel engaged by, or on behalf of, Phi Finney McDonald in connection with the Court Proceedings.

specified person means:

- (a) a Legal Practitioner; or
- (b) Phi Finney.

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), (3) or (5A) of the Act.

Third Party Expert means an expert appointed by Phi Finney in connection with the Court Proceedings.

Westpac means the Westpac Banking Corporation ACN 007 457 141.

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:
 - a. information or documents provided by, or on behalf of, the person to AUSTRAC in support of the exemption application; and
 - b. facts and circumstances relevant to the exemption 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. 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.