



**Australian Government**

**Australian Transaction Reports  
and Analysis Centre**

**Explanatory Statement – *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2013 (No. 2)* 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, 38 and 56**

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. Chapter 11 of the *Anti-Money Laundering/Counter-Terrorism Financing Rules* (AML/CTF Rules) sets out the reporting periods for compliance reports and the lodgment periods during which compliance reports relating to reporting entity compliance with the AML/CTF Act, regulations and AML/CTF Rules must be submitted.
3. For the 2012 compliance reporting period, AUSTRAC provided an exemption for registered network providers (RNPs) and registered remittance affiliates providing designated services under items 31, 32 or 32A in order to alleviate the regulatory burden of registration on the Remittance Sector Register. However, independent remittance dealers were not exempt from that requirement given the earlier commencement of their obligation to register.
4. For the 2013 compliance reporting period, the amendments extend the exemption which was in place for the 2012 compliance reporting period.
5. It is noted that if a registered remittance affiliate of a RNP provides a designated service in addition to items 31 or 32, or a RNP provides a designated service in addition to item 32A in 2013, then they are required to submit a compliance report for that year in respect to all designated services.

6. The amendments also revise Chapter 11 in order to repeal outdated provisions and provide clarity in regard to compliance reporting and lodgment periods after 2013.

### **Amendments to Chapter 38**

7. Chapter 38 of the Anti-Money Laundering and Counter-Terrorism Financing Rules exempts from the customer identification provisions of the AML/CTF Act, those persons who provide an item 33 designated service involving the disposal of low-value parcels of shares, for the purpose of passing the proceeds to charitable organisations who are deductible gift recipients (DGRs) under the *Income Tax Assessment Act 1997*.
8. The exemption applies when a person who wishes to donate the proceeds of the sale of their shares to charity provides details to a broker, who sells the shares and provides the proceeds of the share sale to an ancillary fund which subsequently distributes the proceeds to DGRs. Stockbrokers currently undertake the sale of the shares in such circumstances without charging a fee to the customer.
9. The passing of the *Australian Charities and Not-for-profits Commission Act 2012* and the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012* has amended the *Income Tax Assessment Act 1997* upon which some of the definitions in Chapter 38 are based. Consequently Chapter 38 has been amended, particularly in regard to those definitions.
10. The amendments to Chapter 38 do not alter the scope of the exemption provided by the chapter.

### **Amendments to Chapter 56**

11. Chapter 56 of the AML/CTF Rules specifies the information to be included in an application for registration on the Remittance Sector Register by a reporting entity as a remittance network provider (RNP), a remittance affiliate of the RNP or an independent remittance dealer.
12. The amendments to Chapter 56 relate to the requirement for applicants to obtain and retain the original or certified copy of a National Police Certificate (NPC) for each of their key personnel (if the applicant is a RNP or an independent remittance dealer) or, if the applicant is registering a remittance affiliate, for each of the key personnel of the affiliate.
13. A NPC is a document that contains a certification, effective on a national basis, that the person to whom it relates has no disclosable convictions or those disclosable convictions which are detailed in the Certificate, and which is issued by an Australian Police Force. The NPC is an aid to the reporting entity wishing to apply for registration, in assessing whether any of their key personnel may be a money-laundering, terrorism-financing or people-smuggling risk.

14. The amendments allow applicants to obtain and retain a National Police History Check (NPHC) through an agency accredited by CrimTrac as an alternative to obtaining a NPC. CrimTrac is an Australian government agency which operates the information database which supports the process of national police history checking.

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

15. 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 a Statement of Compatibility to accompany all new Bills and disallowable legislative instruments.
16. The Statement of Compatibility for *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2013 (No.2)* is included in this Explanatory Statement at page 7. 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 2013 (No.2)*.

### **Section 2**

This section specifies that Schedules 1, 2 and 3 commence on the day after the instrument is registered.

### **Section 3**

This section contains the details of the amendment:

Schedules 1, 2 and 3 amend the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No.1)*.

### **Schedule 1**

This schedule repeals Chapter 11 and inserts a new version of the chapter.

### **Schedule 2**

This schedule repeals Chapter 38 and inserts a new version of the chapter.

### **Schedule 3**

This schedule amends Chapter 56.

#### **3. Notes on Items**

### **Schedule 1**

#### **Chapter 11**

##### **Item 1**

This item repeals the existing Chapter 11.

##### **Item 2**

This item inserts a new version of Chapter 11 which has been amended to specify the reporting and lodgment periods for compliance reporting in 2013. The item also extends the existing RNP and registered remittance affiliate exemption for the 2013 compliance report.

### **Schedule 2**

#### **Chapter 38**

##### **Item 1**

This item repeals the existing Chapter 38.

##### **Item 2**

This item inserts a new version of Chapter 38 which has been amended as a result of the passing of *Australian Charities and Not-for-profits Commission Act 2012* and the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012*.

### **Schedule 3**

#### **Chapter 56**

##### **Item 1**

This item removes paragraph 56.8 which contains the definitions for the chapter and substitutes an amended paragraph 56.8 which contains additional definitions relating to National Police History Checks (NPHC).

##### **Item 2**

This item substitutes an amended paragraph 1 to allow applicants seeking registration as a remittance network provider, to obtain and retain a NPHC as an alternative to obtaining a National Police Certificate (NPC) for each of the applicant's key personnel, subject to specified conditions.

### **Item 3**

This item substitutes an amended paragraph 1 to allow applicants seeking registration as a remittance affiliate of a registered remittance network provider, to obtain and retain a NPHC as an alternative to obtaining a NPC for each of the key personnel of the applicant's affiliate, subject to specified conditions.

### **Item 4**

This item substitutes an amended paragraph 1 to allow applicants seeking registration as an independent remittance dealer or as an independent remittance dealer seeking registration as a remittance affiliate, to obtain and retain a NPHC as an alternative to obtaining a NPC for each of the applicant's key personnel, subject to specified conditions.

#### **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 not have an impact on reporting entities which were exempt from compliance reporting in 2012 as this exemption is continued for the 2013 compliance reporting and lodgment period. The amendments to Chapter 38 will not have an impact on relevant reporting entities as they do not alter the scope of the partial exemption from the AML/CTF Act currently provided by the chapter.

The amendments to Chapter 56 will have an impact on reporting entities which are required to obtain NPCs in regard to their key personnel.

#### **6. Assessment of benefits**

The amendments to Chapter 11 will provide certainty to reporting entities by specifying the reporting and lodgment periods for 2013 and thereafter. Regulatory burden on RNPs and registered remittance affiliates will be reduced by the continuance in 2013 of the current exemption from compliance reporting which commenced in 2012.

The amendments to Chapter 38 clarify the operation of the chapter as a result of the passing of *Australian Charities and Not-for-profits Commission Act 2012* and the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012*.

The amendments to Chapter 56 provide regulatory relief to reporting entities by reducing the time and cost associated with registering on the Remittance Sector Register, as the alternative certificate to a NPC will be less expensive and may be obtained more quickly by applicants.

## **7. Consultation**

AUSTRAC has consulted with the Australian Federal Police, the Australian Taxation Office, the Australian Customs and Border Protection Service, the Australian Crime Commission and the Office of the Australian Information Commissioner in relation to the amendments to Chapters 38 and 56 of the AML/CTF Rules. In addition, AUSTRAC consulted with the Australian Charities and Not-for-profits Commission in relation to the amendments to Chapter 38. AUSTRAC did not consult on the amendments to Chapter 11 as they were considered to be minor in nature and continued existing regulatory arrangements for relevant reporting entities.

AUSTRAC published the amendments to Chapter 56 of the AML/CTF Rules for public consultation on the AUSTRAC website from 14 March 2013 to 11 April 2013.

AUSTRAC published the amendments to Chapter 38 of the AML/CTF Rules for public consultation on the AUSTRAC website from 28 May 2013 to 25 June 2013.

## **8. Ongoing consultation**

AUSTRAC will conduct ongoing consultation with stakeholders on the operation of the 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 2013 (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**

The Instrument amends Chapter 11 of the Anti-Money Laundering/Counter-Terrorism Financing Rules (AML/CTF Rules) to specify the reporting and lodgment periods for compliance reporting in 2013 and also extends, for the 2013 compliance report, the existing exemption for registered network providers and registered remittance affiliates.

The Instrument amends Chapter 38 of the AML/CTF Rules to clarify the operation of the chapter as a result of the *Australian Charities and Not-for-profits Commission Act 2012* and the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012*.

The Instrument also amends Chapter 56 of the AML/CTF Rules and allows reporting entities applying for registration on the Remittance Sector Register to use National Police History Checks (NPHC) as an alternative to National Police Certificates (NPC).

#### **Human rights implications**

It is considered that this Instrument engages and is compatible with the right to privacy and reputation. AUSTRAC has highlighted the importance of the privacy considerations by including the following 'Notes' in the Chapter 56 amendments:

*Note 1: Subsection 6E(1A) of the Privacy Act 1988 applies the National Privacy Principles to all reporting entities in relation to their activities under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006.*

*Note 2: A reporting entity intending to disclose a NPHC or information from it to AUSTRAC should ensure that they comply with any requirements of CrimTrac in regard to that disclosure.*

A NPHC will contain the same information about an individual as a NPC obtained on that person, as the information for both is obtained from the same database. It is considered that this Instrument does not engage any of the other rights or freedoms.

**Conclusion**

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

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