



Anti-Money Laundering and Counter-Terrorism Financing (Exemption—Westpac Banking Corporation) Instrument 2021 (No. 9)

I, Kathryn Miller, make the following instrument as a delegate of the AUSTRAC CEO.

Dated 15 March 2021

A handwritten signature in blue ink that reads 'K. Miller'.

Kathryn Miller
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 Banking Corporation) Instrument 2021 (No. 9)*.

2 Commencement

This instrument commences on the day after it is signed.

3 Cessation

This instrument ceases to have effect on the day after the Fair Work Commission makes a decision to resolve the Fair Work proceedings.

4 Authority

This instrument is:

- (a) made under paragraph 248(1)(a) of the Act; and
- (b) subject to conditions as authorised under paragraph 248(2)(b) of the Act.

5 Definitions

In this instrument:

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

Applicant means REDACTED the applicant in the Fair Work proceedings.

Fair Work proceedings means the hearing in the Fair Work Commission in matter number REDACTED.

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 described in paragraph (a);

in connection with the Fair Work proceedings.

protected information means any or all of the statements set out in Schedule 1 to this instrument.

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

6 Application

- (1) This instrument applies to the disclosure of protected information by Westpac or a legal practitioner to the following persons:
 - (a) the Fair Work Commission;
 - (b) the Applicant;
 - (c) the Applicant's legal representatives;

in connection with the Fair Work proceedings.

- (2) To avoid doubt, if, in accordance with this instrument, Westpac or a legal practitioner discloses protected information to the Fair Work Commission, 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 Exempt provisions

- (1) Westpac is exempt from subsection 123(2) of the Act.
- (2) A legal practitioner is exempt from subsection 123(5A) of the Act.

8 Conditions

- (1) This section specifies conditions that apply to the exemption.
- (2) Westpac must only disclose protected information to a legal practitioner if the legal practitioner has signed the confidentiality undertaking in the form set out in Schedule 2 to this instrument.
- (3) Westpac must obtain the orders listed in subsection (4) from the Fair Work Commission before disclosing protected information to the Commission.
- (4) Westpac must seek the following orders from the Fair Work Commission under the *Fair Work Act 2009*:
 - (a) an order to prohibit the publication of protected information such that the information is not made available to the public;
 - (b) an order to conduct the hearing in closed court when protected information is being disclosed or discussed;
 - (c) an order to restrict public access to protected information (if any) in the court file;
 - (d) orders for the storage of protected information during the Fair Work proceedings and for the return or destruction of protected information after the proceedings as the Commission sees fit.
- (5) If the Fair Work Commission does not make the orders listed in subsection (4), Westpac or a legal practitioner may disclose the following information to the Commission:
 - (a) Westpac is prohibited from disclosing protected information to the Commission under section 123 of the Act;
 - (b) AUSTRAC is the relevant regulator of the statutory regime that prohibits the disclosure of protected information.
- (6) Westpac 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—Protected information

1 Protected information

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

REDACTED

REDACTED

REDACTED

Schedule 2—Confidentiality undertaking

I, _____,

of _____

undertake to AUSTRAC to:

- (1) keep protected information confidential at all times; and
- (2) not make public or disclose protected information either directly or indirectly to any person unless the disclosure is permitted by this undertaking; and
- (3) securely store any record of protected information; and
- (4) only disclose protected information to a legal practitioner engaged by, or on behalf of, Westpac who has signed an undertaking in this form in connection with the Fair Work proceedings; and
- (5) return any physical copies of documents containing protected information to Westpac immediately upon request; and
- (6) delete all electronic copies of documents containing protected information immediately upon request by Westpac or a legal practitioner, except in respect of electronic copies of documents containing protected information that are stored on a back-up server for security and data recovery purposes and not readily accessible.

For the avoidance of doubt, this undertaking does not preclude me from disclosing protected information under the *Anti-Money Laundering and Counter-Terrorism Financing (Exemption—Westpac Banking Corporation) Instrument 2021 (No. 9)*, or making disclosures that are otherwise permitted by law.

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. 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.
3. The person granted the exemption may request the AUSTRAC CEO to revoke or vary the exemption at any time.
4. 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.
5. This exemption does not preclude the person from making communications or disclosures that are otherwise permitted by law.