Australian Government

Australian Transaction Reports and Analysis Centre

Explanatory Statement – *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2016 (No. 1)* 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 Chapters 4, 38, 56 and 60

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. *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2016 (No. 1)* amends the following chapters:

- Chapter 4 (relating to customer identification)
- Chapter 38 (relating to sale of shares for charitable purposes)
- Chapter 56 (relating to applications to the Remittance Sector Register)
- Chapter 60 (relating to change of registration details on the Remittance Sector Register).

Amendments to Chapter 4

3. *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 to include procedures for collecting and verifying beneficial owner (Part 4.12) and politically exposed person information (Part 4.13).

4. In undertaking consultation for those amendments, three issues were identified by industry which AUSTRAC agreed to consider with the intention that Chapter 4 would be amended to accommodate them. They were:

- Amend the collection of customer identification information to allow information to be collected from sources other than the customer
- Amend the electronic safe harbour provisions for customers
- Extend current customer identification exemptions to cover beneficial owners and politically exposed persons.

5. It is noted that the extension of the customer identification exemptions were implemented by *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2015 (No. 2)*, which was registered on 11 November 2015. The other two issues raised by industry during consultation are considered below.

Collection of identification information to allow information to be collected from sources other than the customer

6. Financial Action Task Force (FATF) Recommendation 10 (Customer Due Diligence) states that financial institutions must undertake measures 'identifying the customer and verifying that customer's identity using reliable, independent source documents, data or information'. It is noted that FATF does not require that the 'reliable, independent source documents, data or information' be sourced only 'from' the customer.

7. During the CDD consultation, industry submitted that there would be regulatory advantages and savings if their ability to collect customer identification information was broadened.

8. The Regulation Impact Statement[1] for the CDD changes describes these advantages and savings:

> Under the proposed change, the reporting entity would have flexibility in its approach to collection and verification of customer information including obtaining initial information from an independent source, pre-fill parts of the customer application form and then check the information with the customer for verification purposes. The key cost savings would relate to:
>
> - reducing manual data entry of customer information by reporting entity employees
> - reducing customer time needed to complete application forms (due to the reporting entity pre-filling information from an independent source).
>
> Based on discussions with financial institutions, it is estimated that the proposed change would reduce manual data entry time by around 4 minutes per customer and would reduce the time it takes the average new customer to complete an application form by around 12.5 minutes. Some financial institutions indicated that the proposed change would not provide cost savings to their customer on-boarding process due to technology constraints and practical issues around existing processes. Therefore, it is assumed that around half of the financial institutions would adapt their processes to leverage the flexibility of the proposed requirements over the 10 year period. The estimated annualised savings represent $7.2 million to financial institutions and $7.9 million to

[1] *Proposed Reform to Strengthen Customer Due Diligence*, AUSTRAC, May 2014, p ix.

customers (individuals), with a total saving of around $15.1 million per annum from this offset.

9. The amendments remove the word ‘from’ and replace it with ‘about’ in Chapter 4 with regard to customer identification. It is noted that as a result reporting entities will have the discretion to collect information from either the customer or from sources other than the customer.

Amendment of the electronic safe harbour provisions for customers

10. Reporting entities may adopt 'safe harbour' procedures to verify customer information for individuals with a medium or lower money-laundering or terrorism-financing (ML/TF) risk in accordance with paragraph 4.2 of Chapter 4.

11. The CDD amendments of 2014 inserted provisions relating to the identification of beneficial owners by reporting entities. These provisions included ‘safe harbour procedures’ that may be applied to beneficial owners who are of medium or lower ML/TF risk, and were based upon the existing electronic safe harbour provisions for customers in Chapter 4.

12. Industry submissions in regard to CDD requested that the existing electronic safe harbour procedures for customers should be made consistent with the new electronic safe harbour procedures for beneficial owners, as such an alignment would produce regulatory savings.

13. Currently the electronic safe harbour provisions for individual customers state that, in respect to verification, two components are mandatory (customer name and residential address), while two are discretionary (customer date of birth or customer transaction history).

14. The amendments require one mandatory component in regard to verification (name) and three discretionary components (residential address, date of birth or customer transaction history).

15. As the amendments are solely deregulatory, the Office of Best Practice Regulation (OBPR) stated that there was no requirement to undertake a Regulation Impact Statement, however, the savings must be costed using the Australian Regulatory Burden Measurement Framework (OBPR reference: 16171).

16. Draft costings were developed and published on the AUSTRAC website for consultation from 9 June 2016 to 7 July 2016. No submissions were received on the published costings.

17. The costings are reproduced below:

Current cost to financial institutions performing manual verifications	$7,379,136	Based on OBPR purchase costs formula for businesses (Source: OBPR Guidance Note – Regulatory Burden Measurement Framework, page 13). $23 per Australia Post AML identity check as specified by industry. Assume same cost for manual verification for all businesses whether the customer attends a branch of the reporting entity or Australia Post. Assumes there are 4,010,400 new customers per year across affected financial institutions (Source: PwC). All new customers would be e-verified in the first instance. Industry has advised that 40% of new customers fail e-verification (1,604,160) and that 20% of customers who fail e-verification will go on to complete manual verification (320,832).
New cost to financial institutions performing manual verifications	$2,767,176	Based on the information from industry that the proposed changes would reduce e-verification fail rates from 40% (1,604,160) to 15% (601,560). It is assumed that 20% of customers who fail e-verification will continue to be manually verified (120,312).
Savings to financial institutions (business) performing manual verifications	**$4,611,960**	Difference between current cost and new cost.
Current cost to financial institutions performing mismatches	$4,200,306	Based on OBPR labour costs formula for businesses (Source: OBPR Guidance Note – Regulatory Burden Measurement Framework, page 12). $21.82 per mismatch. Figure based on default work-related labour cost of $65.45 per hour and information from industry that it takes 0.3 hours to process a mismatch and there is an average of 6 staff in every institution that process mismatches. Based on the assumption that 10% of manual verifications (320832) will still result in a mismatch (32083).
New cost to financial institutions performing mismatches	$1,575,099	
Savings to financial institutions (business) performing mismatches	**$2,625,207**	
Total savings to business	**$6,730,565**	After one-off administrative cost of 7% (506602) has been deducted from the first year. This is the cost for business to understand the new changes and review and amend their procedures. Average figure was calculated by dividing one-off cost over ten years.
Average savings over 10 years	**$7,186,506**	

Savings to individuals

Item	Cost	Source and explanation

Item	Cost	Source and explanation
Current cost to customers performing manual verifications	$9,304,128	Based on OBPR labour costs formula for individuals (Source: OBPR Guidance Note – Regulatory Burden Measurement Framework, page 13). $29 per manual verification. Figure based on default non-work related labour cost of $29 per hour and information from industry that it takes a customer 2 hours to collect relevant documents and attend financial institution's branch/Australia Post. Assumes there are 4,010,400 new customers per year across affected financial institutions (Source: PwC). Industry has advised that 40% of new customers (1,604,160) fail e-verification and that 20% of customers who fail e-verification will go on to complete manual verification (320,832).
New cost to customers performing manual verifications	$3,489,048	Based on the information provided by industry that the proposed changes would reduce e-verification fail rates from 40% (1,604,160) to 15% (601,560). It is estimated that 20% of customers who fail e-verification will continue to be manually verified (120,312).
Savings to customers (individuals)	**$5,815,080**	Difference between current cost and new cost.
Average savings over 10 years	**$5,815,080**	

Total offset savings

Total offset savings	$13,001,586	Average savings over 10 years for business and customers

Amendments to Chapter 38

18. Chapter 38 of the AML/CTF Rules exempts reporting entities from the customer identification provisions of the AML/CTF Act when they provide an item 33 designated service (as an agent acquiring or disposing of a security or derivative) 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*.

19. The exemption applies when a person who wishes to donate the proceeds of the sale of their shares to charity, provides details to a reporting entity (a stockbroker in this case) that sells the shares and provides the proceeds of the share sale to a charitable fund or charitable institution, which subsequently distributes the proceeds to DGRs.

20. The raising of the threshold from $500 to $10,000 will allow larger donations to be made for charitable purposes and will also decrease the regulatory burden for stockbrokers by widening the exemption. In addition, those customers who may wish to make greater donations up to the new threshold will not have the inconvenience of having to undergo customer identification.

Amendments to Chapters 56 and 60

21. On 1 July 2016 the *Australian Crime Commission Amendment (National Policing Information) Act 2016* amended the *Australian Crime Commission Act 2002* and implemented the transfer of the functions formerly undertaken by the CrimTrac agency, to the Australian Crime Commission (ACC). These functions include the provision of systems and services relating to national policing information and nationally coordinated criminal history checks.

22. It is noted that although the ACC is now known as the Australian Criminal Intelligence Commission (ACIC), it is still the Australian Crime Commission for legal purposes.

23. As a result of the merger of CrimTrac with ACIC, machinery changes have been made to amend references to 'CrimTrac' in Chapter 56 (Application for registration on the Remittance Sector Register) and Chapter 60 (Change in registration details) to read 'Australian Crime Commission'.

24. Detailed summaries of the amendments to Chapters 4, 38, 56 and 60 are contained in the Notes on Items commencing on page 7.

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

25. The *Human Rights (Parliamentary Scrutiny) Act 2011* introduced a requirement for a Statement of Compatibility to accompany all new Bills and disallowable legislative instruments.

26. The Statement of Compatibility for the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2016 (No. 1)* is included in this Explanatory Statement at page 11. 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 2016 (No. 1).*

Section 2

This section specifies that Schedule 1 commences on the day after the instrument is registered.

Section 3

This section contains the details of the amendment:

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

Schedule 1

This Schedule amends Chapter 4, Chapter 38, Chapter 56 and Chapter 60.

Notes on Items

Schedule 1

1. Chapter 4

Item 1

This item repeals the existing Chapter 4 and substitutes it with an amended version. The amendments relating to the collection of identification information to allow information to be collected from sources other than the customer are specified in paragraphs and subparagraphs: 4.2.3, 4.2.4, 4.2.13, 4.2.5, 4.2.8, 4.2.9, 4.2.11(1), 4.2.11(3), 4.2.13(1), 4.3.3, 4.4.3, 4.4.3(6), 4.4.3(7), 4.4.3(8), 4.4.9, 4.5.3, 4.5.3(4), 4.6.3, 4.6.3(2)(d), 4.7.3, 4.8.3, 4.9.3(1), 4.9.3(4), 4.9.5(4), 4.10.1, 4.10.2(4), 4.11.2, 4.11.6, 4.12.1(1), 4.12.3, 4.12.7(1) and 4.12.8.

The amendment at 4.1.1 insets a note relating to privacy which was a recommendation made by the Privacy Impact Assessment in respect to obtaining information from sources other than the customer, and also deletes an obsolete reference to the commencement date of Chapter 4. The amendment at paragraph 4.9.1 deletes an erroneous reference.

The amendments relating to the electronic safe harbour provisions for customers are specified in paragraphs 4.2.13 to 4.2.14. Prior to these amendments, the electronic safe harbour provisions for the identification of customers state that, in respect to verification, two components are mandatory (customer name and residential address), while two are discretionary (customer date of birth or customer transaction history).

The amendments specify that there is now only one mandatory component in regard to verification (name) and four discretionary components in regard to residential address or date of birth or both or customer transaction history.

2. Chapter 38

Item 1

This item amends the threshold from $500 to $10,000.

3. Chapter 56

Item 1

This item changes 'CrimTrac' references to 'Australian Crime Commission'.

Item 2

This item deletes the definition of 'CrimTrac' and substitutes a definition of 'Australian Crime Commission'.

Item 3

This item changes 'CrimTrac' references to 'Australian Crime Commission'.

Item 4

This item changes 'CrimTrac' references to 'Australian Crime Commission'.

Item 5

This item changes 'CrimTrac' references to 'Australian Crime Commission'.

Item 6

This item changes 'CrimTrac' references to 'Australian Crime Commission'.

Item 7

This item changes 'CrimTrac' references to 'Australian Crime Commission'.

Item 8

This item changes 'CrimTrac' references to 'Australian Crime Commission'.

4. Chapter 60

Item 1

This item amends 'CrimTrac' references to 'Australian Crime Commission'.

Item 2

This item deletes the definition of 'CrimTrac' and substitutes a definition of 'Australian Crime Commission'.

Item 3

This item changes 'CrimTrac' references to 'Australian Crime Commission'.

Item 4

This item changes 'CrimTrac' references to 'Australian Crime Commission'.

Item 5

This item changes 'CrimTrac' references to 'Australian Crime Commission'.

Item 6

This item changes 'CrimTrac' references to 'Australian Crime Commission'.

Legislative instruments

These AML/CTF Rules are legislative instruments as defined in section 8 of the *Legislation Act 2003*.

Likely impact

The amendments (other than those specified in Chapters 56 and 60) will have an impact on reporting entities in respect to customer identification.

Assessment of benefits

The amendments to Chapter 4 will provide significant deregulatory benefits to both individuals and industry:

- The Regulation Impact Statement[2] which examined the amendments allowing information to be collected from sources other than the customer, estimated annualised savings of $7.2 million to reporting entities and $7.9 million to customers (individuals), with a total saving of around $15.1 million per annum.

- The consultation paper[3] which examined the amendments to the safe harbour procedures, estimated annualised savings of $7.2 million to reporting entities and $5.8 million to customers (individuals), with a total saving of around $13 million per annum. These costings were reviewed by the Office of Best Practice Regulation to ensure that they conformed to the Australian Regulatory Burden Measurement Framework.

The amendment of the threshold in Chapter 38 from $500 to $10,000 will allow larger gifts of shares that will aid the charity sector before customer identification needs to be undertaken, while maintaining the exemption from customer identification currently in place for reporting entities in regard to these transactions up to the threshold.

[2] *Proposed Reform to Strengthen Customer Due Diligence*, AUSTRAC, May 2014, p ix.
[3] *Costings: electronic safe harbour procedures*, AUSTRAC, June 2016.

The amendments to Chapter 56 and Chapter 60 will provide clarity for reporting entities in accurately identifying the relevant entity.

Consultation

The amendments to Chapter 4 relating to the electronic safe harbour procedures for customers were published on the AUSTRAC website from 29 May 2014 until 26 June 2014.

Following consideration of stakeholder submissions, they were republished on the AUSTRAC website from 10 June 2015 to 8 July 2015, in conjunction with the amendments allowing information to be collected from sources other than the customer.

As a result of a submission from the Australian Privacy Commissioner received in the 2015 consultation, a Privacy Impact Assessment[4] on the amendments allowing information to be collected from sources other than the customer was undertaken by AUSTRAC. A draft was published on the AUSTRAC website from 25 November 2015 to 9 December 2015.

AUSTRAC has also consulted with the Australian Taxation Office, the Australian Customs and Border Protection Service (as it then was), the Australian Federal Police, the Australian Crime Commission and the Office of the Australian Information Commissioner in relation to these AML/CTF Rules.

Ongoing consultation

AUSTRAC will conduct ongoing consultation with stakeholders on the operation of these AML/CTF Rules.

[4] *Privacy Impact Assessment – Amendments to Chapter 4 of the AML/CTF Rules*, AUSTRAC, November 2015.

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 2016 (No. 1)

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 changes Chapters 4, 38, 56 and 60 of the Anti-Money Laundering/Counter-Terrorism Financing Rules (AML/CTF Rules) to amend procedures relating to customer identification (Chapter 4 amendments), increase a threshold from $500 to $10,000 (Chapter 38) and make minor amendments to nomenclature (Chapter 56 and Chapter 60).

Human rights implications

It is considered that in relation to the amendments to Chapter 4, this Instrument engages and is compatible with the right to privacy and reputation. As a result of consultation on the Chapter 4 amendments, AUSTRAC noted the submission of the Australian Privacy Commissioner which requested that a Privacy Impact Assessment be undertaken. This was developed by AUSTRAC and a draft was published for consultation on the AUSTRAC website. Stakeholders, including the Commissioner, are in agreement with the final recommendations of the Assessment:

> While the proposed amendments will have privacy impacts, these can be managed appropriately by:
>
> (a) Reporting entities implementing any necessary adjustments to their privacy practices, procedures or systems to ensure continued compliance with the APPs. This is important in relation to non-individual customers who have associated individuals who may not normally be notified about collection of their personal information by the reporting entity, nor have the opportunity to consent to such collection;
>
> (b) The inclusion of the following note in Chapter 4 which highlights the relevant privacy obligations:
>
> *Note: Reporting entities that collect information about a customer from a third party will need to consider their obligation under subclause 3.6 of the Australian Privacy Principles, which requires that personal information about an individual must be collected only from the individual unless it is unreasonable or impractical to do so and where it is reasonably necessary for the reporting entity's functions or activities;*

(c) AUSTRAC issuing guidance to industry which discusses the amendments to Chapter 4, explains the interaction with APP3 (and other APPs generally) and highlights the importance of complying with APP 3.6 when collecting information from sources other than the individual concerned;

(d) Noting the above recommendations in the 'Statement of Compatibility with Human Rights' as required by Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*, when the proposed amendments are finalised.

Recommendation (b) has been included in *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2016 (No. 1)*, Recommendation (c) will be developed and subsequently published for public consultation after the making and registration of *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2016 (No. 1)*, while Recommendation (d) has been included in the Explanatory Statement.

Conclusion

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

[Signed]
Paul Jevtovic APM
Chief Executive Officer
Australian Transaction Reports and Analysis Centre