

## **Explanatory Statement – Anti-Money Laundering and Counter-Terrorism Financing Rules for electronic funds transfer instructions and ‘approved third-party bill payment system’ definition**

Section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) provides that the AUSTRAC Chief Executive Officer (CEO) may, by writing, make AML/CTF Rules prescribing matters required or permitted by any other provision of the Act to be prescribed by the AML/CTF Rules.

Part 5 of the AML/CTF Act deals with electronic funds transfer instructions.

This explanatory statement concerns:

- (a) the AML/CTF Rules for section 5 of AML/CTF Act regarding the definition of ‘approved third-party bill payment system;’ and
- (b) the AML/CTF Rules for subparagraph 70(a)(i) of the AML/CTF Act regarding the type of electronic funds transfer instruction to which tracing information applies. Tracing information is a type of ‘required transfer information’ under section 70 of the AML/CTF Act, which falls within Part 5 of that Act.

The AML/CTF Rules are registered in the form of numbered chapters and are legislative instruments as defined in section 5 of the *Legislative Instruments Act 2003*.

### **Chapter 12**

Paragraph 70(a) of the AML/CTF Act defines ‘required transfer information’ to be ‘tracing information’ where a transfer instruction is of a kind specified in the AML/CTF Rules and the relevant circumstances specified in the Rules apply.

Tracing information is defined in section 72 of the AML/CTF Act as follows:

- (a) if the money is to be transferred from an account held by the payer with the ordering institution—the account number; or
- (b) in any case—a unique reference number for the transfer instruction.

Chapter 12 of the AML/CTF Rules provides that tracing information applies to a certain type of funds transfer instruction where money is to be paid by use of a credit card. However, transfer instructions involving e-currency where the transfer instruction falls within paragraph 70(c) of the AML/CTF Act are excluded.

### **Chapter 13**

The definition of approved third-party bill payment system in section 5 of the AML/CTF Act is relevant to subsection 67(1) of that Act. The effect of a combined reading of subsection 67(1) of the AML/CTF Act and these AML/CTF Rules is that

the following types of bill payment systems are not subject to the requirements in Part 5 of that Act which deal with electronic funds transfer instructions:

- (1) BPAY which is a national bill payment service provided by banks, building societies and credit unions registered with the BPAY scheme, that is accessed by a registered business' customer via the telephone or internet and which enables the registered business to collect payments from their customers electronically;
- (2) DEFT being the direct electronic funds transfer which is a payment, collection, receipting and reconciliation service that enables the payment of bills by customers registered with the DEFT scheme through the internet, BPAY, Australia Post offices, telephone or mail; and
- (3) The Australian Payments Clearing Association Limited's direct entry system.

Subsection 67(1) of the AML/CTF Act is in Part 5 of that Act.

### **Anticipated impact**

The Chapter 12 AML/CTF Rules provide a positive impact as they have the effect of applying the tracing information requirement (rather than the complete payer information requirement) to certain types of electronic funds transfer instructions involving the use of a credit card for payment.

The Chapter 13 AML/CTF Rules provide a positive impact as they have the effect of exempting certain types of electronic funds transfer instructions from the application of Part 5 of the AML/CTF Act. They further clarify the meaning of 'approved third-party bill payment system' in section 5 of the AML/CTF Act to assist reporting entities to understand their obligations under the AML/CTF Act. These AML/CTF Rules have the effect of narrowing the application of Part 5 relating to certain types of electronic funds transfer instructions.

A regulatory impact statement in respect of the AML/CTF Act including electronic funds transfer instructions requirements in Part 5 of that Act was prepared prior to the passage of that Act. These AML/CTF Rules relate to Part 5 of the AML/CTF Act.

These AML/CTF Rules will have an impact on all reporting entities to which electronic funds transfer instruction obligations apply. As a result, costs will likely be incurred by reporting entities due to their compliance with the relevant obligations.

### **Benefits arising from the AML/CTF Rules**

The requirements set out in the Chapter 12 AML/CTF Rules will result in lower compliance costs by those reporting entities which have electronic funds transfer instruction obligations under the AML/CTF Act, as the required transfer information requirement will be less extensive for affected transactions.

Under the Chapter 13 AML/CTF Rules, a person will not incur any cost of complying with Part 5 of the AML/CTF Act in relation to a service that involves a certain specified kind of bill payment system.

### **Consultation**

AUSTRAC has consulted with the Privacy Commissioner, the Australian Customs Service, the Australian Federal Police, the Australian Taxation Office and the Australian Crime Commission in relation to these AML/CTF Rules.

AUSTRAC also published a draft of these AML/CTF Rules on its website for public comment. Industry was consulted extensively in the development of these AML/CTF Rules and AUSTRAC considered all comments which were made.

### **Ongoing consultation**

AUSTRAC will continue to consult with stakeholders on the operation of these AML/CTF Rules.