



**Explanatory Statement – *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2017 (No. 4) 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) adding Chapter 75.**

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.

**Addition of Chapter 75**

2. AUSTRAC is aware of instances when law enforcement enquiries with reporting entities about the activities of certain customers have adversely affected the progress of related law enforcement investigations.
3. The issue for law enforcement arises when reporting entities undertake actions, in line with their obligations under the AML/CTF Act, which have the effect of alerting customers to possible closer scrutiny of their financial transactions. Customers then cease their activities with the reporting entity, thus limiting the ability of law enforcement officers to investigate the financial transactions.
4. A temporary exemption from certain AML/CTF Act obligations is needed in circumstances where actions taken by reporting entities, in line with these AML/CTF obligations, could undermine investigations by law enforcement into certain customers of the reporting entities.
5. Chapter 75 specifies that the AUSTRAC CEO may exempt reporting entities from particular sections of the AML/CTF Act where a requesting officer of an eligible agency reasonably believes that providing a designated service to a customer would assist the investigation of a serious offence.
6. The Chapter does not mandate that a reporting entity co-operate with the investigation, or otherwise continue to provide a designated service to a customer; this will be a decision made by the reporting entity in line with its risk-based systems and controls.
7. The money laundering or financing of terrorism risk associated with the proposed exemption is considered to be low.

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

8. The *Human Rights (Parliamentary Scrutiny) Act 2011* requires a Statement of Compatibility declaring that the relevant instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act.
9. The Statement of Compatibility for the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2017 (No. 4)* 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 2017 (No. 4)*.

#### **Section 2**

This section specifies that the Instrument commences on the day after it is registered.

#### **Section 3**

This section contains the details of the amendment:

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

#### **Schedule 1**

This schedule adds Chapter 75.

### **Notes on Paragraphs**

#### **Chapter 75**

##### **Item 1**

This item adds Chapter 75.

##### **Paragraph 75.1**

This paragraph specifies that these AML/CTF Rules have been made under section 229 of the AML/CTF Act, for the purposes of subsection 247(4) of the AML/CTF Act.

## **Paragraph 75.2**

This paragraph specifies that a requesting officer of an eligible agency can request the AUSTRAC CEO to exempt a reporting entity from specified sections of the AML/CTF Act when providing a designated service to a customer, if the requesting officer has a reasonable belief that the provision or continued provision of the designated service to that customer would assist the agency in the investigation of a serious offence.

## **Paragraph 75.3**

This paragraph specifies the sections of the AML/CTF Act that a reporting entity would be exempt from in relation to the provision of a designated service to the customer, if the exemption application is approved by the AUSTRAC CEO.

## **Paragraph 75.4**

This paragraph specifies the form and content required of an application for exemption.

## **Paragraph 75.5**

This paragraph specifies that the AUSTRAC CEO, when deciding whether to approve an exemption, must consider all the information provided in the application. Moreover, the AUSTRAC CEO can take into account any other information that assists in determining the application.

## **Paragraph 75.6**

This paragraph specifies that the AUSTRAC CEO must provide written notice of the decision to both the eligible agency and the reporting entity or entities specified in the application. The notice is to be given as soon as reasonably possible, taking into account the facts and circumstances of each application.

## **Paragraph 75.7**

This paragraph sets out the information that, at a minimum, a notice given by the AUSTRAC CEO to the eligible agency and reporting entity or entities must contain.

## **Paragraph 75.8**

This paragraph specifies when an exemption period commences, and how the length of the period is determined.

## **Paragraph 75.9**

This paragraph specifies the circumstances in which an exemption period can be extended.

## **Paragraph 75.10**

This paragraph defines the terms ‘eligible agency’, ‘requesting officer’ and ‘serious offence’.

## **Legislative instruments**

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

## **Likely impact**

The addition of Chapter 75 will have an impact on reporting entities, though the regulatory burden is considered to be cost neutral. While reporting entities will benefit from an exemption in relation to specified AML/CTF Act obligations, they will need to continue to monitor high-risk customers as a result of this policy when they may otherwise have exited the relationship.

## **Assessment of benefits**

The addition of Chapter 75 will have a positive impact on reporting entities by providing greater comfort to reporting entities through guaranteeing protection from liability in legal proceedings.

Costings were not undertaken in regard to Chapter 75 as the Office of Best Practice Regulation (OBPR) advised AUSTRAC that the proposal is not likely to have a regulatory impact on business, community organisations or individuals.

## **Consultation**

Chapter 75 was published on the AUSTRAC website from 16 February 2017 to 16 March 2017.

AUSTRAC has consulted with the Australian Taxation Office, the Department of Immigration and Border Protection, the Australian Federal Police, the Australian Criminal Intelligence Commission and the Office of the Australian Information Commissioner.

## **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 2017 (No. 4)***

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 Chapter 75 to allow the AUSTRAC CEO to exempt reporting entities from particular provisions of the AML/CTF Act where a requesting officer of an eligible agency reasonably believes that providing a designated service to a customer would assist the investigation of a serious offence. The Chapter does not mandate that a reporting entity co-operate with the investigation, or otherwise continue to provide a designated service to a customer; this will be a decision made by the reporting entity in line with its risk-based systems and controls

#### **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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