

**Explanatory Statement – Anti-Money Laundering and Counter-Terrorism
Financing Rules for record-keeping obligations under section 114 of the
AML/CTF Act**

1. Purpose and operation of Anti-Money Laundering and Counter-Terrorism Financing Rules (AML/CTF Rules) for record-keeping obligations under section 114 of the AML/CTF Act

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

Division 3 of Part 10 of the AML/CTF Act deals with record-keeping requirements. Section 38 provides that if a reporting entity has carried out an applicable customer identification procedure (ACIP), then a second reporting entity may rely on that ACIP, rather than conduct another ACIP on the same customer, subject to satisfying conditions specified in AML/CTF Rules.

One such condition is set out in these AML/CTF Rules, which exempt reporting entities from the record-keeping obligations in subsections 114(2), 114(3) and 114(5) of the AML/CTF Act in certain circumstances. These AML/CTF Rules allow the second reporting entity to rely on the record of the ACIP which has been carried out by the first reporting entity, provided that the second reporting entity has access to that record in accordance with an agreement which is in place between the two reporting entities for the management of records. However, the second reporting entity may only rely on this agreement if it has first assessed that it is appropriate to rely on the first reporting entity's ACIP having regard to the money laundering/terrorism financing risk relevant to the designated service which the second reporting entity is providing. That is, if the first reporting entity's risk is different to the second reporting entity's, it may not be appropriate to rely on the first reporting entity's ACIP.

Division 3 of Part 10 of the AML/CTF Act commenced on 12 December 2007.

2. Notes on sections

Section 1

This section sets out the name of the instrument, i.e. the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2008 (No. 1)*.

Section 2

This section details the commencement date of the instrument, being the day after it is registered.

Section 3

This section contains two schedules which amend the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* as follows:

Schedule 1

This Schedule substitutes a new section 2 for sections 2 and 3 in the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* with a revised wording, as the existing wording of these sections no longer applies since the removal of the Schedule headings. The replaced wording contains a statement that the AML/CTF Rules are set out in the Instrument. Details of historical commencement dates (currently in section 2) are set out in the tables at the end of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* compilation.

This Schedule also amends the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* by inserting Chapter 20 into that Instrument. Until Chapters 15 to 19 take effect on 12 December 2008, Chapter 20 will follow on from Chapter 14.

Schedule 2

This Schedule amends the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2007 (No. 5)* by deleting the current words ‘the Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) commence’ and replacing them with ‘This Chapter commences’. The purpose of this amendment is to clarify the commencement dates of the AML/CTF Rules in Chapter 19 (12 December 2008) and the subsequent replacement Chapter 19 (1 January 2011).

3. Notes on paragraphs of these AML/CTF Rules

Paragraph 20.1

This paragraph states that these AML/CTF Rules have been made under section 229 of the AML/CTF Act. Subsection 247(4) of the AML/CTF Act permits the making of these Rules.

Paragraph 20.2

This paragraph provides that the second reporting entity is exempted from the requirements in section 114 of the AML/CTF Act to:

- (1) request the first reporting entity to provide a copy of a record made by the first reporting entity relating to the ACIP in relation to a particular customer
- (2) retain a copy of the record referred to in paragraph (1) above for a specified period.

The exemption only applies if the second reporting entity has access to that record under an agreement for the management of identification records between the first and

second reporting entities. The second reporting entity must determine that it is appropriate to rely on the ACIP carried out by the first reporting entity in relation to a particular customer, after a consideration of the money laundering/terrorism financing risk of the provision of a designated service to the customer.

The intent and purpose of these AML/CTF Rules is consistent with subparagraphs 7.2.2(2) and 7.3.2(2) of Chapter 7 of the AML/CTF Rules.

Paragraph 20.3

This paragraph specifies relevant definitions for ‘first reporting entity’ and ‘second reporting entity’ by reference to section 114 of the AML/CTF Act.

4. Legislative instruments

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

5. Likely impact

These AML/CTF Rules will have a beneficial impact on reporting entities which have obligations under the record-keeping requirements of the AML/CTF Act. In terms of any likely costs to consumers, there is no direct cost.

6. Assessment of benefits

These AML/CTF Rules supply industry with added flexibility to manage their record-keeping requirements in regard to ACIP for the purposes of section 38 and Chapter 7 of the AML/CTF Rules.

7. Consultation

AUSTRAC has consulted with the Office of 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.

8. Ongoing consultation

AUSTRAC will conduct ongoing consultation with stakeholders on the operation of the AML/CTF Rules.