



**Explanatory Statement – *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2018 (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 1, 4, 8, 9, 30 and 36.**

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.

**Amendments to Chapter 1 (Definitions)**

2. The amendments to Chapter 1 make the definitions of ‘primary photographic identification document’, ‘primary non-photographic identification document’, and ‘secondary identification document’ inclusive.
3. The amendments enable other ‘unique identifiers’ to be used on national identity cards, passports, or similar documents in place of, or in addition to, a signature.
4. The amendments also expand the list of persons who can provide certified copies of documents to include a person in a foreign country who is authorised by law in that jurisdiction to administer oaths or affirmations or to authenticate documents.

**Amendments to Chapter 4 (Customer Due Diligence)**

5. Paragraph 4.12.2 is amended to expand the exemptions for identification of beneficial ownership to include majority-owned subsidiaries of foreign publicly-listed companies that are already subject to disclosure requirements (whether by stock exchange rules or through law or enforceable means).
6. The amendments also remove the existing requirement for reporting entities to ensure that the foreign disclosure requirements are “the same as, or comparable to, the requirements in Australia”.
7. The amendments add a new Part 4.15, which sets out procedures for reporting entities to follow in certain limited and exceptional circumstances where a customer is unable to provide satisfactory evidence of their identity. The provisions draw on relevant sections of the National Identity Proofing Guidelines, as prepared by the Attorney-General’s Department. The proposed

amendments are in response to the finding of the *Statutory Review of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 and Associated Rules and Regulations* that “reporting entities are struggling to verify customers’ identities in some circumstances,” and which has been identified as an ongoing issue since the commencement of the AML/CTF Act in 2006. The amendments will also assist the government in meeting its G20 commitment to reduce financial exclusion.

#### **Amendments to Chapters 8 and 9 (AML/CTF Programs)**

8. Amendments are made to Parts 8.1 and 9.1 to make the ‘identification, mitigation, and management’ of money laundering and terrorism financing (ML/TF) risk a general requirement in respect of new designated services, new methods of delivering designated services, new technologies, and changes arising in the nature of the business relationship, control structure, and beneficial ownership of the customer.
9. Amendments are also made to Parts 8.6 and 9.6 to guarantee the independence of the reviewer of AML/CTF programs.
10. The amendments to Parts 8.7 and 9.7 require reporting entities to incorporate guidance on ML/TF risks provided or disseminated by AUSTRAC in the development or updating of Part A of their AML/CTF Programs.

#### **Chapter 30 (Disclosure certificates)**

11. The amendments to Chapter 30 allow reporting entities to accept disclosure certificates that are certified by an appropriate officer of the customer using a risk-based approach. The amendments expressly clarify that a reporting entity must not rely on a disclosure certificate if it knows or has reason to believe that the information provided in the certificate is incorrect or otherwise unreliable.

#### **Chapter 36 (Exemption of certain designated services within a corporate structure)**

12. The amendments to Chapter 36 extend the circumstances in which the exemption applies when a reporting entity is related to its customer in Chapter 36 of the AML/CTF Rules, to include partnerships where justified by the ML/TF risk. The amendments exclude ‘limited partnerships’, which can be created and dissolved with relative ease.

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

13. 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.
14. The Statement of Compatibility for the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2018 (No. 1)* is included in

this Explanatory Statement at page 7. 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**

### **Part 1—Preliminary**

#### **Section 1**

This section sets out the name of the Instrument, i.e. the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2018 (No. 1)*.

#### **Section 2**

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

#### **Section 3**

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

### **Schedule 1—Amendments**

This schedule amends Chapters 1, 4, 8, 9, 30 and 36.

## **Notes on items**

### **Chapter 1**

#### **Item 1**

This item provides a revised definition of ‘certified copy’, which has been extended to include certifications made by a person in a foreign country who is authorised by law in that jurisdiction to administer oaths or affirmations or to authenticate documents.

#### **Item 2**

This item amends the definition of ‘primary non photographic identification document’ to make the definition inclusive.

#### **Item 3**

This item amends the definition of ‘primary photographic identification document’ by enabling unique identifiers other than a signature to be used on specified documents.

#### **Item 4**

This item amends the definition of ‘secondary identification document’ to make the definition inclusive.

## **Chapter 4**

### **Item 5**

This item amends subparagraph 4.12.2 to expand the circumstances in which the requirements of paragraph 4.12.1 need not be applied.

### **Item 6**

This item adds a new Part 4.15 to aid reporting entities in identifying customers that do not possess, and are unable to obtain, the necessary information or evidence of identity.

## **Chapter 8**

### **Item 7**

This item amends Part 8.1 to require reporting entities to identify, mitigate and manage any ML/TF risk arising from new designated services, new methods of designated service delivery, new or developing technologies used for the provision of a designated service, and changes in the nature of the business relationship, control structure or beneficial ownership of their customers.

### **Item 8**

This item amends Part 8.6 to provide reporting entities with additional information around the required timing and frequency of independent reviews of Part A of an AML/CTF Program, and clarifies that the person undertaking the review must not have been involved in undertaking any of the functions or measured being reviewed. Reporting entities must be able to demonstrate the independence of the reviewer.

### **Item 9**

This item amends Part 8.7 to require reporting entities to take into account any applicable guidance material disseminated or published by AUSTRAC, as well as any feedback provided by AUSTRAC in respect of the reporting entity, that is relevant to the identification, mitigation, and management of ML/TF risk arising from the provision of a designated service by that entity, both when initially developing and subsequently updating Part A of an AML/CTF Program.

## **Chapter 9**

### **Item 10**

This item amends Part 9.1 to require reporting entities in a designated business group to identify, mitigate and manage any ML/TF risk arising from new designated services, new methods of designated service delivery, new or developing technologies used for the provision of a designated service, and changes in the nature of the business relationship, control structure or beneficial ownership of their customers.

## **Item 11**

This item amends Part 9.6 to provide reporting entities in a designated business group with additional information around the required timing and frequency of independent reviews of Part A of a joint AML/CTF Program, and clarifies that the person undertaking the review must not have been involved in undertaking any of the functions or measured being reviewed. The designated business group must be able to demonstrate the independence of the reviewer.

## **Item 12**

This item amends Part 9.7 to require reporting entities in a designated business group to take into account any applicable guidance material disseminated or published by AUSTRAC, as well as any feedback provided by AUSTRAC in respect of the group, that is relevant to the identification, mitigation, and management of ML/TF risk arising from the provision of designated service(s) by that group, both when initially developing and subsequently updating Part A of a joint AML/CTF Program.

## **Chapter 30**

### **Item 13**

This item amends Chapter 30 to further specify the contents of a disclosure certificate, and to require that certificates be certified by an appropriate officer of the customer. The reporting entity is provided with discretion to determine who is an ‘appropriate officer’ for this purpose, in accordance with its internal risk-based systems and controls. The amendments include an express requirement that a reporting entity must not rely on a disclosure certificate if it knows or has reason to believe that the information provided in the certificate is incorrect or unreliable.

## **Chapter 36**

### **Item 14**

This item amends Chapter 36 to extend the circumstances in which the exemption applies when a reporting entity is related to its customer in Chapter 36 of the AML/CTF Rules, to include partnerships where justified by the ML/TF risk.

However, the AML/CTF Act contains a definition of ‘partnership’ which includes ‘limited partnerships’. This type of partnership could be created and dissolved with relative ease and therefore be at odds with the policy intention of the amendment. Accordingly, a new paragraph has been inserted to exclude ‘limited partnerships’ from the scope of the exemption.

## **Legislative instruments**

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

## **Likely impact**

The amendments to Chapters 1, 30 and 36 are predominantly minor, technical amendments that seek to remove complexity and provide greater flexibility to reporting entities, without substantively amending existing obligations.

The amendments to Chapter 4 are likely to have a deregulatory impact, by removing the need to assess the cross-jurisdictional equivalency of disclosure requirements relating to beneficial ownership identification, and providing reporting entities with greater flexibility when identifying and on-boarding customers.

The amendments to Chapters 8 and 9 are likely to have a minor regulatory impact, by requiring reporting entities to take into account any applicable guidance material disseminated by AUSTRAC when developing and updating Part A of an AML/CTF Program.

The Office of Best Practice Regulation (OBPR) indicated that the proposed amendments are likely to have a minor regulatory impact on business, community organisations or individuals, but advised AUSTRAC that costings were not required to be undertaken.

### **Assessment of benefits**

The amendments to Chapters 1, 4, 8, 9, 30 and 36 implement several recommendations arising out of the *Statutory Review of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 and Associated Rules and Regulations*, and address a number of deficiencies identified by the Financial Action Task Force (FATF) in its Mutual Evaluation of Australia's AML/CTF regime. The amendments seek to remove complexity in existing drafting and provide reporting entities with greater flexibility in complying with their obligations, while continuing to strengthen Australia's AML/CTF regime and protect our financial system from criminal abuse.

### **Consultation**

The amendments to Chapters 1, 4, 8, 9, 30 and 36 were published on the AUSTRAC website from 24 April 2017 to 22 May 2017.

AUSTRAC has consulted with the Australian Taxation Office, the Department of Immigration and Border Protection, the Attorney-General's Department, 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 2018 (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 amends Chapters 1, 4, 8, 9, 30 and 36 to implement a number of recommendations arising out of the *Statutory Review of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 and Associated Rules and Regulations*, and address several deficiencies identified by the Financial Action Task Force (FATF) in its Mutual Evaluation of Australia's AML/CTF regime.

#### **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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