



Australian Government

Australian Transaction Reports and Analysis Centre

Explanatory Statement – *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2012 (No. 2)* amending the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*

1. Purpose and operation of Anti-Money Laundering and Counter-Terrorism Financing Rules (AML/CTF Rules) amending Chapter 56 and Chapter 63

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

Amendments to Chapter 56

2. Section 75B (Applications for registration) of the AML/CTF Act specifies the information and requirements for applications for registration on the Remittance Sector Register. Paragraph 75B(3)(b) specifies that applications for registration must contain the information required by the AML/CTF Rules. Chapter 56 of the AML/CTF Rules specifies the information to be included in an application for registration as a remittance network provider, a remittance affiliate of the registered network provider or an independent remittance dealer.
3. These amendments to Chapter 56 specify that applications for registration must include the business contact details of the individual making the application. This mirrors the existing requirement contained in Chapter 63 in regard to the Reporting Entities Roll.

Amendments to Chapter 63

4. Section 51E (Applications for enrolment) of the AML/CTF Act specifies the information and requirements for applications for enrolment on the Reporting Entities Roll. Paragraph 51E(2)(b) provides that applications must contain the information required by the AML/CTF Rules. Chapter 63 of the AML/CTF Rules specifies the enrolment information to be provided or related to a person applying for enrolment. Part A of Schedule 1 to Chapter 63 specifies the

enrolment details to be provided by a person applying for enrolment and Part B of Schedule 1 specifies the information to be obtained and retained by a person applying for enrolment.

5. The amendments are as follows:

- (a) The deletion of a paragraph which asks for essentially the same information as another paragraph of Part A of the Schedule;
- (b) If a reporting entity provides the item 31 and item 32 designated services as an affiliate of a registered network provider, and no other designated services, then that reporting entity is not required to pay the cost recovery levy under the provisions of the *Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy Determination 2012 (No. 2)*.

As a result, information under Chapter 63 relating to whether the reporting entity is a 'related body corporate' (paragraph 19), 'an ultimate holding company' (paragraph 20), details of its earnings (paragraph 21), the 'billing address' (paragraph 22), the 'business contact details' (paragraph 25), whether the person is exempt from the AML/CTF Act (paragraph 26) and whether the person has fewer than 5 employees (paragraph 27), need not be collected;

- (c) If a reporting entity is identified as being exempt under Part 7 of the AML/CTF Act, then that reporting entity is excluded from the cost recovery levy and therefore reporting entity information relating to the calculation of the levy is not required;

As a result, information relating to whether the reporting entity is a 'related body corporate' (paragraph 19), 'an ultimate holding company' (paragraph 20), details of its earnings (paragraph 21), the 'billing address' (paragraph 22), the 'business contact details' (paragraph 25), and whether the person has fewer than 5 employees (paragraph 27), need not be collected;

- (d) If a reporting entity provides the item 31 and item 32 designated services as an affiliate of a registered network provider, and no other designated services, then the amendments make it clear that that reporting entity is not required to obtain and retain their financial statements for cost recovery purposes. Likewise, if a reporting entity is exempt from the levy because they are exempt from Part 7 of the AML/CTF Act, they also do not need to obtain and retain their financial statements.

Statement of Compatibility with the *Human Rights (Parliamentary Scrutiny) Act 2011*

- 6. The *Human Rights (Parliamentary Scrutiny) Act 2011* was passed on 25 November 2011 and came into effect on 4 January 2012. It

introduces a requirement for Statements of Compatibility to accompany all new Bills and disallowable legislative instruments.

7. The Statement of Compatibility for *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2012 (No.2)* is included in this Explanatory Statement at page 6. The AUSTRAC CEO as the rule-maker of this legislative instrument has stated that it is compatible with the human rights and freedoms recognised or declared in the international instruments lists in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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 2012 (No.2)*.

Section 2

This section specifies that Schedule 1 commences on the day after it is registered.

Section 3

This section contains the details of the amendment:

Schedule 1 amends the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No.1)*.

Schedule 1

This schedule amends Chapter 56 and Chapter 63.

3. Notes on Items

Chapter 56

Item 1 – Schedule 1, Part A, after paragraph 19

This item inserts the business contact details of the individual completing the application for registration as a remittance network provider.

Item 2 – Schedule 2, Part A, after paragraph 19

This item inserts the business contact details of the individual completing the application for registration of a remittance affiliate.

Item 3 – Schedule 3, Part A, after paragraph 19

This item inserts the business contact details of the individual completing the application for registration as an independent remittance dealer or an application for registration as a remittance affiliate made by an independent remittance dealer.

Chapter 63

Item 1 – Schedule, Part A, paragraph 27

This item omits paragraph 27 which, in substance, duplicates the meaning of subparagraph 17(c) of the Schedule.

Item 2 – Schedule, Part A, paragraph 28

This item renumbers the existing paragraph 28 as paragraph 27 due to the omission of the old paragraph 27.

Item 3 – Schedule, Part A, paragraph 28

This item stipulates that remittance affiliates are not required to provide information in regard to their application for enrolment which is specified at paragraphs 19, 20, 21, 22, 25, 26 and 27 of Part A of the Schedule.

Item 4 – Schedule, Part A, paragraph 29

This item stipulates that persons exempt from Part 7 of the AML/CTF Act in full are not required to provide the information in regard to their application for enrolment specified at paragraphs 19, 20, 21, 22, 25 and 27 of Part A of the Schedule.

Item 5 – Schedule, Part B, paragraph 1

This item amends paragraph 1 to specify the persons who are not required to obtain and retain annual financial statements relating to the most recent financial year before the census date.

4. Legislative instruments

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

5. Likely impact

The amendments to Chapter 56 will not have an impact on any reporting entity required to register on the Remittance Sector Register, as the additional information sought is already provided by such entities in their applications for compulsory enrolment on the Reporting Entities Roll, pursuant to Chapter 63 of the AML/CTF Rules.

The amendments to Chapter 63 will have a positive impact by reducing the regulatory burden on remittance affiliates and persons exempt under Part 7 of the AML/CTF Act in full, by clarifying the information which those classes of entities are required to provide in their applications for enrolment.

6. Assessment of benefits

The amendments to Chapters 56 and 63 will provide certainty to reporting entities on what information they must provide in regard to their applications for registration on the Remittance Sector Register and enrolment on the Reporting Entities Roll.

7. Consultation

As these amendments are considered to be of a minor or machinery nature and do not substantially alter existing arrangements, in accordance with section 18 (Circumstances where consultation may be unnecessary or inappropriate) of the *Legislative Instruments Act 2003*, AUSTRAC has not undertaken consultation in respect to these AML/CTF Rules.

8. Ongoing consultation

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

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2012 (No. 2)

This Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

This Instrument makes amendments to Chapter 56 and Chapter 63 of the Anti-Money Laundering and Counter-Terrorism Financing Rules.

The amendments add the contact details of the person making the application for enrolment in Chapter 56 (mirroring an existing obligation under Chapter 63 which has been in place since October 2011) and clarify the information required of reporting entities in regard to their enrolment on the Reporting Entities Roll as specified in Chapter 63.

Human rights implications

This Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Instrument is compatible with human rights as it does not raise any human rights issues.

John Lance Schmidt
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