



**Australian Government**

**Australian Transaction Reports  
and Analysis Centre**

## **Explanatory Statement – Amendment of the Anti-Money Laundering and Counter-Terrorism Financing Rules**

### **1. Purpose and operation of Anti-Money Laundering and Counter-Terrorism Financing Rules (AML/CTF Rules) amending Chapters 1 and 19, inserting a new Chapter 2, and adding Chapter 35 of the AML/CTF Rules**

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.

#### **Amendment of Chapter 1 of the AML/CTF Rules**

This amendment inserts a definition of ‘accredited translator’ into Chapter 1 of the AML/CTF Rules in order to provide greater certainty. Before this amendment, the term was not defined in the AML/CTF Rules, despite being a component in one of the Chapter 4 procedures for verification of customer identity.

Under the procedure, the identity of low and medium risk customers (as determined by the reporting entity’s AML/CTF program) can be verified by various specified documents. Where these documents are not in language understood by the person carrying out the verification, they must be accompanied by a translation into English prepared by an “accredited translator”.

The amendment also makes a minor amendment to Chapter 1 by deleting the phrase, ‘In the Rules in chapters 3 to 10 inclusive’, as the Compilation now extends beyond Chapter 10, and instead substitutes the phrase, ‘In these Rules.’ This ensures the definitions in Chapter 1 apply through the entirety of the AML/CTF Rules, including those made after the initial ten chapters.

#### **Amendment of subparagraph 19.3(1)(aa) of Chapter 19 of the AML/CTF Rules**

Section 43 of the AML/CTF Act requires reporting entities to report a threshold transaction to AUSTRAC. Chapter 19 of the AML/CTF Rules sets out the details which must be contained in these reports.

Subparagraph 19.3(1)(aa) of Chapter 19 of the AML/CTF Rules states that reporting entities must supply the following about a reportable threshold transaction: ‘any

business name(s) under which the customer operates'. AUSTRAC considers it appropriate that the phrase, 'if known' should be added to this subparagraph in order to reflect situations where a reporting entity may not know the business name under which a customer operates. This is consistent with various other provisions of Chapter 19 and other chapters of the AML/CTF Rules.

### **Replacement of Chapter 2 of the AML/CTF Rules**

Chapter 2 of the AML/CTF Rules sets out the requirements for the formation of a 'designated business group' (DBG). Currently, the definition only applies to members of a DBG which are:

- (a) related to each other within the meaning of section 50 of the *Corporations Act 2001*; and either,
- (b) a reporting entity; or
- (c) a company in a foreign country which if resident in Australia would be a reporting entity; or
- (d) providing a designated service as a result of a joint venture agreement to which each member of the DBG is a party.

As a result of submissions from the accountancy and legal professions, AUSTRAC considers it appropriate to extend the definition of DBG to accountancy and law practices. The extension of the definition will allow such practices to share customer identity information, have a joint AML/CTF Program, lodge group compliance reports and allow one member of the DBG to discharge certain record-keeping obligations.

The amendments have been made by repealing the existing Chapter 2 and inserting a new Chapter 2 containing both the existing and new permissible forms of DBGs.

### **Addition of Chapter 35 'Exemption from applicable customer identification procedures for correspondent banking relationships'**

Subsection 39(4) of the AML/CTF Act allows exemption from a specified provision of Part 2 of the Act in relation to a designated service that is provided in circumstances specified in the AML/CTF Rules.

These AML/CTF Rules exempt certain reporting entities from carrying out their applicable customer identification procedures in relation to signatories of vostro accounts. Vostro accounts are accounts which are held by a financial institution in Australia on behalf of a foreign financial institution with which the Australian institution has a correspondent banking relationship. A 'correspondent banking relationship' is defined in the AML/CTF Act and, in brief, means a relationship that 'involves the provision by a financial institution of banking services to another financial institution'.

These AML/CTF Rules apply to the designated services contained in item 2 (allowing a person to become a signatory to an account) and item 3 (allowing a transaction to be conducted in relation to an account) of table 1 of section 6 of the AML/CTF Act.

Under the Act a reporting entity is required to carry out the applicable customer identification procedure each time an employee of another financial institution is added as a signatory to a vostro account. Due to the nature of vostro accounts, a large number of individuals (potentially in the hundreds) may give instructions for the operation of the account. As a result, the burden on a reporting entity in complying with its customer identification procedures in these circumstances will be significant.

Part 8 (correspondent banking) of the AML/CTF Act and Chapter 3 (correspondent banking due diligence) of the AML/CTF Rules also impose obligations on financial institutions that enter into correspondent banking relationships with foreign financial institutions. The requirements of Part 8 of the Act and Chapter 3 of the AML/CTF Rules, in conjunction with these AML/CTF Rules, sufficiently mitigate the potential ML/TF risk regarding the operation of such accounts that the exemption provided by these Rules is appropriate.

These AML/CTF Rules also impose conditions to ensure that the exemption only applies to employees of the other financial institution, relate only to a correspondent banking relationship and occur under the terms of section 100 (geographical links) of the AML/CTF Act, in order to ensure as far as possible that such accounts are not used for ML/TF purposes.

## **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 2009 (No.3)*.

### **Section 2**

This section specifies that the Instrument commences on the day after it is registered.

### **Section 3**

This section contains schedules which amend the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No.1)* and the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2007 (No.5)* as follows:

#### **Schedule 1**

This schedule amends the version of Chapter 19 of the AML/CTF Rules which comes into force on 1 January 2011, by adding the phrase 'if known' to subparagraph 19.3(1)(aa) of that Chapter.

#### **Schedule 2**

This schedule amends Chapter 1 by inserting a definition of 'accredited translator' together with a minor amendment to ensure the definitions in Chapter 1 apply to all chapters of the Rules.

It also amends Chapter 19 as currently in force by adding the phrase ‘if known’ to subparagraph 19.3(1)(aa) of that Chapter.

### **Schedule 3**

This schedule deletes Chapter 2 and inserts a new Chapter 2 of the AML/CTF Rules, broadening the definition of ‘designated business group’. The new provisions are contained at subparagraph 2.1.2(c) in respect to accounting practices, and subparagraph 2.1.2(d) in respect to law practices. The AML/CTF Rules also insert definitions of ‘accounting practice’ (subparagraph 2.1.3(6)) and ‘law practice’ (subparagraph 2.1.3(7)).

### **Schedule 4**

This schedule adds Chapter 35 ‘Exemption from applicable customer identification procedures for correspondent banking relationships’ to the AML/CTF Rules.

## **3. Notes on paragraphs**

### **Paragraph 35.1**

This paragraph specifies that these AML/CTF Rules have been made under section 229 of the AML/CTF Act.

### **Paragraph 35.2**

This paragraph specifies that the requirements of the AML/CTF Act to identify customers do not apply to a reporting entity which is allowing a person to become a signatory to an account or allowing a transaction to be conducted in relation to the account where provision of the service relates to a correspondent banking relationship. In order for the exemption to apply, the customer must be a financial institution which is in a correspondent banking relationship with the reporting entity to which Part 8 of the AML/CTF Act applies because the geographical links in section 100 of the Act are satisfied. In addition, the exemption only applies where the signatories involved are those employed by the financial institution.

## **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 no negative impact upon reporting entities as they do not impose any regulatory burden.

## **6. Assessment of benefits**

### **Chapters 1, 2 and 19**

These AML/CTF Rules will be beneficial to reporting entities as they provide certainty in regard to the definition of ‘accredited translator’, provide flexibility in regard to the adoption of the phrase, ‘if known’, and extend the definition of ‘designated business group’ in order to allow law and accounting practices to take advantage of the efficiencies which result from being able to form designated business groups.

### **Chapter 35**

These AML/CTF Rules will exempt businesses in certain circumstances from the regulatory costs of complying with the identification procedures of the AML/CTF Act.

## **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.