



Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2013 (No. 2)

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

I, John Lance Schmidt, Chief Executive Officer, Australian Transaction Reports and Analysis Centre, make this Instrument under section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

Dated 18 September 2013

[Signed]
John Lance Schmidt
Chief Executive Officer
Australian Transaction Reports and Analysis Centre

1 Name of Instrument

This Instrument is the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2013 (No. 2)*.

2 Commencement

This Instrument commences on the day after it is registered.

3 Amendment

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

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

1. Chapter 11

Item 1 *repeal Chapter 11*

Item 2 *After Chapter 10 insert*

CHAPTER 11 Compliance Report – Reporting and Lodgment periods

11.1. These Rules are made under section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (the AML/CTF Act) for subsections 47(1), 47(2) and 247(4) of the AML/CTF Act. They specify the reporting period and the lodgment period for a compliance report under subsection 47(1) of the AML/CTF Act.

11.2. For paragraph 47(1)(a) of the AML/CTF Act, a reporting period is:

- (1) the period beginning on 1 January 2013 and ending on 31 December 2013; and thereafter,
- (2) each calendar year.

11.3. For paragraph 47(1)(b) of the AML/CTF Act, the lodgment period:

- (1) for the reporting period in subparagraph 11.2(1), is the period of 3 months beginning at the end of the reporting period in 2013 and ending on 31 March 2014; and
- (2) for subparagraph 11.2(2), is the period beginning on the first business day in January in the calendar year immediately following the end of the reporting period and ending on 31 March of that calendar year.

Exemption relating to compliance reporting and compliance report lodgment periods

11.4. For subsection 247(4) of the AML/CTF Act, subsections 47(1) and 47(2) of that Act are specified in relation to:

- (1) the reporting period as specified in subparagraph 11.2(1) , and
- (2) the lodgment period as specified in subparagraph 11.3(1);

in the following circumstances:

- (3) in the 2013 calendar year, the reporting entity is a registered remittance affiliate that only provides designated services of the kind set out in items 31 and 32 of table 1 in subsection 6(2) of the AML/CTF Act; or
- (4) in the 2013 calendar year, the reporting entity is a registered remittance network provider that only provides a designated service of the kind set out in item 32A of table 1 in subsection 6(2) of the AML/CTF Act.

11.5. In this Chapter:

- (1) ‘The first business day in January’ is the first day in each January which is not a Saturday, a Sunday or a public holiday in Australia.

Reporting entities should note that in relation to activities they undertake to comply with the AML/CTF Act, they will have obligations under the Privacy Act 1988, including the requirement to comply with the National Privacy Principles, even if they would otherwise be exempt from the Privacy Act. For further information about these obligations, please go to <http://www.oaic.gov.au> or call 1300 363 992.

Schedule 2 **Amendment of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.**

1. Chapter 38

Item 1 *repeal Chapter 38*

Item 2 *After Chapter 37 insert*

CHAPTER 38 Exemption from applicable customer identification procedures for the sale of shares for charitable purposes

38.1. These Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) are made under section 229 for subsection 39(4) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act).

38.2. Division 4 of Part 2 of the AML/CTF Act does not apply to a designated service that:

- (1) is a disposal of the kind described in item 33 of table 1 in subsection 6(2) of the AML/CTF Act; and
- (2) the disposal occurs on a prescribed financial market; and
- (3) the value of the security does not exceed \$500; and
- (4) the agent gives the proceeds of the disposal directly to an ancillary fund that provides an undertaking to:
 - (a) distribute, by cheque and/or electronic funds transfer, the proceeds of the disposal of the security to a deductible gift recipient before the end of the financial year in which it receives the proceeds; and
 - (b) list on its public website within 14 business days, for a period of 12 months, the details of the distribution of the proceeds of the disposal of the security to the deductible gift recipient.

38.3. The ancillary fund must be a registered entity.

38.4. In this Chapter:

- (1) 'ancillary fund' has the meaning given by the *Income Tax Assessment Act 1997*;

- (2) 'deductible gift recipient' has the meaning given by the *Income Tax Assessment Act 1997*;
- (3) 'prescribed financial market' has the meaning given by section 9 of the *Corporations Act 2001*;
- (4) 'registered entity' has the meaning given by section 300-5 of the *Australian Charities and Not-for-profits Commission Act 2012*.

Reporting entities should note that in relation to activities they undertake to comply with the AML/CTF Act, they will have obligations under the Privacy Act 1988, including the requirement to comply with the National Privacy Principles, even if they would otherwise be exempt from the Privacy Act. For further information about these obligations, please go to <http://www.oaic.gov.au> or call 1300 363 992.

Schedule 3 **Amendment of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.**

1. Chapter 56

Item 1 **For paragraph 56.8. substitute**

56.8. In this Chapter:

- (1) ‘accredited agency’ means an agency approved by CrimTrac to access the National Police Checking Service;

Note: In 2013, the list of accredited agencies as specified by CrimTrac was available on the CrimTrac website (www.crimtrac.gov.au).

- (2) ‘associated entity’ has the meaning given by section 50AAA of the *Corporations Act 2001*;

- (3) ‘Australian Police Force’ means ACT Policing, the Australian Federal Police, the New South Wales Police Service, the Northern Territory Police, the Queensland Police Service, the Victoria Police, the South Australia Police, the Tasmania Police Service and the Western Australia Police;

- (4) ‘authorised individual’ means a natural person who is:

- (a) a beneficial owner; or
- (b) an officer as defined in section 9 of the *Corporations Act 2001* or;
- (c) is an employee of the applicant who has been authorised in writing by an applicant to act in this capacity;

- (5) ‘beneficial owner’ in respect of a company, means any individual who owns through one or more share holdings more than 25 per cent of the issued capital in the company;

- (6) ‘body’ has the same meaning as in the *Corporations Act 2001*;

- (7) ‘company’ has the same meaning as in the *Corporations Act 2001*;

- (8) ‘control’ has the meaning given by section 50AA of the *Corporations Act 2001*;

- (9) ‘CrimTrac’ means the agency which was established in July 2000 through an Inter-Governmental Agreement signed by the Australian

Government Minister for Justice and Customs and by State and Territory Police Ministers on behalf of their respective governments;

- (10) 'destination' includes country and a city or town of that country;
- (11) 'disclosable convictions' means a conviction that:
 - (a) has been recorded by a court; and
 - (b) has not been spent under the laws of the country in which the conviction was recorded;
- (12) 'employee due diligence program' has the same meaning as in Chapter 8 of the AML/CTF Rules;
- (13) 'enforcement action' includes any action of a corrective nature in respect of an alleged breach of a law taken by a regulatory body of the Commonwealth or a State or Territory, or a government body;
- (14) 'entity' has the same meaning as in section 9 of the *Corporations Act 2001*;
- (15) 'fraud' means dishonestly obtaining a benefit by deception or other means;
- (16) 'key personnel' means:
 - (a) in the case of a company, corporation sole or body politic, is a natural person that is:
 - (i) a beneficial owner; or
 - (ii) an officer as defined in section 9 of the *Corporations Act 2001*, or an employee or agent of the body corporate with duties of such responsibility that his or her conduct may fairly be assumed to represent the body corporate's policy;
 - (b) in the case of an individual, trust or partnership, is a natural person that is an employee or agent of the individual, trust or partnership with duties of such responsibility that his or her conduct may fairly be assumed to represent the policy of the individual, trust or partnership;
- (17) 'National Police Certificate' means a document that contains a certification, effective on a national basis, that the natural person to whom it relates either has no disclosable convictions or has a disclosable conviction that is detailed in the Certificate; and
 - (a) if the natural person to whom it relates is a resident of Australia, is issued by an Australian police force; or

- (b) if the natural person to whom it relates is a resident of another country, is issued by a police force of that other country;
- (18) 'National Police Checking Service Support System' means the information database administered by CrimTrac which supports the process of national police history checking;
- (19) 'National Police History Check' means a police history record check carried out by CrimTrac within Australia through the National Police Checking Service and provided to an accredited agency, which contains the information specified in subparagraph 1(b) of Part B of Schedules 1, 2 and 3 of Chapter 56;
- (20) 'people smuggling' means conduct that amounts to:
 - (a) an offence against Division 73 of the *Criminal Code*; or
 - (b) an offence against Subdivision A, Division 12, Part 2 of the *Migration Act 1958*; or
 - (c) an offence against a law of a foreign country or of a part of a foreign country that corresponds:
 - (i) to an offence referred to in paragraph (a) or (b); or
 - (ii) with the *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime*;
- (21) 'person' has the same meaning as in the AML/CTF Act;
- (22) 'reference number' means an identifier (including an Organisation Registration Number supplied by CrimTrac) allocated by an accredited agency to the National Police History Check request, which identifies the search results obtained by that agency from the National Police Checking Service Support System;
- (23) 'serious offence' means an offence which is:
 - (a) an offence against a law of the Commonwealth, or a law of a State or Territory, punishable on indictment by imprisonment for life or 2 or more years, that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence) regardless of whether the offence proceeds summarily or on indictment; or
 - (b) an offence against a law of a foreign country constituted by conduct that, if it had occurred in Australia, would have constituted a serious offence.

A 'serious offence' in relation to a person other than an individual means an offence which would have been a serious offence if the person had been an individual;

- (24) 'subsidiary' has the same meaning as in the *Corporations Act 2001*;
- (25) 'terrorism' means conduct that amounts to:
 - (a) an offence against Division 101 or 102 of the *Criminal Code*; or
 - (b) an offence against a law of a State or Territory that corresponds to an offence referred to in paragraph (a); or
 - (c) an offence against a law of a foreign country or of a part of a foreign country that corresponds to an offence referred to in paragraph (a).

Item 2 For paragraph 1 of Part B of Schedule 1 *substitute*

- 1. (a) the original or certified copy (as applicable) of a National Police Certificate (or foreign equivalent if one is able to be obtained) that has been issued within the 6 month period preceding the date of application for registration, for each of the key personnel of the applicant; or
- (b) a National Police History Check (NPHC) that has been issued within the 6 month period preceding the date of the application for registration, for each of the key personnel of the applicant, which:
 - (i) has been obtained from an accredited agency;
 - (ii) specifies the full name and date of birth of the natural person to whom the NPHC relates;
 - (iii) provides relevant information regarding the natural person to whom the NPHC relates, which will enable the applicant to make an informed decision as to whether that natural person has any disclosable convictions arising from any court outcomes within Australia which are disclosable;
 - (iv) specifies the reference number allocated to the NPHC by the accredited agency;
 - (v) specifies the name of the accredited agency which obtained the NPHC; and
 - (vi) specifies the date on which the NPHC was released.

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.

Item 3 **For paragraph 1 of Part B of Schedule 2 substitute**

1. (a) the original or certified copy (as applicable) of a National Police Certificate (or foreign equivalent if one is able to be obtained) that has been issued within the 12 month period preceding the date of application for registration, for each of the key personnel of the other person; or
- (b) a National Police History Check (NPHC) document that has been issued within the 12 month period preceding the date of the application for registration, for each of the key personnel of the other person, which:
 - (i) has been obtained from an accredited agency;
 - (ii) specifies the full name and date of birth of the natural person to whom the NPHC relates;
 - (iii) provides relevant information regarding the natural person to whom the NPHC relates, which will enable the applicant to make an informed decision as to whether that natural person has any disclosable convictions arising from any court outcomes within Australia which are disclosable;
 - (iv) specifies the reference number allocated to the NPHC by the accredited agency;
 - (v) specifies the name of the accredited agency which obtained the NPHC; and
 - (vi) specifies the date on which the NPHC was released.

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.

Item 4 **For paragraph 1 of Part B of Schedule 3 substitute**

1. (a) the original or certified copy (as applicable) of a National Police Certificate (or foreign equivalent if one is able to be obtained) that has been issued within the 6 month period preceding the date of application for registration, for each of the key personnel of the applicant; or
- (b) a National Police History Check (NPHC) document that has been issued within the 6 month period preceding the date of the application for registration, for each of the key personnel of the applicant, which:
 - (i) has been obtained from an accredited agency;
 - (ii) specifies the full name and date of birth of the natural person to whom the NPHC relates;
 - (iii) provides relevant information regarding the natural person to whom the NPHC relates, which will enable the applicant to make an informed decision as to whether that natural person has any disclosable convictions arising from any court outcomes within Australia which are disclosable;
 - (iv) specifies the reference number allocated to the NPHC by the accredited agency;
 - (v) specifies the name of the accredited agency which obtained the NPHC; and
 - (vi) specifies the date on which the NPHC was released.

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.