Australian Government

Australian Transaction Reports and Analysis Centre

Explanatory Statement – *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2014 (No. 3)* 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 1, 4, 5, 8, 9, 15 and 30

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.

2. The customer due diligence (CDD) amendments to the AML/CTF Rules strengthens the AML/CTF regime of Australia by enabling the following issues to be addressed:

   (a) The reduction in Australia's revenue base resulting from a lack of accurate or verified customer information has enabled information regarding organised crime, terrorist and other organisations to be hidden from, or misrepresented to, financial institutions and, ultimately, government agencies;

   (b) Adverse impacts on Australia's national security whereby financial institutions may inadvertently facilitate transactions that result in tax evasion, money laundering or terrorism financing as organised criminals and money launderers use the corporate veil to conceal their ownership and controlling interest in companies; and

   (c) Failure to meet Australia's international obligations if Australia's regulatory approach is inconsistent with endorsed international standards, thereby leaving Australia's financial system vulnerable to serious and organised crime, such as drug trafficking, fraud, tax evasion and other criminal and corrupt activities.

3. In regard to international obligations, those relating to the Financial Action Task Force (FATF) are of crucial importance. FATF is an international inter-governmental body (of which Australia is a founding member), which sets standards and promotes effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.

4. The FATF Recommendations are recognised as the international standard for combating money laundering, the financing of terrorism and the proliferation of weapons of mass destruction.

5. FATF identified a number of deficiencies in the anti-money laundering and terrorism financing regime of Australia in regard to customer due diligence (CDD):

   (a) There is no requirement to take reasonable measures to understand the ownership and control structure of a customer that is a legal person or arrangement;

   (b) There is no comprehensive requirement to identify and verify beneficial owners of a customer that is a legal person or arrangement;

   (c) There is no requirement for reporting entities to determine whether the customer is acting on behalf of another person and, if so, to take reasonable steps to verify the identity of that other person;

   (d) There is no specific requirement for reporting entities to identify and verify the settlor of a trust;

   (e) There is no specific requirement to apply a range of measures in high-risk situations and some enhanced due diligence measures are not clearly distinguishable from normal CDD measures. Reporting entities are not required to take specific additional measures for customers (or their beneficial owners) who are politically exposed persons (PEPs);

   (f) There is no requirement to collect information on the purpose and intended nature of the business relationship;

   (g) The obligations on reporting entities concerning record-keeping requirements regarding documents collected as part of the processes of identification, verification and updating of customers are inadequate.

6. As part of the Australian Government's consideration of FATF's concerns, a discussion paper titled *Consideration of possible enhancements to the requirements for customer due diligence* was released for public consultation from May 2013 to 30 September 2013.

7. Following consideration of stakeholder submissions in response to the Discussion Paper, draft AML/CTF Rules were issued for public consultation.

8. The resulting amendments to the AML/CTF Rules are contained in *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2014 (No. 3.)* which amends the following chapters:

   - Chapter 1 (containing key terms and concepts);
   - Chapter 4 (relating to customer identification);
   - Chapter 5 (relating to a special AML/CTF Program);

- Chapter 8 (relating to Part A of a standard AML/CTF Program);
- Chapter 9 (relating to Part A of a joint AML/CTF Program);
- Chapter 15 (relating to ongoing customer due diligence); and
- Chapter 30 (relating to disclosure certificates).

9. In addition to the amendments relating to CDD, the Instrument also makes amendments to privacy notices contained in the AML/CTF Rules Compilation (Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)) and to the definitions of 'certified copy' and 'certified extract' contained in Chapter 1.

10. Detailed summaries of the amendments are contained in the Notes on Items commencing on page 4.

Structure of *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2014 (No. 3)*

11. The Instrument contains two Schedules as the amendments relating to 'certified copy' and 'certified extract' in Chapter 1 (as a result of the insertion of the 'notary public' provisions), and those relating to privacy notices, will commence before the CDD amendments.

12. Accordingly, Schedule 1 will commence on the day after registration of the Instrument, while Schedule 2, which contains the amendments to the Chapters in relation to customer due diligence, will commence on 1 June 2014.

13. As a result, the AML/CTF Rules Compilation will show the Schedule 1 amendments as being in legal force, however, the amendments in Schedule 2 will not be in legal force but instead will be contained in the 'Notes to the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*' until their commencement on 1 June 2014, after which they will be incorporated into the Compilation.

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

14. 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.

15. The Statement of Compatibility for the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2014 (No. 3)* is included in this Explanatory Statement at page 16. 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 2014 (No. 3).*

Section 2

This section specifies that Schedule 1 commences on the day after the instrument is registered and that Schedule 2 commences on 1 June 2014.

Section 3

This section contains the details of the amendment:

Both Schedule 1 and Schedule 2 amend *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.

Schedule 1

This schedule amends the existing definitions of 'certified copy' and 'certified extract' in Chapter 1 and updates previous references to 'National Privacy Principles' to 'Australian Privacy Principles' to reflect amendments to the *Privacy Act 1988*.

Schedule 2

This schedule sets out the amendments to Chapters 1, 4, 5, 8, 9, 15 and 30 of the AML/CTF Rules.

3. Notes on Items

Schedule 1

1. Chapter 1

Item 1

This item inserts a new subparagraph (6) to the definition of 'certified copy' to allow a 'notary public' to certify a copy of a document. The new CDD measures may lead to a greater need to obtain reliable and independent documentary verification from persons outside of Australia. Without the addition of a notary public as a person who may certify a copy of a document, certification outside of Australia may have posed difficulties because of the limited range of parties that are able to certify documentation outside of Australia.

Item 2

This item makes a consequential amendment as a result of Item 1 to allow a notary public to certify a copy of an extract of a complete original document.

Both Items 1 and 2 will commence on the day after this instrument is registered as it was considered appropriate that they commence immediately.

Privacy Notices

Item 1

This item substitutes a new note for inclusion at the end of all of the Chapters in the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* due to the amendments to the *Privacy Act 1988* which commenced in March 2014. It substitutes the term 'Australian Privacy Principles' for 'National Privacy Principles'.

Item 2

This item amends the notes in Chapter 56 to read 'Australian Privacy Principles' as a result of the amendments to the *Privacy Act 1988* in March 2014.

Both Items 1 and 2 will commence on the day after this instrument is registered as it was considered appropriate that they commence immediately.

Schedule 2

1. Chapter 1

Item 1

This item substitutes paragraph 1.1.1 and specifies that the amendments to the chapter will commence on 1 June 2014.

Item 2

This item inserts a definition of 'Australian Government Entity', a term used in subparagraph 4.12.2(2)(c) of Chapter 4 in relation to beneficial owners.

Item 3

This item deletes the existing definition of 'beneficial owner' and substitutes a new definition of this term. The definition is in accordance with the FATF definition of 'beneficial owner' contained in *The FATF Recommendations*. There are two limbs to the definition: the first relates to a beneficial owner of a reporting entity as a result of the requirements relevant to the Remittance Sector Register, whereby the beneficial owner of the reporting entity must be provided to AUSTRAC; the second relates to the identification of the beneficial owner of a customer. Whereas the previous definition limited the requirement to companies, the new definition extends that obligation to all customer types as specified in Chapter 4.

Other important terms in the definition are discussed below.

'Owns or controls'

This term is in disjunctive form, that is, the word 'or' should be read in the alternative. There may be circumstances where both elements may be considered relevant, however, there are some circumstances, such as in the case of an individual, where 'owns' is not relevant as an individual cannot be 'owned'.

'Ultimately'

The FATF definition of 'beneficial owner' refers to a person 'who ultimately owns or controls a customer' and 'includes those persons who exercise ultimate effective control'. The word 'ultimately' has been used in paragraph (2) of the definition in order to ensure that reporting entities do not need to collect and verify beneficial owner details at each level in a chain of ownership, but instead only need to collect and verify the details at the 'ultimate' beneficial owner level.

'Directly or indirectly'

This phrase has been included to addresses situations where a beneficial owner may directly own a customer, such as a company, however, another entity may control that owner indirectly and therefore could be considered to be the ultimate beneficial owner of that company.

'Control'

The phrase 'exercising control through the capacity to determine decisions about financial and operating policies', is intended to narrow the range of persons who may be considered to exercise the relevant control over a customer and therefore the number of beneficial owners which may be considered by reporting entities.

Ownership percentage

The definition uses the term '25% or more' of a person in order to avoid situations where no beneficial ownership would be identified if each owner was an equal 25% shareholder of an entity.

Item 4

This item inserts a new definition of 'politically exposed person' into paragraph 1.2.1 in Chapter 1 in response to FATF requirements. The definition is inclusive rather than exhaustive, that is, other persons may be added to the list contained in the definition if a reporting entity considers it appropriate after consideration of ML/TF risk. It is noted that the FATF definition of 'politically exposed person' is also inclusive.

The new definition requires checks to be made against 'public or readily available' information, with the term 'readily available' allowing for situations where there may be delay and expense in reporting entities searching old or archived records, even though that information is technically 'available'. In those circumstances, because the information is so onerous to retrieve, it is in effect, unavailable.

Item 5

This item inserts a new definition of 'reasonable measures' into paragraph 1.2.1.

This new definition mirrors the definition of 'reasonable measures' in the *The FATF Recommendations*. The references to 'money laundering or terrorist financing risks' and 'appropriate measures' in the definition, means that reporting entities can apply a risk-based approach to their application of requirements.

Item 6

This item inserts a new definition of 'senior managing official' into paragraph 1.2.1. This phrase is used in Part 4.2 of Chapter 4 in relation to procedures which need to be undertaken when a beneficial owner of a customer cannot be identified and is intentionally broad to allow its application to a range of customer types.

2. Chapter 4

Item 1

This item repeals the existing Chapter 4 and substitutes a new version.

Item 2

This item inserts a new version of Chapter 4 with the following key amendments.

Changing references from 'Part B' to "AML/CTF program'

The previous version of Chapter 4 referred to Part B of the AML/CTF program, which has now been amended to refer to an 'AML/CTF program'. These amendments have been made in order to clarify the legal powers relating to the identification and verification requirements for a 'beneficial owner' of a customer, as the beneficial owner is not a customer of a reporting entity.

Amendment to paragraph 4.1.1

Paragraph 4.1.1 has been amended to expand the use of enabling powers of the AML/CTF Act in regard to Chapter 4, and accordingly the following have been added: paragraph 36(1)(b) (ongoing customer due diligence), paragraph 84(2)(c) (standard AML/CTF programs), paragraph 85(2)(c) (joint AML/CTF programs), section 106 (records of designated services), section 107 (transaction records), section 108 (customer-provided transaction documents to be retained), section 136 (false or misleading information), and section 137 (producing false or misleading documents).

Sections 136 and 137 relate to offences for providing false or misleading information and documents. They have been inserted to ensure that non-compliance with Chapter 4 can be enforced pursuant to those sections.

The paragraph also specifies that the chapter commences operation on 1 June 2014.

New paragraph 4.1.2

A new paragraph 4.1.2 has been inserted to clarify that the amendments to Chapter 4 do not apply to:

- pre-commencement customers which are existing customers of a reporting entity who were first provided with a designated service before 12 December 2007; and

- customers covered by the statutory exemption at subsection 39(6) of the AML/CTF Act which relates to the designated services covered by item 40 (accepting payment of the purchase price for a new pension or annuity), item 42 (accepting a superannuation contribution, roll-over or transfer) or item 44 (accepting a Retirement Savings Account contribution, roll-over or transfer) of table 1 in subsection 6(2) of the AML/CTF Act.

New paragraph 4.1.3

The wording of the existing paragraph 4.1.3 has been broadened in line with FATF requirements to include additional risk factors that a reporting entity needs to consider in identifying its ML/TF risk. The assessment of this risk is undertaken generally in respect to customers, rather than in relation to each customer and need not be undertaken prior to providing a designated service.

New paragraph 4.1.6 – application of new provisions

The paragraph clarifies that the new CDD measures in relation to settlors, beneficial owners and politically exposed persons in the Chapter 4 only apply to persons who become customers of a reporting entity after 1 June 2014, that is, the commencement date of these amendments.

Deletion of the paragraphs 4.3.10 – 4.3.16

The existing paragraphs 4.3.10 – 4.2.16, relating to the collection and verification of certain information in respect to the beneficial owners of certain companies, have been deleted as they have been superseded by the new requirements for beneficial owners specified in Part 4.12.

New provisions relating to 'settlors'

New subparagraphs 4.4.3(5) and 4.4.5(5) require reporting entities to collect and verify the full name of the settlor of the trust unless the following apply:

(a) the material asset contribution to the trust by the settlor at the time the trust is established is less than $10,000; or

(b) the settlor is deceased; or

(c) the trust is verified using the simplified trustee verification procedure under paragraph 4.4.8 of the AML/CTF Rules.

New Part 4.12 – collection and verification of beneficial owner information

A new Part 4.12, containing beneficial owner identification and verification requirements, has been inserted into Chapter 4. These procedures allow a reporting entity to undertake the requirements either before the provision of a designated service to the customer, or as soon as practicable after the designated service has been provided.

The term 'as soon as practicable' has not been defined in the AML/CTF Rules in order to allow reporting entities to carry out the procedure in a manner which is appropriate to the particular circumstances of each customer.

The new requirements require reporting entities to collect from the customer, and take reasonable measures to verify, the full name; and the date of birth or full residential address of each beneficial owner.

The term 'date of birth' provides greater flexibility to reporting entities for identification purposes as 'address' is not consistently available on some of the data sources and lists used by reporting entities for screening purposes.

It is noted that reporting entities may assume that the customer and the beneficial owner are one and the same, unless the reporting entity has reasonable grounds to consider otherwise. As a consequence reporting entities need not make inquiries of the customer in regard to beneficial ownership, unless they consider this is appropriate having regard to ML/TF risk.

Subparagraph 4.12.2(2) specifies that reporting entities are not required to identify beneficial owners if the customer is:

- a company which is verified under the simplified company verification procedure under paragraph 4.3.8;
- a trust which is verified under the simplified trustee verification procedure under paragraph 4.4.8;
- an Australian Government Entity. This term is based upon the existing definition of 'government body' in the AML/CTF Act, however, the phrase 'Australian Government Entity' has been used as it is intended to also capture local government entities, a level which is absent from the Act definition;
- a foreign public company which is listed on a stock exchange and subject to 'transparency of beneficial owner' disclosure requirements which are the same as, or comparable to, the requirements which exist in Australia.

Part 4.12 also specifies requirements which must be undertaken if a reporting entity is unable to identify a beneficial owner and generally follow the guidance contained in the FATF 'Interpretative Note to Recommendation 10 (Customer Due Diligence)'. These provisions allow a reporting entity to identify an individual if the ostensible beneficial owner as defined in the AML/CTF Rules cannot be identified.

Part 4.12 also introduces safe harbour procedures for beneficial owners where the beneficial owner is assessed by a reporting entity as being of medium or lower ML/TF risk. Both document and electronic based procedures are allowed for and are modelled on the existing safe harbour procedures for customers in Chapter 4, but do not replicate those procedures.

A note is included after paragraph 4.12.3 reminding reporting entities of their obligations under the *Privacy Act 1988* in relation to the collection and handling of information about beneficial owners.

New Part 4.13 - collection and verification of politically exposed person information

A new Part 4.13, containing the new politically exposed person (PEP) identification and verification requirements, has been inserted into Chapter 4. Part 4.13 covers both customers who are PEPs (and who therefore are identified under the individual customer requirements of Chapter 4) and beneficial owners who are not customers, but if they are a PEP must be identified under the same provisions as a customer.

Part 4.13 requires an AML/CTF program to include appropriate risk-management systems to determine whether a customer or beneficial owner is a PEP and this must occur either before the provision of a designated service, or as soon as practicable after the designated service has been provided to the customer.

Part 4.13 also uses the term 'as soon as practicable' which has not been defined in the AML/CTF Rules in order to allow reporting entities to carry out the procedures in a manner which is appropriate to the particular circumstances of each customer.

The AML/CTF Rules have different requirements for:

- medium or lower ML/TF risk domestic PEPs and international organisation PEPs; and
- foreign PEPs and high ML/TF risk domestic PEPs and international organisation PEPs.

For domestic PEPs and international organisation PEPs which are beneficial owners, a reporting entity must carry out the normal identification and verification requirements prescribed in paragraphs 4.2.3 to 4.2.9 which apply to individuals. They must also ascertain whether the PEP is of higher ML/TF risk. Generally, domestic and international organisation PEPs may be considered to be of lower ML/TF risk, but this cannot be assumed and therefore an express requirement for the consideration of ML/TF risk has been inserted into the Rules, and which must be undertaken by a reporting entity before such a judgement is made.

For foreign PEPs and high ML/TF risk domestic PEPs and international organisation PEPs, a reporting entity must identify the PEP under the procedures which apply to individual customers, obtain senior management approval, establish their sources of wealth and funds, and comply with the ongoing customer due diligence obligations in Chapter 15.

A note is included after paragraph 4.13.4 to remind reporting entities of their obligations under the *Privacy Act 1988* in relation to the collection and handling of sensitive information about PEPs.

3. Chapter 5

Item 1

This item repeals the existing Chapter 5 in its entirety.

Item 2

This item inserts a new version of Chapter 5 which has been amended to replace references to 'Part B' of an AML/CTF program with 'AML/CTF program'. These amendments have been made in order to clarify the legal powers relating to the identification and verification requirements for a 'beneficial owner' of a customer, as the beneficial owner is not a customer of a reporting entity.

Paragraph 5.1.1 has been amended to include reference to additional enabling powers from the AML/CTF Act: paragraph 36(1)(b) (ongoing customer due diligence), section 106 (records of designated services), section 107 (transaction records), and section 108 (customer-provided transaction documents to be retained) and also states that the chapter commences operation on 1 June 2014.

4. Chapter 8

Item 1

This item substitutes a new paragraph 8.1.1 which now includes a reference to paragraph 36(1)(b) of the AML/CTF Act as an additional enabling power under which the new provisions in Chapter 8 are made, and states that the chapter commences on 1 June 2014.

Item 2

This item amends paragraph 8.1.5 by requiring reporting entities to understand the nature and purpose of their business relationships with their customers, which reflects the FATF requirement that reporting entities must understand such business relationships. Reporting entities must also consider the 'control structure' of their non-individual customers, such as companies, trusts, partnerships, associations and registered co-operatives.

5. Chapter 9

Item 1

This item substitutes a new paragraph 9.1.1 which now includes a reference to paragraph 36(1)(b) of the AML/CTF Act as an additional enabling power under which the new provisions in Chapter 8 are made, and states that the chapter commences on 1 June 2014.

Item 2

This item amends paragraph 9.1.5 by requiring reporting entities which have formed designated business groups, to understand the nature and purpose of their business relationships with their customers, which reflects the FATF requirement that reporting entities must understand such business relationships. Reporting entities must also consider the 'control structure' of their non-individual customers, such as companies, trusts, partnerships, associations and registered co-operatives.

6. Chapter 15

Item 1

This item repeals the existing Chapter 15 in its entirety.

Item 2

This item inserts a new version of Chapter 15 which prescribes ongoing customer due diligence requirements in relation to both customers and the beneficial owners of such customers, including situations where the customer or beneficial owner is a politically exposed person.

The substantive amendments are detailed below.

Amendment to paragraph 15.1

To ensure that non-compliance with the various provisions in the new Chapter 15 of the AML/CTF Rules can be enforced pursuant to the offences in sections 136 and 137 of the AML/CTF Act, a reference to these two sections has been inserted into paragraph 15.1. The paragraph also specifies that the amended chapter commences on 1 June 2014.

Paragraph 15.2 – Know Your Customer (KYC) and Beneficial Owner Information

The paragraph has been amended to include requirements relating to beneficial owner information. It retains the risk-based approach in regard to reporting entities assessing whether to collect any additional KYC or beneficial owner information.

Paragraph 15.3 – Updating of records

The paragraph has been amended in accordance with FATF guidance on record-keeping. The reference to 'the applicable customer identification procedure' (ACIP) in the paragraph does not mean that the updating of records requires a further ACIP to be carried out in regard to the customer, for example, amending a customer's address does not mean that the address needs to be verified. The use of the term is intended to narrow the range of documents, data or information which may need to be updated to those connected with the ACIP.

The use of the term 'reasonable measures' means that reporting entities can apply a risk-based approach to complying with relevant requirements while taking into account the particular customers and circumstances of the reporting entity.

Paragraph 15.9 – enhanced customer due diligence program

The new paragraph specifies that the enhanced customer due diligence program must be applied when a customer is a foreign PEP or the customer has a beneficial owner who is a foreign PEP. If these circumstances apply, then the reporting entity must apply the provisions of paragraph 15.10.

A note has also been added reminding reporting entities to consider whether any beneficial owner of a customer, including domestic or international organisation PEPs, should be considered of high ML/TF risk. If so, then the reporting entity must apply its enhanced customer due diligence program.

Paragraph 15.10 – range of enhanced customer due diligence measures

Paragraph 15.10 contains a number of new provisions relating to beneficial owners, including obtaining KYC information, identifying the source of their funds or wealth and verifying or re-verifying identification information.

The paragraph now specifies that senior management approval no longer needs to be sought by reporting entities in respect to whether a transaction by a customer should be processed, although the obligation in respect to the assessment of transactions remains at subparagraph 15.10(7).

7. Chapter 30

Item 1

This item repeals Chapter 30 in its entirety.

Item 2

This item inserts a new version of Chapter 30 which has been amended to allow the use of disclosure certificates for the identification of beneficial owners.

The substantive amendments to Chapter 30 are detailed below.

Amendments to paragraph 30.1

To ensure that non-compliance with the various provisions in the new Chapter 30 can be enforced pursuant to the offences in sections 136 and 137 of the AML/CTF Act, a reference to these two sections has been inserted into paragraph 15.1. The paragraph now specifies paragraph 36(1)(b) as being an enabling power for the chapter and states that it will commence operation on 1 June 2014.

Paragraph 30.2 – circumstances when a disclosure certificate may be used

Paragraph 30.2 specifies the circumstances in which a reporting entity may request that a customer provide a disclosure certificate. The Disclosure Certificate must contain the full name and full residential address of each beneficial owner. Requirements in respect to companies are clarified by the new distinction between ‘Domestic companies’ and ‘Foreign companies’.

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 will have an impact on reporting entities, the most significant being the identification of the beneficial owners of the customer and politically exposed persons.

6. Assessment of benefits

These AML/CTF Rules address many of the deficiencies identified by the Financial Action Task Force in relation to customer due diligence. This will result in the following benefits:

- Reporting entities will obtain a sound understanding of their customers' businesses, ownership and control structures which will aid them in identifying, mitigating and managing ML/TF risk.

- The measures will improve the quality of information provided to AUSTRAC and other relevant agencies.

- Australia's AML/CTF regime will be enhanced by strengthening its financial system against money laundering and terrorism financing. International business relationships will be strengthened because of Australia's compliance with the FATF requirements, thereby providing assurance as to the integrity, stability and security of doing business with Australian reporting entities.

7. Consultation

These AML/CTF Rules have been developed following the release of the discussion paper titled *Consideration of possible enhancements to the requirements for customer due diligence* (Discussion Paper) in 2013, and have been subject to extensive consultation.

Following consideration of stakeholder submissions in response to the Discussion Paper, AUSTRAC prepared draft AML/CTF Rules (First Consultative Version) which were released for public consultation on the AUSTRAC website from 9 December 2013 until 24 January 2014. To ensure that all reporting entities were aware of the release of the draft Rules, every reporting entity on the AUSTRAC Reporting Entities Roll was contacted in regard to their publication.

AUSTRAC considered the submissions received in regard to the First Consultative Version and, as a result, prepared a revised version of the AML/CTF Rules (Second Consultative Version). This Version was not published on the AUSTRAC website, but was considered at a consultative forum hosted by AUSTRAC and which was attended by stakeholders that made a substantive submission to the first round of consultation, together with major reporting entities.

As a result of the consultative forum, further amendments were made to the Rules and AUSTRAC released a Third Consultative Version for public consultation from 5 March 2014 to 19 March 2014. Submissions received in relation to the Third Consultative Version did not result in any further changes to the draft AML/CTF Rules.

AUSTRAC has also 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 2014 (No. 3)

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 Chapters 1, 4, 5, 8, 9, 15 and 30 of the Anti-Money Laundering/Counter-Terrorism Financing Rules (AML/CTF Rules) to address Customer Due Diligence deficiencies identified by the Financial Action Task Force and other matters. The substantive amendments relate to the identification of the beneficial owners of a customer and politically exposed persons.

Human rights implications

It is considered that this Instrument engages and is compatible with the right to privacy and reputation. AUSTRAC has amended relevant privacy notices in the AML/CTF Rules by replacing the term 'National Privacy Principles' with the term 'Australian Privacy Principles' which has been introduced as a result of amendments to the *Privacy Act 1988*.

In addition, AUSTRAC noted the submission of the Australian Privacy Commissioner and inserted two notes in the amendments to Chapter 4, reminding reporting entities of their obligations under the *Privacy Act 1988*:

Note: Reporting entities should consider the requirements in the Privacy Act 1988 relating to the collection and handling of sensitive information about politically exposed persons.

Note: Reporting entities should consider the requirements in the Privacy Act 1988 relating to the collection and handling of information about beneficial owners.

Conclusion

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

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