



## **Australian Government**

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

#### ***Explanatory Statement – Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2015 (No. 2) amending the Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)***

#### **Purpose and operation of Anti-Money Laundering/Counter-Terrorism Financing Rules (AML/CTF Rules) amending Chapter 4 and Chapter 11**

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.

#### **Amendment to Chapter 4 of the AML/CTF Rules**

2. The *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2014 (No. 3)* introduced new customer due diligence (CDD) requirements which took effect on 1 June 2014. That Instrument amended Chapter 4 (relating to customer identification and verification) to include procedures for collecting and verifying information in relation to beneficial owners (Part 4.12) and politically exposed persons (PEPs) (Part 4.13).
3. The AML/CTF Rules and the AML/CTF Act currently contain various exemptions in relation to the carrying out customer identification, however, these relate to customers and not beneficial owners and PEPs. This Instrument adds a new Part 4.14 to Chapter 4 to extend the application of the existing exemptions to the identification of beneficial owners and PEPs.

#### **Amendment to Chapter 11 of the AML/CTF Rules**

4. Chapter 11 specifies the reporting and lodgment periods applicable to the compliance reporting obligation in section 47 (AML/CTF compliance reports) of the AML/CTF Act. This obligation requires reporting entities to provide a report to the AUSTRAC CEO about their compliance with the AML/CTF Act, Rules and Regulations.
5. AUSTRAC provided an exemption for the 2012, 2013 and 2014 compliance reporting periods, for registered remittance network providers (RNPs) and registered remittance affiliates providing designated services relating to

remittance arrangements under items 31, 32 or 32A in order to alleviate the regulatory burden of registration on the Remittance Sector Register.

6. It is noted that, if a registered remittance affiliate of a registered RNP provides a designated service in addition to items 31 or 32, or a registered RNP provides a designated service in addition to item 32A in 2015, then they are required to submit a compliance report for that year with respect to all designated services which they provide.

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

7. The *Human Rights (Parliamentary Scrutiny) Act 2011* requires that a Statement of Compatibility accompany all new Bills and disallowable legislative instruments (such as AML/CTF Rules).
8. The Statement of Compatibility for the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2015 (No. 2)* is included in this Explanatory Statement at page 5. 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*.

### **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 2015 (No. 2)*.

#### **Section 2**

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

#### **Section 3**

This section contains the details of the amendment:

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

#### **Schedule 1**

This schedule sets out the amendment to Chapter 4.

#### **Schedule 2**

This schedule sets out amendment to Chapter 11.

## **Notes on Items**

### **Schedule 1**

#### **Chapter 4**

##### **Item 1**

This item inserts a new Part 4.14 in Chapter 4 to extend the application of existing exemptions relating to customer identification to beneficial owners and PEPs. This prevents the anomalous situation whereby reporting entities are exempt from identifying and verifying customers, but still need to identify and verify beneficial owners and PEPs.

### **Schedule 2**

#### **Chapter 11**

##### **Item 1**

This item amends Chapter 11 to extend the existing exemption for registered remittance network providers and registered remittance affiliates to cover the 2015 AML/CTF compliance reporting obligations.

## **Legislative instruments**

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

## **Likely impact**

The addition of Part 4.14 to Chapter 4 will have a positive regulatory impact as it extends the customer identification exemption to include beneficial owners and PEPs.

The amendment to Chapter 11 will have a positive impact on reporting entities as it relates to an exemption from provisions of the AML/CTF Act.

## **Assessment of benefits**

The amendment of Chapter 4 will clarify the scope of existing exemptions relating to the customer identification procedures for customers, beneficial owners and PEPs.

The amendment of Chapter 11 will reduce the regulatory burden on registered remittance network providers and registered remittance affiliates, through the continuance in 2015 of the exemption from compliance reporting obligations which commenced in 2012 and was continued in 2013 and 2014.

## **Consultation**

AUSTRAC published the draft amendment to Chapter 4 (which relates to this Instrument) for public consultation on the AUSTRAC website from 10 June 2015 to 8 July 2015. Industry supported the proposed amendment.

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 the Chapter 4 amendment.

AUSTRAC did not consult on the amendment to Chapter 11 as it was considered to be minor and machinery in nature and continued existing regulatory arrangements for relevant reporting entities. This is in accordance with previous iterations of Chapter 11 relating to this exemption.

### **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 2015 (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 adds Part 4.14 to Chapter 4 of the Anti-Money Laundering/Counter-Terrorism Financing Rules (AML/CTF Rules) which specifies that when reporting entities are exempt from the requirement to identify and verify a customer under the AML/CTF Act or the AML/CTF Rules, they will also be exempt from the requirement to identify and verify the beneficial owner and politically exposed persons (PEPs) of the customer.

The Instrument also makes an amendment to Chapter 11 to extend the existing exemption for registered remittance network providers and registered remittance affiliates to cover the compliance reporting obligation for 2015.

#### **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.

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