



Anti-Money Laundering and Counter-Terrorism Financing (Exemption—Westpac Banking Corporation) Instrument 2022 (No. 7)

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

Dated 6 June 2022

A handwritten signature in blue ink, appearing to read 'K. Miller', is positioned below the date.

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 2022 (No. 7)*.

2 Commencement

This instrument commences on 2 August 2022.

3 Cessation

This instrument ceases on 1 August 2025.

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

Note: A number of expressions used in this instrument are defined in section 5 of the Act, including the following:

- (a) AML/CTF Rules;
- (b) customer;
- (c) designated service;
- (d) person;
- (e) personal information;
- (f) reporting entity.

In this instrument:

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

AML/CTF services (short for anti-money laundering and counter-terrorism financing services) means the following services to be provided by a contractor to Westpac:

- (a) monitoring, reviewing or analysing transactions made by Westpac customers stored on, or accessible through, Westpac systems;
- (b) processing and reviewing transaction monitoring alerts in relation to the transactions referred to in paragraph (a);
- (c) undertaking ongoing customer due diligence or enhanced customer due diligence measures in relation to Westpac customers;
- (d) escalating matters to Westpac for review, including matters that may result in the lodgement of suspicious matter reports by Westpac in accordance with section 41 of the Act;

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- (e) providing information technology, maintenance and business support services in respect of Westpac systems that store suspicious matter material or from which suspicious matter material is accessible; or
 - (f) investigating suspected misconduct or fraud involving Westpac employees or contractors.

contractor means a person contracted by Westpac, either directly or via a contractor supplier to provide one or more of the AML/CTF services to Westpac.

contractor supplier means a person that supplies contractors to Westpac.

Divisional Financial Crime Officer means a Divisional Financial Crime Officer appointed by Westpac, or his/her delegate.

suspicious matter material means any information, the disclosure of which would engage subsections 123(1) or (2) of the Act.

suspicious matter report means a report given to the AUSTRAC CEO under subsection 41(2) of the Act.

Westpac means Westpac Banking Corporation ACN 007 457 141 and any entity within the Westpac designated business group.

Westpac system means a computer system or digital infrastructure owned or operated by Westpac.

6 Application

This instrument applies to Westpac in relation to the disclosure of suspicious matter material.

7 Exempt provisions

Westpac is exempt from subsections 123(1) and (2) of the Act.

8 Conditions

- (1) This section specifies conditions that apply to the exemption.

Prohibitions

- (2) Except as permitted under section 123 of the Act or this section, Westpac must not communicate, or make disclosures of, suspicious matter material.
- (3) Westpac may only disclose suspicious matter material in the following circumstances:
 - (a) the disclosure is made by Westpac to a contractor for the purpose of providing one or more of the AML/CTF services to Westpac;
 - (b) the contractor must be:
 - (i) subject to risk-based screening and re-screening processes and procedures that are equivalent to the processes and procedures included in the employee due diligence program that has been

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- implemented by Westpac in accordance with Part 8.3 of the AML/CTF Rules; and
- (ii) subject to training requirements that are equivalent to the requirements under the AML/CTF risk awareness training program that has been implemented by Westpac in accordance with Part 8.2 of the AML/CTF Rules prior to the receipt of, or access to the suspicious matter material;
 - (c) in the case of contractors engaged directly by Westpac, the Divisional Financial Crime Officer must approve, in writing, the access or receipt of suspicious matter material by the contractor prior to the contractor's receipt of or access to the suspicious matter material;
 - (d) in the case of contractors engaged via a contractor supplier, the Divisional Financial Crime Officer must approve, in writing, the engagement of the contractor supplier prior to the contractor's receipt of or access to the suspicious matter material;
 - (e) the disclosure is made in accordance with Westpac's information security policies and procedures; and
 - (f) the suspicious matter material is:
 - (i) handled, stored, used and disclosed in accordance with Westpac's information security policies and procedures at all times;
 - (ii) securely stored in data centres located in Australia; and
 - (iii) accessed through an encrypted connection.

Confidentiality undertaking

- (4) Westpac must:
 - (a) ensure that a separate confidentiality undertaking is provided by:
 - (i) every contractor supplier; and
 - (ii) every contractor that provides the AML/CTF services to Westpac; and
 - (b) maintain a list of contractors and contractor suppliers who have entered into a confidentiality undertaking; and
 - (c) provide the AUSTRAC CEO with:
 - (i) a list referred to in paragraph 4(b); or
 - (ii) confirmation that there has been no change to the list referred to in paragraph 4(b),
every three months in each calendar year or by such other date as agreed with AUSTRAC from time to time.

Note: The confidentiality undertaking may be a stand-alone undertaking or form part of the agreement between Westpac and the contractor or contractor supplier for the provision of the AML/CTF services to Westpac.

- (5) The confidentiality undertaking must:
 - (a) be provided in favour of Westpac before the AML/CTF services are provided to Westpac;
 - (b) be capable of enforcement by injunction or damages;

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- (c) incorporate the obligations set out in Schedule 1;
 - (d) be produced and provided by Westpac to AUSTRAC within 5 business days of receiving a written request from AUSTRAC; and
 - (e) continue in force until:
 - (i) the AML/CTF services are no longer provided to Westpac; and
 - (ii) the contractor is no longer in possession of suspicious matter material that relates to Westpac customers.

Notify AUSTRAC CEO of inability to comply

- (6) Westpac must, in writing, notify the AUSTRAC CEO within 5 business days of Westpac becoming aware of one or more of the following events occurring:
 - (a) any event that may affect the ability of Westpac to comply with this instrument;
 - (b) any event that may affect the ability of a contractor supplier or contractor to comply with the terms of the confidentiality undertaking; or
 - (c) a contractor supplier or contractor receiving a request (however described) to disclose suspicious matter material to another person, government or other body of any kind (however described or constituted) under a foreign law.

Oversight

- (7) The arrangements in place to comply with the conditions set out in subsections (3)-(6) must be subject to ongoing oversight of the board and senior management of Westpac.
- (8) Westpac must undertake an annual independent review of its compliance with the requirements and conditions set out in subsections (2)-(7) and provide the AUSTRAC CEO with a copy of the results of the independent review within 14 days of it being presented to the board of or a committee of a board of Westpac.
- (9) Each contractor's need to access suspicious matter material must be reviewed by the Divisional Financial Crime Officer, or their delegate, at least every three months in each calendar year.

Geographic location of contractors

- (10) Westpac must not provide a contractor with access to suspicious matter material except where such contractor is domiciled and employed in a country listed below:
 - (a) Australia,
 - (b) India.

Schedule 1—Confidentiality undertaking

Obligations for contractor suppliers

- (1) The contractor supplier must:
 - (a) ensure that every contractor contracted by it to Westpac has signed a confidentiality undertaking prior to providing any AML/CTF Services;
 - (b) inform Westpac within 5 business days of it becoming aware of any contractor contracted by it to Westpac of having breached their confidentiality undertaking with Westpac;
 - (c) inform Westpac within 5 business days of it becoming aware that it has received any suspicious matter material;
 - (d) not disclose suspicious matter material, either directly or indirectly, to any person other than Westpac or AUSTRAC;
 - (e) keep any suspicious matter material that it receives or becomes aware of, confidential at all times and in accordance with Westpac's information security policies and procedures;
 - (f) put in place safeguards in accordance with Westpac's information security policies and procedures to protect any suspicious matter material that it receives or becomes aware of, from unauthorised use or access;
 - (g) protect any personal information contained in suspicious matter material that it receives or becomes aware of;
 - (h) notify Westpac within 1 business day if:
 - i. it receives a request (however described) to disclose suspicious matter material to another person, government or other body of any kind (however described or constituted) under a foreign law; or
 - ii. it becomes aware of any event that may affect its ability to comply with the terms of the confidentiality undertaking;
 - (i) not disclose to any person other than a person mentioned in subsection (2) that:
 - i. Westpac has given, or is required to give, a report to the AUSTRAC CEO under subsection 41(2) of the Act;
 - ii. any other information from which it could reasonably be inferred that Westpac has given, or is required to give, the AUSTRAC CEO a report under subsection 41(2) of the Act;
 - iii. Westpac is or has been required to give information or produce documents in response to a notice under section 49 of the Act; or
 - iv. Westpac has given information or produced documents in response to a notice under section 49 of the Act.
- (2) The contractor supplier must not disclose suspicious matter material, either directly or indirectly, to any person other than:
 - (a) Westpac;
 - (b) if Westpac is permitted to disclose the material to a person mentioned in section 123 of the Act—that person; or

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- (c) another contractor approved by the Divisional Financial Crime Officer to access the material.

Obligations for contractors

- (1) The contractor must:
 - (a) keep suspicious matter material confidential at all times;
 - (b) ensure that suspicious matter material is only used in connection with the provision of the AML/CTF services;
 - (c) securely store all records of suspicious matter material on a Westpac system;
 - (d) put in place reasonable safeguards to protect suspicious matter material from unauthorised use or access; and
 - (e) protect any personal information contained in suspicious matter material.
- (2) The contractor must not disclose suspicious matter material, either directly or indirectly, to any person other than:
 - (a) Westpac;
 - (b) if Westpac is permitted to disclose the material to a person mentioned in section 123 of the Act—that person; or
 - (c) another contractor approved by the Divisional Financial Crime Officer to access the material.
- (3) The contractor must notify Westpac within 1 business day if:
 - (a) it receives a request (however described) to disclose suspicious matter material to another person, government or other body of any kind (however described or constituted) under a foreign law; or
 - (b) it becomes aware of any event that may affect its ability to comply with the terms of the confidentiality undertaking.
- (4) The contractor must not disclose to any person other than a person mentioned in subsection (2) that:
 - (a) Westpac has given, or is required to give, a report to the AUSTRAC CEO under subsection 41(2) of the Act;
 - (b) any other information from which it could reasonably be inferred that Westpac has given, or is required to give, the AUSTRAC CEO a report under subsection 41(2) of the Act;
 - (c) Westpac is or has been required to give information or produce documents in response to a notice under section 49 of the Act; or
 - (d) Westpac has given information or produced documents in response to a notice under section 49 of the Act.

2 Definitions

In this undertaking:

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

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Westpac system means a computer system or digital infrastructure owned or operated by Westpac.

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 exemption application; and
 - 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.