



## **Australian Government**

### **Australian Transaction Reports and Analysis Centre**

#### ***Explanatory Statement – Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2012 (No. 5) amending the Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)***

#### **1. Purpose and operation of Anti-Money Laundering/Counter-Terrorism Financing Rules (AML/CTF Rules) amending Chapters 11 and 41**

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 11**

2. Under section 47 (AML/CTF Compliance Reports) of the AML/CTF Act, reporting entities must submit a compliance report relating to their compliance with the Act, Regulations and AML/CTF Rules to the AUSTRAC CEO. Chapter 11 of the AML/CTF Rules sets out the reporting periods for compliance reports and the lodgment periods during which compliance reports must be submitted.
3. Chapter 11 exempts reporting entities providing remittance services (remittance affiliates of remittance network providers (RNPs) and independent remittance dealers) from the obligation to submit compliance reports for the 2011 reporting period. AUSTRAC granted this exemption in recognition of the increased obligations on these reporting entities resulting from the introduction of the Remittance Sector Register under the AML/CTF Act on 1 November 2011, which required the registration of RNPs, remittance affiliates of RNPs and independent remittance dealers. AUSTRAC considered that requiring these reporting entities to submit compliance reports as well as apply for registration on the Register was an unnecessary regulatory burden in 2011.
4. As the registration requirements for RNPs and remittance affiliates of RNPs are still being finalised, with consequent regulatory burden as a result of that compliance, AUSTRAC considers that registered RNPs and registered remittance affiliates providing only designated services under items 31, 32 or

32A should be exempt from the requirement to lodge a Compliance Report for 2012. The amendments to Chapter 11 give effect to this exemption.

5. Independent remittance dealers are not exempt from the requirement to submit a compliance report for 2012. As independent remittance dealers were required to be registered by 30 April 2012, AUSTRAC considers that the regulatory burden currently being experienced by RNPs and registered remittance affiliates in regard to registration is not applicable to independent remittance dealers and therefore it is appropriate that such dealers submit a 2012 compliance report.
6. It is noted that if a registered remittance affiliate of a RNP or a RNP itself provides a designated service other than items 31, 32 and 32A in 2012, then they are required to submit a compliance report for that year with respect to that designated service or services.

#### **Amendments to Chapter 41**

7. Chapter 41 of the AML/CTF Rules exempts providers of item 43(a) designated services (cashing of superannuation interests) from conducting the applicable customer identification procedure (ACIP) on customers when cashing out low balance superannuation accounts.
8. These amendments to Chapter 41 add a new exemption which relates to the Departing Australia Superannuation Payment (DASP). Under the DASP regime, temporary residents who leave Australia are entitled to cash their superannuation benefits once they leave Australia. The AML/CTF Act requires that relevant reporting entities must undertake the ACIP on such persons, even though applications through the DASP system, administered by the Australian Taxation Office (ATO), require applicants to provide certain information to the ATO to confirm their identity and eligibility to receive a DASP.
9. AUSTRAC considers that undertaking the ACIP in regard to such payments is an unnecessary financial and administrative burden on reporting entities.
10. The exemption applies to providers of item 43 (cashing of superannuation or approved deposit fund interests) and item 45 (cashing of retirement savings account interests) designated services in the following circumstances:
  - (1) the member applies to cash out their interest in a superannuation fund, approved deposit fund or retirement savings account;
  - (2) the application is made online using the DASP system;
  - (3) the value of the interest is not greater than \$5,000;
  - (4) the member does not make any more contributions to the interest;
  - (5) the whole of the interest is cashed out; and

- (6) the account which held the interest is closed as soon as practicable after the interest is cashed out.

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

11. The *Human Rights (Parliamentary Scrutiny) Act 2011* was passed on 25 November 2011 and came into effect on 4 January 2012. It introduced a requirement for Statements of Compatibility to accompany all new Bills and disallowable legislative instruments.
12. The Statement of Compatibility for *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2012 (No.5)* 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 listed 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.5)*.

### **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 11 and repeals and inserts a revised Chapter 41.

## **3. Notes on Items**

### **Chapter 11**

#### **Item 1**

This item inserts an exemption for registered RNPs and registered remittance affiliates of RNPs providing designated services under items 31, 32 or 32A from the requirement to lodge a Compliance Report for 2012.

## **Item 2**

This item renumbers paragraph 11.5 to paragraph 11.6.

## **Item 3**

This item amends the paragraph numbering to be consistent with the numbering convention used in the chapter.

## **Item 4**

This item amends the notation regarding the privacy obligations of reporting entities under the *Privacy Act 1988* so that the notation refers to the current website for the Office of the Australian Information Commissioner (<http://www.oaic.gov.au>) rather than the old website (<http://www.privacy.gov.au>).

## **Chapter 41**

### **Item 1**

This item repeals Chapter 41.

### **Item 2**

This item inserts the revised Chapter 41. This revised chapter is segmented into parts which cover the powers under which the Rules are made (Part 41.1 Introduction), the existing exemption (Part 41.2 Superannuation fund low balance accounts) and the new exemption (Part 41.3 Departing Australia Superannuation Payment).

Part 41.3 exempts reporting entities from conducting the applicable customer identification procedure for providers of the item 43 and 45 designated services, where the interests in the superannuation fund, approved deposit fund or retirement savings account are cashed out online using the Departing Australia Superannuation Payment system, in the circumstances specified in that Part.

The revised chapter also adds a definition for ‘Departing Australia Superannuation Payment’ and amends the notation regarding the privacy obligations of reporting entities under the *Privacy Act 1988* so that the notation refers to the current website for the Office of the Australian Information Commissioner (<http://www.oaic.gov.au>) rather than the old website (<http://www.privacy.gov.au>).

## **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 11 will have a positive impact on registered RNPs and registered remittance affiliates of RNPs as these reporting entities will not be required to submit compliance reports for the 2012 compliance report period.

The amendments to Chapter 41 will have a positive impact on reporting entities which provide the item 43 and 45 designated services to customers cashing out their interests via the DASP system and they will not be required to conduct customer identification in regard to the provision of these designated services.

## **6. Assessment of benefits**

### **Amendments to Chapter 11**

The amendments to Chapter 11 provide regulatory relief to reporting entities by exempting the 2012 compliance reporting obligations of registered RNPs and registered remittance affiliates of RNPs.

### **Amendments to Chapter 41**

The amendments to Chapter 41 provide regulatory relief by exempting reporting entities from the obligation to conduct customer identification procedures on customers cashing out interests via the DASP system in specified circumstances.

## **7. Consultation**

AUSTRAC published Chapter 11 for public consultation for the period from 26 November 2012 to 7 December 2012, and Chapter 41 for the period 27 September 2012 to 25 October 2012. AUSTRAC has consulted with the Australian Taxation Office, the Australian Customs and Border Protection Service, the Australian Federal Police, the Australian Crime Commission and the Office of the Australian Information Commissioner in relation 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. 5)***

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 amends Chapter 11 and repeals and inserts a revised Chapter 41 of the Anti-Money Laundering/Counter-Terrorism Financing Rules (AML/CTF Rules).

Chapter 11 of the AML/CTF Rules sets out the reporting periods for compliance reports and the lodgment periods during which compliance reports must be submitted. The Chapter 11 amendments exempt relevant reporting entities from the compliance reporting obligations under section 47 of the AML/CTF Act for the 2012 compliance reporting period, which is the 2012 calendar year.

The revised Chapter 41 adds a new exemption (which relates to the Departing Australia Superannuation Payment) to the existing exemption contained in the chapter. Under the new exemption, relevant reporting entities are not required to conduct customer identification in relation to the item 43 and item 45 designated services, under certain circumstances.

#### **Human rights implications**

It is considered that this Instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

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

John Lance Schmidt  
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