

## **EXPLANATORY STATEMENT**

Issued by the Minister for Home Affairs

*Financial Transaction Reports Act 1988*

*Financial Transaction Reports Regulations 2019*

The *Financial Transaction Reports Act 1988* (the Act) operates alongside the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act). The Act commenced in 1988 to assist in administering and enforcing taxation laws as well as other Commonwealth, state and territory legislation. When the AML/CTF Act was introduced in 2006, certain parts of the Act were repealed and others became inoperative. However, the Act still requires the reporting of certain transactions and imposes obligations in relation to certain services provided by ‘cash dealers’.

The Minister for Home Affairs administers the *Financial Transaction Reports Act 1988* (the Act), in accordance with the *Administrative Arrangements Order*. Section 43 of the Act empowers the Governor-General to make Regulations prescribing all matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out, or giving effect to the Act.

In addition, Regulations may be made pursuant to the provisions of the Act listed in Attachment A. The *Financial Transaction Reports Regulations 1990* (the 1990 Regulations) were due to sunset on 1 October 2018, however, the Attorney-General issued a deferral certificate in August 2018 to defer the sunset of the 1990 Regulations to 1 October 2019. The reason for the deferral was because, at the time, it was expected that the Act and the 1990 Regulations would be repealed within 12 months of the original sunset date following a review of Australia’s anti-money laundering and counter-terrorism financing regime. The findings of the review are set out in the *Report on the Statutory Review of the Anti-Money Laundering and Counter Terrorism Financing Act 2006*. This review recommended that the Act and the 1990 Regulations be repealed and the reporting requirements incorporated into the AML/CTF Act and its associated rules.

However, in light of the 2019 Federal election and other factors, the repeal of the Act and the necessary amendments to the AML/CTF Act will not be in place before cessation of the 1990 Regulations on 1 October 2019. As such, the *Financial Transaction Reports Regulations 2019* (the Regulations) remakes the 1990 Regulations, and must remain operational until the financial reporting regime is fully subsumed by the AML/CTF Act. The Regulations remake the 1990 Regulations in substantially the same form, with some amendments to ensure that the Regulations remain up-to-date and fit for purpose.

Part 1 of the Regulations introduces the instrument, and defines key terms used throughout the instrument. Part 2 of the Regulations prescribes identity verification procedures that identifying cash dealers may use to verify the identity of signatories to accounts. Part 3 of the Regulations establishes that cash dealers are exempt from retaining a record of a transaction that is less than \$1,000. Part 4 of the Regulations provides for transitional provisions where necessary. The matters prescribed in these parts of the Regulations are consistent with the matters dealt with the 1990 Regulations, with minor and technical amendments to update style and remove redundant provisions.

Details of the Regulations are set out in Attachment B.

A Statement of Compatibility with Human Rights (the Statement) has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Regulations are compatible with human rights. A copy of the Statement is at Attachment C.

### Consultation

The Office of Best Practice Regulation (the OBPR) has been consulted in relation to the amendments made by the Regulations. No Regulation Impact Statement is required. The OBPR consultation reference is 25264.

The Regulations were informed by consultation with Australian Transaction Reports and Analysis Centre (AUSTRAC), as operational users of the Regulations. Further consultation was not considered necessary, as there are no intended changes in policy settings.

The Act specifies no other conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on the day after the Regulations are registered on the Federal Register of Legislation.

Authority: Section 43 of the  
*Financial Transaction  
Reports Act 1988*

**ATTACHMENT A**

Section 43 of the Act empowers the Governor-General to make Regulations prescribing all matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out, or giving effect to the Act.

In addition, the following provisions of the Act may apply:

- paragraph (c)(v) of the definition of ***account information*** in subsection 3(1) which provides that details of trustees and beneficiaries may be prescribed in the Regulations in relation to an account held in trust for the purposes of the definition; and
- definition of ***international funds transfer instruction*** in subsection 3(1) which provides that the Regulations may prescribe kinds of instructions which are not included in the definition; and
- paragraph (a) of the definition of ***reporting period*** in subsection 3(1) which provides that for a signification cash transaction that involves foreign currency, the Regulations may prescribe a longer period than is included in the definition; and
- paragraph 17B(8)(a) which provides that for an instruction that is transmitted into Australia, the Regulations may specify a later reporting time than 14 days after the day that the transmission is received; and
- paragraph 17B(8)(b) which provides for an instruction that is transmitted out of Australia, the Regulations may specify a later reporting time than 14 days after the day that the instruction is transmitted; and
- paragraph 20A(1)(b) which provides that the Regulations may prescribe the verification procedure to identify a signatory to an account; and
- subsection 21(1) which provides for specified primary and secondary identification to be prescribed in relation to identification references for account signatories; and
- subsection 21A(2), which provides that the Regulations may prescribe a person who may sign a change of name statement for a signatory to an account; and
- subsection 40H(2) which provides that the Regulations may specify an amount for a transaction below which a financial institution does not commit an offence in relation to retaining financial transaction documents; and
- subsection 40J(2) which provides that the Regulations may specify an amount for a transaction below which a financial institution does not commit an offence in relation to retaining financial transaction documents; and
- paragraphs 42A(a) and (b) which provides that the Regulations may amend Schedule 1, 2, 3, 3A or 4 by varying or omitting any of the details referred to in the Schedule or any other matter contained in the Schedule, and by inserting new details, or other matter, in the Schedule.

**ATTACHMENT B****Details of the *Financial Transaction Reports Regulations 2019*****Part 1 – Introduction****Division 1 – Preliminary**Section 1 – Name

This section provides that the title of this instrument is the *Financial Transaction Reports Regulations 2019*.

Section 2 – Commencement

This section provides that the whole of the instrument is to commence the day after the instrument is registered.

Section 3 – Authority

This section provides that this instrument is made under the *Financial Transaction Reports Act 1988* (the Act).

Section 4 – Schedules

This section provides that each instrument specified in the Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule. Schedule 1 repeals the *Financial Transaction Reports Regulations 1990*.

**Division 2 – Definitions**Section 5 - Definitions

This section provides definitions for terms used in the Regulations.

The note at the beginning of section 5 provides that a number of expressions used in the Regulations are defined in the Act, including the following:

- (a) account;
- (b) account information;
- (c) ADI;
- (d) cash dealer;
- (e) international funds transfer instruction;

- (f) public authority;
- (g) signatory.

Subsection 5(1) would provide definitions for the following terms:

***Aboriginal person***

The term ‘Aboriginal person’ is defined to mean a person of the Aboriginal race of Australia. This term is relevant to sections 15 of the Regulations, which deals with verifying the identity of an Aboriginal or Torres Strait Islander person, who is a signatory to an account.

***Act***

The term ‘Act’ is defined to mean the *Financial Transaction Reports Act 1988*. This term is used throughout the Regulations.

***Bank***

The term ‘bank’ is defined to mean an ADI (authorised deposit-taking institution) that is permitted to use the expression bank under section 66 of the *Banking Act 1959*. The term would be used in the definition of ‘incorporated body’ in section 5 of the Regulations.

***Building society***

The term ‘building society’ is defined to mean an ADI that is permitted to use the expression building society under section 66 of the *Banking Act 1959*. The term is used in the definition of ‘incorporated body’ in section 5 of the Regulations.

***Child***

The term ‘child’ is defined to mean a person who is under 18 years of age. The term is relevant to section 12 of the Regulations, which deals with verifying the identity of a child who is a signatory to an account.

***Community leader***

The term ‘community leader’, in relation to an Aboriginal or Torres Strait Islander community, is defined to mean:

- (a) a person who is recognised by the members of the community to be a community elder; or
- (b) if there is an Aboriginal council that represents the community—an elected member of the council; or
- (c) a member, or a member of the staff, of an Aboriginal Land Council established under Part III of the *Aboriginal Land Rights (Northern Territory) Act 1976*.

The term is relevant to section 15 of the Regulations, which addresses verifying the identity of an Aboriginal or Torres Strait Islander person who is a signatory to an account.

### ***Corporate treasurer***

The term ‘corporate treasurer’ is defined to mean an ADI that provides financial management services to a body corporate that is related to the corporate treasurer. The term is relevant to section 8 of the Regulations, which prescribes the kinds of instructions that are not considered to be international funds transfer instructions.

### ***Credit union***

The term ‘credit union’ is defined to mean an ADI that is permitted to use the expression credit union under section 66 of the *Banking Act 1959*. This term is also used in the definition of ‘incorporated body’ in section 5 of the Regulations.

### ***Financial body***

The term ‘financial body’ is defined to mean:

- (a) a financial institution; or
- (b) a corporation that is a registrable corporation within the meaning of the *Financial Sector (Collection of Data) Act 2001*.

The term is relevant to sections 10 and 14 of the Regulations and to the definition of ‘known customer’. Section 10 prescribes general procedures to verify the identity of signatories to accounts. Section 14 deals with verifying the identity of a non-resident of Australia who is a signatory to an account.

### ***Foreign driver licence***

The term ‘foreign driver licence’ is defined to mean a licence to drive a motor vehicle held by an international visitor and issued in the country in which the person is ordinarily resident. The term is used in section 10 of the Regulations, which prescribes verifying the identities of signatories to accounts.

### ***Higher education provider***

The term ‘higher education provider’ has the meaning given by subsection 16-1(1) of the *Higher Education Support Act 2003*. This term is used in the definition of ‘tertiary education institution’, in section 5 of the Regulations.

### ***Human Services Department***

The term ‘Human Services Department’ is defined to mean the Department administered by the Minister administering the *Human Services (Centrelink) Act 1997*. The term is used in

section 16 of the Regulations, which deals with verifying the identity of individuals who receive social security benefits, and are signatories to an account.

### ***Incorporated body***

The term ‘incorporated body’ is defined to mean:

- (a) a public company within the meaning of the *Corporations Act 2001*; or
- (b) a body corporate that is a subsidiary of a public company within the meaning of any of sections 46 to 49 of the *Corporations Act 2001*; or
- (c) a proprietary company within the meaning of the *Corporations Act 2001* in which one or more shares is owned by a public company within the meaning of that Act; or
- (d) a proprietary company within the meaning of the *Corporations Act 2001*, or an incorporated association:
  - (i) that has traded for a continuous period of 2 or more years; or
  - (ii) that has maintained an account with a financial institution for a continuous period of 2 or more years; or
- (e) a registered foreign company carrying on business in Australia within the meaning of the *Corporations Act 2001*; or
- (f) a bank; or
- (g) a building society; or
- (h) a credit union; or
- (i) a company that is a friendly society for the purposes of the *Life Insurance Act 1995*; or
- (j) a body established or incorporated for a public purpose.

The term is relevant to section 11 of the Regulations, which deals with verifying the identity of individuals who are nominated to be a verifying officer or signatory to an account that is held by a public authority, rating authority or incorporated body.

### ***International visitor***

The term ‘international visitor’ is defined to mean a person who:

- (a) is ordinarily resident in a foreign country; and
- (b) is not a permanent resident of Australia.

The term is used in the definition of ‘foreign driver licence’ under section 5 of the Regulations.

### ***Known customer***

The term ‘known customer’, in relation to a financial body at a particular time, is defined to mean an individual who has been a signatory to an account with the financial body for not less than 12 months immediately before that time. The term is relevant to section 10 of the Regulations, which deal with verifying signatories to an account.

***Principal executive officer***

The term ‘principal executive officer’ is defined to have the same meaning as in subsection 8A(8) of the Act. The term is relevant to section 11 of the Regulations, which deals with verifying the identities of individuals nominated to be verifying officers or signatories to accounts that are held by public authorities, rating authorities or incorporated bodies.

***Public employee***

The term ‘public employee’ is defined to have the meaning given by section 6 of the Regulations. The term is also relevant to section 10 of the proposed Regulations, which deals with verifying signatories to an account.

***Public utility***

The term ‘public utility’ is defined to mean an authority or enterprise the primary business of which is to provide electricity, water, sewerage or gas to the public for domestic or business purposes. The term is relevant to section 10 of the Regulations, which deal with verifying signatories to an account.

***Rating authority***

The term ‘rating authority’ is defined to mean:

- (a) a municipal, city, town, district or shire council; or
- (b) in the case of land in the Australian Capital Territory—the Australian Capital Territory.

The term is relevant to sections 6, 7, 10 and 11 of the Regulations. Section 6 prescribes the meaning of a ‘public employee’. Section 7 deals with details in relation to trust accounts. Section 10 prescribes general procedures to verify signatories to an account. Similarly, section 11 deals with verifying the identities of individuals nominated to be verifying officers or signatories to accounts that are held by public authorities, rating authorities or incorporated bodies.

***Sensis***

The term ‘Sensis’ is defined to mean Sensis Pty Ltd (ACN 007 423 912). The term is relevant to section 10 of the Regulations, which prescribes general procedures to verify signatories to an account.

***Social Services Department***

The term ‘Social Services Department’ is defined to mean the Department administered by the Minister administering the *Student Assistance Act 1973*.



This term is relevant to sections 16 and 17 of the Regulations. Section 16 of the Regulations provides a verification procedure for certain individuals who receive social security benefits. Similarly, section 17 provides a verification procedure for certain individuals who receive student financial supplement.

***Superannuation fund***

The term ‘superannuation fund’ is defined to have the same meaning as in subsection 10(1) of the *Superannuation Industry (Supervision) Act 1993*. The term is relevant to section 7 of the Regulations which deal with details in relation to trust accounts.

***Technical and further education institution***

The term ‘technical and further education institution’ is defined to have the same meaning as in section 3 of the *Student Assistance Act 1973*. This term is used in the definition of ‘tertiary education institution’ under section 5 of the Regulations.

***Telstra***

The term ‘Telstra’ is defined to have the same meaning as in section 3 of the *Telstra Corporation Act 1991*.

***Tertiary education institution***

The term ‘tertiary education institution’ is defined to mean a higher education provider or a technical and further education institution.

The term is relevant to section 10 of the Regulations which deal with verifying signatories to an account. ***Torres Strait Islander***

The term ‘Torres Strait Islander’ is defined to mean a descendant of an Indigenous inhabitant of the Torres Strait Islands. This term is relevant to section 15 of the Regulations which deals with verifying the identity of an Aboriginal or Torres Strait Islander person who is a signatory to an account.

***Verified signatory***

The term ‘verified signatory’ is defined to mean a signatory who has been identified through:

- (a) a verification procedure referred to in subparagraph 20A(1)(b)(ii) of the Act; or
- (b) an identification reference in accordance with section 21 of the Act; or
- (c) the checks mentioned in section 10 of this instrument.

This term is relevant for sections 10, 11 and 14, in relation to different methods by which an identifying cash dealer can verify the identity of a signatory to an account.

Subsection 5(2) provides that if the rules of a superannuation fund contain a provision the purpose of which is to avoid a breach of a rule of law relating to perpetuities, this provision does not prevent the fund from being treated as an indefinitely continuing fund, for the purposes of the definition of *superannuation fund* in subsection (1).

Subsection 5(3) provides that for the purposes of this instrument, the question whether a body corporate is related to another body corporate, is determined in the same way as that question is determined for the purposes of the *Corporations Act 2001*.

### Section 6 – Meaning of *public employee*

This section provides the meaning of the term *public employee* under the Regulations. The term is relevant to paragraph 10(2)(a) of the Regulations which deal with verifying signatories to an account. For the purposes of the Regulations, a public employee is an employee of the Commonwealth, a State, a Territory, a public authority, or a rating authority. The term includes employees employed under a law, a contract of service, or an apprenticeship.

Subsection 6(2) makes clear that each of the following is employed by the Commonwealth or a State or Territory, as the case may be, and therefore a public employee:

- a member of the Parliament of the Commonwealth or of a State or Territory;
- a justice or judge of a court of the Commonwealth or of a State or Territory;
- a person (other than a person mentioned in subsection (4)) who is the holder of an office established by or under a law of the Commonwealth or of a State or Territory.

Subsection 6(3) makes clear that a member of the Australian Defence Force is taken to be employed by the Commonwealth, and therefore a public employee.

Subsection 6(4) makes clear that a person is taken to be employed by a public authority or a rating authority, and therefore a public employee, if:

- the person constitutes, or is a member of, the authority; or
- if the authority is a body corporate – the person is a director of the body corporate.

## **Division 3 – Provisions relating to definitions in the Act**

### Section 7 – Prescribed details in relation to trust accounts

Subparagraph (c)(v) of the definition of *account information* in subsection 3(1) of the Act provides that, for an account held in trust, account information includes prescribed details of the trustees and beneficiaries of the trust. Accordingly, section 7 of the Regulations prescribes those details to be:

- (a) the name and address of the trustee;
- (b) either:

- (i) if the terms of the trust identify the beneficiaries under the trust by reference only to membership of a class—details of the class; or
- (ii) otherwise—the name of each beneficiary under the trust.

Subsection 7(2) of the Regulations provide that a cash dealer is not required to provide the account information prescribed under subsection 7(1), if the account is held by certain entities. Specifically, a cash dealer does not need to provide account information if an account is held by or operated in connection with a superannuation fund, or if the account is held by the Commonwealth or a State or Territory, or a public authority or a rating authority.

#### Section 8 – Instructions that are not international funds transfer instructions

Subsection 3(1) of the Act provides that an *international funds transfer instruction* means an instruction for a transfer of funds that is transmitted into or out of Australia electronically or by telegraph, but does not include an instruction of a prescribed kind.

Section 8 of the Regulations prescribes the kinds of instructions that are not an international funds transfer instruction to be:

- (a) an instruction that is transmitted out of Australia by a corporate treasurer for the purpose of providing financial management services to a body corporate that is related to the corporate treasurer;
- (b) an instruction that is transmitted into Australia to a corporate treasurer for the purpose of assisting the corporate treasurer to provide financial management services to a body corporate that is related to the corporate treasurer.

The exclusion of these types of instructions is to ensure that the payment for these services performed by related parties should not require a report to be made to the Australian Transaction Reports and Analysis Centre Chief Executive Officer.

## **Part 2 – Accounts**

### **Division 1 – General**

#### Section 9 – Prescribed verification procedure – identifying cash dealers

Subparagraph 20A(1)(b)(i) of the Act provides that an identifying cash dealer has an identification record for a signatory to an account where they have carried out, and have a record of, the prescribed verification procedure to identify the signatory.

Subsection 9(1) of the Regulations sets out the prescribed verification procedure for a signatory to an account. In particular, the verification procedure consists of:

- the checks mentioned in section 10 of the Regulations;

- in relation to a signatory mentioned in sections 11, 12, 13, 14, 15, or 16 of the Regulations – the alternative verification procedure for the signatory mentioned in the section that applies to the signatory;
- in relation to a person receiving financial supplement as mentioned in section 17 of the Regulations – the alternative verification procedure mentioned in that section.

Subsection 9(2) provides that a signatory to an account is taken to be identified by a cash dealer, if the signatory obtains at least 100 points as a result of the cash dealer using the verification procedure prescribed under subsection (1).

Subsection 9(3) provides that the points attributable to each of the following may only be counted once in relation to a signatory to an account:

- a type of source mentioned in a subparagraph of paragraph 10(1)(a), (b) or (c); or
- a telephone contact mentioned in subparagraph 10(1)(d); or
- a document mentioned in paragraph 10(1)(e); or
- a document mentioned in paragraph 10(1)(g) issued from a particular source; or
- a reference mentioned in a subparagraph of paragraph 10(1)(j).

The note following subsection 9(3) provides an example of how this is intended to operate. The example provides that an application of subsection 9(3) is where a person has been identified by their current employer under subparagraph 10(1)(a)(i) and that identification is worth 35 points. The person cannot also rely on identification by a former employer to gain a further 35 points for opening the same account. Although subsection 9(3) only allows points for identification under subparagraph 10(1)(a)(i) to be counted once, this does not prevent the person from relying on identification under another subparagraph of paragraph 10(1)(a) or identification under another paragraph of subsection 10(1).

Subsection 9(4) provides that although two or more bodies corporate are related, it does not affect their identity as distinct sources. The note after subsection 9(4) gives an example of the application of subsection 9(4). For example, a person has been issued with a MasterCard and a Visa Card by one bank. Each card is worth 25 points under subparagraph 10(1)(g), but because these cards have been issued by the same bank, the person may only use one of these cards for identification purposes. However, if a different bank issued the person with a credit card, and the person also holds a credit card issued by another finance company that is a wholly own subsidiary of that bank, then for the purpose of identifying the person, the three credit cards may be taken into account, giving a total of 75 points under the verification identification system.

This prescribed verification procedure assists in protecting the integrity of Australia's financial system through ensuring that cash dealers accurately verify the identities of signatories to an account. This section does this through spreading reliance across a number of prescribed procedures, and through specifying how often the points attributed to particular a source or document may be used towards the necessary 100 points of identification.

## Section 10 – Verification checks of signatories to accounts

This section outlines general verification checks that may be made in relation to any signatory to an account.

Paragraph 10(1)(a) provides that the identifying cash dealer may verify the name and address of any signatory using one or more of the sources listed under subparagraphs 10(1)(a)(i) to (vi). Each verification from this list of sources is worth 35 points. The sources for the purposes of paragraph 10(1)(a) are:

- the employer of the signatory, or a person who was an employer of the signatory within the last 2 years, from records held by the employer or previous employer;
- a rating authority, from its records relating to land ownership or occupation;
- a document held by the identifying cash dealer conferring an interest by way of security over property of the signatory;
- a financial body, other than the identifying cash dealer, from its records relating to a mortgage or other instrument of security granted by the signatory to that body;
- subject to the *Privacy Act 1988*, records of a credit reporting body (within the meaning of that Act);
- records held under a law of a State or Territory relating to land titles.

Paragraph 10(1)(b) provides that the identifying cash dealer may verify the name and address of the signatory from one or more of the sources listed under subparagraphs 10(1)(b)(i) to (vi). Each verification from this list of sources is worth 25 points. The sources for the purposes of paragraph 10(1)(c) be:

- the electoral roll compiled by the Australian Electoral Office and available for public scrutiny;
- a nominee of the signatory who is an acceptable referee or who, if the nominee had known the signatory for at least 12 months, be an acceptable referee. An ‘acceptable referee’ is defined under section 3 of the Act to mean a person in a class of persons declared by the Minister, by notice in the *Gazette*, to be acceptable referees for the purposes of that definition;
- if the signatory lives or carries on business in rented accommodation – the owner or landlord of the premises or a real estate agent acting as managing agent of the premises;
- from the records of a public utility;
- from the records of another financial body, if the signatory is a known customer of that financial body;
- a record held under a law of a State or Territory, other than a law relating to land titles.

Paragraph 10(1)(c) provides that the identifying cash dealer may verify the name and date of birth of any signatory from either, or both of the sources listed under subparagraphs 10(1)(c)(i) and (ii). Each verification is worth 25 points. The sources for the purposes of paragraph 10(1)(b) are:

- the records of a primary, secondary or tertiary educational institution that the signatory attended within the last 10 years;

- the records of a professional or trade association of which the signatory is a member.

Paragraph 10(1)(d) provides that the identifying cash dealer may verify the name, address and telephone number of the signatory by following the procedure the sources listed under subparagraphs 10(1)(d)(i) and (ii). Verification through this procedure is worth 25 points. The sources for the purposes of paragraph 10(1)(d) are:

- by reference to the latest telephone directory published by Sensis or by advice provided by Telstra; and
- by marking telephone contact with the signatory on the telephone number obtained in accordance with subparagraph (i).

Paragraph 10(1)(e) prescribes that the identifying cash dealer may verify the name of the signatory using a primary identification document relating to the signatory produced to the identifying cash dealer. Verification through this procedure is worth 70 points. ‘Primary identification document’ is defined under section 3 of the Act to mean the following documents that show the person’s name:

- a certified copy, or an extract, of a birth certificate of the person; or
- a certified copy of a citizenship certificate of the person; or
- an international travel document for the person; or
- any other prescribed document.

Paragraph 10(1)(f) provides that an identifying cash dealer may verify the name of the signatory using a secondary identification document that contains a photograph or signature of the signatory, and, is also a kind of document specified in subsection 10(2). Verification through this procedure is worth 40 points. ‘Secondary identification document’ is defined under section 3 of the Act to mean, in relation to a person in a particular name, a document (other than a primary identification document), which establishes the identity of the person in that name.

Paragraph 10(1)(g) provides that the identifying cash dealer may verify the name of a signatory from any other secondary identification document relating to the signatory that is produced to an identifying cash dealer. Verification by this procedure is worth 25 points.

Paragraphs 10(1)(h) and (i) prescribes checks that may be performed by an identifying cash dealer that is a financial body, in order to verify a signatory to an account. These paragraphs allocate different points for each check. Specifically, if the identifying cash dealer is a financial body:

- paragraph 10(1)(h) prescribes that if it verifies that the signatory is a known customer, this verification is worth 40 points; or
- paragraph 10(1)(i) prescribes that if it verifies that the signatory has been a signatory to an account with the financial body for at least 36 months immediately before the verification, this verification is worth 100 points.

Paragraph 10(1)(j) provides that the identifying cash dealer may verify the name of the signatory from the references listed under subparagraphs 10(1)(j)(i), (ii), and (iii):

- a written reference from a financial body relating to the signatory certifying that the signatory is a known customer and bearing the signatures of the signatory and an employee or agent of the financial body; or
- a written reference from an acceptable referee certifying that the referee has known the signatory by that name for at least 12 months and bearing the signatures of the signatory and the acceptable referee. An ‘acceptable referee’ is defined in section 3 of the Act to mean a person in a class of persons declared by the Minister, by notice in the *Gazette*, to be acceptable referees for the purposes of that definition; or
- a written reference from a verified signatory certifying that the verified signatory has known the signatory for at least 12 months and bearing the signatures of the signatory and the verified signatory.

Subsection 10(2) specifies documents that may be used for the purposes of subparagraph 10(1)(f)(ii) of the Regulations. These documents are:

- an identification card issued to a public employee;
- a licence or permit issued under a law of the Commonwealth or of a State or Territory;
- an identification card issued to a person by the Commonwealth or by a State or Territory as evidence of the person’s entitlement to a financial benefit;
- an identification card issued to a student at a tertiary education institution;
- a foreign driver licence.

Subsection 10(3) prescribes that the identifying cash dealer must:

- retain or copy each of the documents produced for the purposes of paragraphs 10(1)(e), (f), (g) or (j); or
- record for each of those documents the particulars mentioned in section 18.

These prescribed verification procedures reflect the policy intention of providing identifying cash dealers with a number of general options to verify signatories to an account. This forms a robust verification system that is not prohibitive to business.

## **Division 2 – Alternative verification procedures**

### **Section 11 – Alternative verification procedure – public authorities, rating authorities and incorporated bodies**

While section 10 of these Regulations provides general verification procedures, section 11 prescribes alternative verification procedures where a public authority, rating authority or an incorporated body (an authority or body) has one or more accounts with an identifying cash dealer, and the authority or body nominates a person to represent them as a signatory, or a verifying officer in respect of one or more of the accounts.

*Certificate of identity by verifying officer*

Subsection 11(1) provides that a signatory to an account of an authority or body is taken to be identified if a certificate of identity by the verifying officer, or a verifying officer, for that account is lodged with an identifying cash dealer. Further, the certificate must:

- state that the officer is satisfied that the signatory is authorised by the authority or body to be a signatory to that account; and
- bears the signatures of the officer and the signatory.

Subsection 11(2) provides that a certificate of identity by a verifying officer may relate to more than one signatory to the account for which it was lodged.

Subsection 11(3) prescribes that verification of a signatory under the verification procedure in subsection (1) is worth 100 points.

*Nomination of verifying officer*

Subsection 11(4) prescribes that for the purposes of subsection (1), an authority or body may notify an identifying cash dealer of the nomination of a person to be their verifying officer, or a verifying officer, in respect of some or all accounts, of the authority or body with the identifying cash dealer.

Subsection 11(5) provides that the nomination must be signed by the principal executive officer of the authority or body, or by the person responsible for administration of the account.

*Identifying nominated person*

Subsection 11(6) prescribes that if an identifying cash dealer is notified that a person has been nominated as a verifying officer, but the nominated person is not a verified signatory, then the identifying cash dealer must identify the person as soon as practicable by:

- a verification procedure referred to in subparagraph 20A(1)(b)(ii) of the Act; or
- an identification reference for the person, as described under section 21 of the Act; or
- the checks mentioned in section 10 of the Regulations.

*Revocation of nomination etc.*

Subsection 11(7) provides that if an authority or body revokes a nomination, or a verifying officer ceases to be employed by them, then the authority or body must notify the identifying cash dealer of that fact as soon as practicable.

This section provides for a streamlined procedure through enabling public authorities, rating authorities or incorporated bodies the ability to nominate a verifying officer that may issue a



certificate of identity for a signatory to an account. This provides identifying cash dealers an alternative method for identifying customers.

### Section 12 – Alternative verification procedure – children

Section 12 of the Regulations prescribes verification checks that an identifying cash dealer may perform to identify a child who is a signatory to an account, in addition to the general verification procedures in section 10.

Subsection 12(1) provides that a child who is a signatory to an account is taken to be identified, if either of the following documents is produced to the identifying cash dealer:

- a primary identification document relating to the child; or
- a statement issued on behalf of an educational institution attended by the child, that complies with subsection (2).

Under section 3 of the Act, a ‘primary identification document’ is defined to mean any of the following documents that show a person’s name:

- a certified copy, or an extract, of a birth certificate of the person; or
- a certified copy of a citizenship certificate of the person; or
- an international travel document for the person; or
- any other prescribed document.

The Regulations provide that the statement mentioned in paragraph 12(1)(b) complies with subsection 12(2), if the statement is:

- written on the letterhead of the educational institution or on the letterhead of the educational system to which the education institution belongs; or
- contained in a student card issued by the educational institution that also bears the seal or stamp of the educational institution.

Further, paragraphs 12(2)(b) to (d) prescribes that the statement under paragraph 12(1)(b) must also:

- specify the name of the child (paragraph 12(2)(b)); and
- confirm that the child attends the educational institution (paragraph 12(2)(c)); and
- is signed by any of the following officers of the educational institution (paragraph 12(2)(d):
  - the principal;
  - the deputy principal;
  - the head teacher;
  - the deputy head teacher;
  - the enrolment officer;
  - the deputy enrolment officer;
  - the secretary;
  - the deputy secretary;

- the chief administrator;
- the deputy chief administrator.

Subsection 12(3) prescribes that the identifying cash dealer must either:

- copy each of the documents produced; or
- record for each of those documents, the particulars described in section 18 of the Regulations.

Subsection 12(4) provides that verification of a child as a signatory to an account in accordance with subsection (1) is worth 100 points.

This prescribed verification procedure is in recognition that many children have a limited ability to meet the 100 point threshold without an additional verification option made available. In light of this, in addition to the other verification procedures available, the Regulations allow for a child who is a signatory to an account to provide a statement from their education institution. This establishes a procedure for identifying children that is both robust and accessible.

### Section 13 – Alternative verification procedure – recent arrivals in Australia

Together with the general verification procedures provided in section 10, section 13 of the Regulations prescribes an alternative verification procedure for recent arrivals in Australia.

Subsection 13(1) of the Regulations prescribes that a signatory to an account is taken to be identified if:

- immediately before the person most recently arrived in Australia, the person was not ordinarily resident in Australia; and
- the person produces their international travel document to the identifying cash dealer; and
- at the time the person produces their international travel document, that person has been in Australia for a period:
  - that commences on the day on which the person most recently arrived in Australia, or on the first day since that arrival on which the person is lawfully at large in Australia, whichever is the later; and
  - the duration of which is less than 6 weeks.

Subsection 13(2) prescribes that the identifying cash dealer must either:

- copy each of the documents produced; or
- record for each of those documents, the particulars described in section 18 of the Regulations.

Subsection 13(3) provides that verification of a signatory under subsection (1) is worth 100 points.

## Section 14 – Alternative verification procedure – non-residents

Section 14 of the Regulations provides verification procedures for non-residents of Australia, which differs from the general verification procedures in section 10 of the Regulations.

### *Certificate of identity by foreign verifying officer*

Subsection 14(1) prescribes a procedure to identify a non-resident signatory, who has an account with a financial body. The non-resident signatory is identified where a foreign verifying officer for the account lodges a certificate with an identifying cash dealer and the certificate:

- sets out the name and residential address of the signatory; and
- states that the foreign verifying officer is satisfied:
  - that the name is the name by which the signatory is known; and
  - that the signatory is a signatory to an account with the financial body; and
- bears the signatures of the foreign verifying officer and the signatory.

Subsection 14(2) provides that a certificate of identity by an employee referred to in subsection (1) may relate to more than one signatory to the account for which it was lodged.

Subsection 14(3) provides that verification of the identity of a signatory under subsection (1) is worth 100 points.

### *Identification of person resident outside Australia*

Subsection 14(4) provides a further procedure for identification of a person resident outside Australia. Under this subsection, the person is taken to be identified if:

- the person produces verification of their identity to an employee of a foreign bank using documents that are equivalent to documents worth a total of 100 points that are referred to in section 10. The person must also produce those documents to a bank employee who is authorised by the bank to open accounts with the bank; and
- the bank employee signs a statement that they have seen the documents; and
- the bank employee includes in the statement a copy of each of the documents, or records the pertinent details of the documents.

Equivalent documents may be taken to include sources such as an electoral roll, a land title or other government records. For example, a non-resident of Australia may accumulate 100 points of identification if they produce their passport (worth 70 points), as well as producing their foreign driver's licence with their photograph or signature (40 points) to the identifying cash dealer.

Subsection 14(5) provides that verification of the identity of a signatory under subsection (4) is worth 100 points.

*Nomination by financial body by foreign verifying officer*

Subsection 14(6) provides that for the purposes of subsection (1), a financial body that carries on business in Australia, or in a State or Territory, may notify an identifying cash dealer that they have nominated a person who is a resident overseas and employed by them, to be a foreign verifying officer of the financial body.

Subsection 14(7) provides that if an identifying cash dealer is notified that a person has been nominated as a foreign verifying officer, but the nominated person is not a verified signatory, the identifying cash dealer must identify the nominated person as soon as practicable, by:

- a verification procedure referred to in subparagraph 20A(1)(b)(ii) of the Act; or
- an identification reference for the person in accordance with section 21 of the Act; or
- the checks mention in section 10 of these Regulations (that are described above).

*Revocation of nomination etc*

Subsection 14(8) provides that if a financial body revokes a nomination, or a foreign verifying officer ceases to be employed by a financial body, the financial body must notify the identifying cash dealer as soon as practicable.

*Interpretation*

Subsection 14(9) provides that reference to a foreign bank in subsection (4) is reference to an entity that carries on banking business outside Australia and is engaged in a transaction with an identifying cash dealer. The entity does not need to have an authority under section 9 of the *Banking Act 1959*.

Subsection 14(10) provides that the term ‘carrying on business in Australia, or in a State or Territory’ (as used in subsection (6)), has the meaning given by section 21 of the *Corporations Act 2001*.

Section 21 of the *Corporations Act 2001* defines ‘carrying on business in Australia or a State or Territory’. Specifically:

- Subsection 21(1) of that Act notes that a body corporate carries on business in Australia or a State or Territory if it has a place of business in Australia, or in a State or Territory.
- Subsection 21(2) also provides that a reference to a body corporate carrying on business in Australia, or in a State or Territory, includes:
  - establishing or using a share transfer office or share registration office in Australia, or in the State or Territory; or
  - administering managing, or otherwise dealing with, property situation in Australia, or in the State or Territory, as an agent, legal personal representative or trustee, whether by employees or agents or otherwise.

These prescribed verification procedures reflect that persons resident outside of Australia may have difficulty meeting the 100 point threshold through the general means of verification. Through enabling the use of equivalent overseas documents, this section ensures that persons resident outside Australia are not disadvantaged in accessing the services provided by cash dealers.

### Section 15 – Alternative verification procedure – Aboriginal persons or Torres Strait Islanders

Section 15 of the Regulations provides, in addition to the general verification checks in section 10 of the Regulations, a verification procedure for an Aboriginal person or a Torres Strait Islander.

Subsection 15(1) provides that the name of an Aboriginal person or Torres Strait Islander who is a signatory to an account may also be verified by a written statement from a referee. Subsection 15(1) provides that a referee is:

- a director or secretary of an Aboriginal and Torres Strait Islander corporation that is registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; or
- a member of a Land Council established by or under the *Aboriginal Land Rights (Northern Territory) Act 1976* for an area in which the signatory lives; or
- a community leader of the community to which the signatory belongs; or
- a person before whom a statutory declaration may be made under the *Statutory Declarations Act 1959*.

Subsection 15(2) provides for content that must be included in the referee's statement. Specifically, the statement must be signed and dated by the referee, and include all of the following details:

- the referee's knowledge of the signatory's name and any other names by which the signatory is, or has been known; and
- the referee's knowledge of the signatory's residential address and any other addresses at which the signatory has resided; and
- the referee's knowledge of the signatory's birth date (actual or approximate); and
- how long the referee has known the signatory; and
- any other details known to the referee that establish the signatory's identity.

Subsection 15(3) provides that verification of the name of a signatory by referee under subsection (1) is worth 50 points. The effect of this provision is that—where subsections 15(1) and (2) are complied with—statements from two individual referees are worth 100 points.

This prescribed verification procedure reflects that there are still a portions of the Aboriginal and Torres Strait Islander communities that have limited or no access to primary identity documentation such as birth certificates. This option enables persons in these communities to use referees to either provide supplementary or complete identity verification. This policy is

to ensure that Aboriginal and Torres Strait Islanders are not prohibited from services performed by identifying cash dealers due to a lack of identification documentation.

### Section 16 – Alternative verification procedure – certain individuals who receive social security benefits

Section 16 provides an alternative verification procedure for certain individuals who receive social security benefits and are unable to comply with the checks mentioned in section 10 of the Regulations.

Subsection 16(1) of the Regulations provides that an identifying cash dealer can verify the identity of a person who is a signatory to an account from a letter of introduction from the Human Services Department where:

- the person is unable to comply with the verification of identity checks in section 10 of the Regulations as described above; and
- the individual produces the letter of introduction from the Human Services Department, to the identifying cash dealer not more than 3 months after the date on which the letter was issued.

Subsection 16(3) provides that the letter of introduction means a letter signed by the signatory and an employee of the Human Services Department to the effect that:

- the signatory receives a social security payment; and
- the signatory's signature has been verified from the records of the Department.

The Regulations provide that the Human Services Department means the Department administered by the Minister administering the *Human Services (Centrelink) Act 1997*. Following the *Administrative Arrangement Orders* released on 29 May 2019, the Human Services Department is presently known as Services Australia.

Subsection 16(2) provides that verification of the identity of a signatory under subsection (1) is worth 100 points.

This verification procedure aligns with the intention of enabling identifying cash dealers to rely on reliable third parties, as a source for identifying signatories to an account. The ability to rely on a letter of introduction is designed to alleviate the administrative burden in potentially complex cases where the signatory to the account is unable to meet the general procedures prescribed in section 10.

### Section 17 – Alternative verification procedures – persons receiving student financial supplement

Complimentary to the general procedures in section 10 of the Regulations, section 17 prescribes an alternative verification procedure for a person's identity, if the person receives student financial supplement.

Subsection 17(1) sets out circumstances where section 17 of the Regulations would apply. Specifically, paragraph 17(1)(a) provides that section 17 applies if a person:

- has a document, issued by the Social Services Department, certifying that they are eligible to apply for financial supplement under the Student Financial Supplement Scheme set out in Part 4A of the *Student Assistance Act 1973*; and
- gives the document to an identifying cash dealer, no later than 3 months after the day on which the document is issued; and
- applies to the identifying cash dealer for the amount of financial supplement to be paid into an account to which the person is a signatory.

Additionally, paragraph 17(1)(b) prescribes that the identifying cash dealer must have:

- entered into an agreement with the Commonwealth for the purposes of subsection 12D(1) of the *Student Assistance Act 1973*; and
- accepts the person's application.

Part 4A of the *Student Assistance Act 1973*, provides guidance on how eligible tertiary students may obtain a financial supplement under the ABSTUDY scheme. Relatedly, subsection 12D(1) of the *Student Assistance Act 1973* details that an eligible student may apply for financial supplement only to a financial corporation that has entered into an agreement with the Commonwealth to pay a financial supplement, in accordance with that Act.

The current *Administrative Arrangements Order* on 29 May 2019 establishes that the Department of Social Services is responsible for the *Student Assistance Act 1973*. However, Services Australia, (which was renamed from Department of Human Services in the *Administrative Arrangements Order*), is the agency that administers financial supplements under the *Student Assistance Act 1973*.

If the section applies because the circumstances set out above are met, subsection 17(2) prescribes that the identifying cash dealer may verify the person's identity by using the document issued by the Social Services Department, and is referred to in subparagraph 17(1)(a)(i).

Subsection 17(3) provides that verification of a person's identity under subsection (2) is worth 100 points.

This verification procedure reflects the policy intention to enabling identifying cash dealers the ability to rely on specific third parties as a source for identifying signatories to an account. This section acknowledges that in providing access to the scheme the applicable department would have verified the person to an appropriate standard. This would provide a streamlined verification option for some signatories to an account.

### **Division 3 – Particulars to be recorded**

## Section 18 – Particulars to be recorded – signatories to accounts

This section provides the particulars that must be recorded relating to a document mentioned in paragraphs 10(1)(e), (f), (g) or (j), or subsection 12(3), or 13(2). The effect of this section is to provide recording-keeping obligations when documents are used to verify the identity of a signatory to an account.

The particulars to be recorded would be:

- the nature of the document;
- the name of the person to whom it relates;
- if the document contains information relating to the age or place of residence of the signatory—details of that information;
- the date, place of issue and any expiry date of the document;
- any number allocated to the document by the authority which issued it.

Subsection 18(2) provides that if an identification check is based on information provided by a person, then the person making the check must record whichever of the following details are relevant:

- the name of the person providing the information;
- the designation, title or rank of that person;
- the name and address of any body or organisation with whom the person is associated, if that association is relevant to the kind of information provided by the person;
- a note of the information provided by the person.

This section establishes that depending on the type of verification procedure undertaken, or the check performed by the identifying cash dealer, that certain details must be recorded.

## **Division 4 – Change of name**

### Section 19 – Prescribed person

Subsection 21A(2) of the Act provides for the situation where a signatory gives change of name statements to an identifying cash dealer. If those change of name statements are signed by the signatory and by a prescribed person, then:

- (a) the new name is taken to be a name by which the signatory is commonly known; and
- (b) the statements are taken to constitute an identification reference for the signatory in the name.

For the purposes of subsection 21A(2) of the Act, subsection 19(1) of the Regulations provides that each of the following is a prescribed person who can sign a change of name statement:



- a person before whom a statutory declaration may be made under the *Statutory Declarations Act 1959*;
- an employee of:
  - a women’s refuge; or
  - a crisis and counselling service;
 who counsels or otherwise assists victims of domestic violence, sexual assault or sexual abuse, as part of the employee’s duties.

Subsection 19(2) further provides that, for the purposes of subsection 21A(2) of the Act, for a signatory who has been verified (wholly or partially) under section 15 of this instrument, each of the following is a prescribed person who can sign a change of name statement:

- a director or secretary of an Aboriginal and Torres Strait Islander corporation that is registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*;
- a member of a Land Council established under the *Aboriginal Land Rights (Northern Territory) Act 1976*;
- a community leader of the community to which the signatory belongs.

### **Part 3 – Retaining financial transaction documents**

#### **Section 20 – Customer-generated financial transaction documents relating to operation of accounts**

Paragraphs 40H(1)(a) to (c) of the Act provide that a financial institution commits an offence, which attracts a penalty of 100 penalty units, if:

- it does not retain, for the minimum retention period, either the original or copy of a customer-generated financial transaction document; and
- the document relates to the operation of an account held with the institution; and
- the document is not a cheque or payment order.

However, subsection 40H(2) of the Act prescribes that subsection 40H(1) does not apply to a document that relates to a single deposit, credit, withdrawal, debit or transfer of an amount that is under \$200, or a higher amount that is specified in the Regulations.

For the purposes of subsection 40H(2), section 20 of the Regulations specifies an amount of \$1,000.

Section 20 of the Regulations maintains a reduced impost on business by prescribing the threshold at \$1,000. This reduces the administrative burden incurred in the recording of transactions by exempting transactions that are now seen as of a minor or incidental quantum.

#### **Section 21 – Retaining other financial transaction documents**

Paragraphs 40J(1)(a) to (c) of the Act provides that a financial institution has committed an offence, which attracts a penalty of 100 penalty units, if:

- it does not retain, for the minimum retention period, either the original or a copy of a financial transaction document that is not a customer-generated financial transaction document; and
- retaining the document is necessary to preserve a record of the transactions concerned; and
- The document is not a cheque or payment order.

Subsection 40J(2) of the Act provides that it is not considered an offence under subsection 40J(1), if a document relates to a single deposit, credit, withdrawal, debit or transfer of an amount that is less than \$200, or, a higher amount as specified in the Regulations.

For the purposes of subsection 40J(2) of the Act, section 21 of the Regulations specifies an amount of \$1,000.

Section 21 of the Regulations maintains a reduced impost on business by prescribing the threshold at \$1,000. This reduces the administrative burden incurred in the recording of transactions by exempting transactions that are now seen as of a minor or incidental quantity.

#### **Part 4 – Transitional provisions**

##### **Section 22 – Things done under the *Financial Transaction Reports Regulations 1990***

Subsection 22(1) of the Regulations provides that if:

- a thing was done for a particular purpose under the previous 1990 Regulations as in force immediately before those Regulations were repealed; and
- the thing could be done for that purpose under this instrument;

then the thing has effect for the purposes of this instrument, as if it had been done under this instrument.

Subsection 22(2) of the Regulations provides that, without limiting subsection (1), a reference in that subsection to a thing being done includes a reference to a notice, application or other instrument being given, made or served.

#### **Schedule 1 – Repeals**

The schedule repeals the 1990 Regulations their entirety, and the 1990 Regulations is replaced by the proposed Regulations.

## Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### *Financial Transaction Reports Regulations 2019*

1. This legislative 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**

2. The *Financial Transaction Reports Regulations 2019* (the Regulations) remake the *Financial Transaction Reports Regulations 1990* in their current form with minor technical and stylistic amendments and the removal of some redundant provisions to ensure that the Regulations remain relevant and fit for purpose.

3. The Regulations are made under the *Financial Transaction Reports Act 1988* (the FTR Act). The FTR Act operates alongside the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) in providing a response to the serious threat to the Australian community posed by money laundering and terrorism financing.

4. **Part 1 of the Regulations** sets out in Division 1, preliminary matters such as the name of the instrument, its commencement and authority. Following, Division 2 defines key terms used throughout the Regulations, including, among others, ‘community leader’, ‘verified signatory’, ‘incorporated body’ and the meaning of ‘public employee’, while Division 3 sets out provisions relating to definitions in the FTR Act, in particular, prescribing details in relation to trust accounts and international funds transfer instructions.

5. **Part 2 of the Regulations** prescribes the identity verification procedures for identifying cash dealers to verify the identity of signatories to accounts (the customer). This part establishes that signatories to an account have been identified if they obtain at least 100 points of identity through provision of documents and statements. This process of verifying identity is established through two complimentary schemes, namely, Division 1 – General, and Division 2 – Specific verification procedures.

6. Division 1 provides a list of sources of identification and applies a sliding scale of value (points). These options include traditional sources of identification such as driver’s licences and utility bills.

7. Division 2 provides specific additional verification procedures that are tailored to the specific circumstances of the following cohorts:

- signatories to accounts of a public authority, rating authority or incorporated body
- children
- recent arrivals in Australia
- persons resident outside Australia
- Aboriginal persons or Torres Strait Islanders
- certain individuals who receive social security benefits
- persons receiving student financial supplement.

8. Division 3 sets out details the cash dealer must record in connection to the verification of the identity of the signatory to the account, while Division 4 prescribes which persons may sign a change of name statement given to a cash dealer by a signatory to an account.

9. **Part 3 of the Regulations** establishes that cash dealers are exempt from retaining the record of a transaction not exceeding \$1,000.

10. **Part 4 of the Regulations** provides for transitional provisions where necessary.

11. **Schedule 1 to the Regulations** provides for the 1990 Regulations to be repealed.

### **Human rights implications**

12. The Regulations engage Australia's international privacy and reputation obligations under the International Covenant on Civil and Political Rights (ICCPR).

#### ***Right to privacy – Article 17 of the ICCPR***

13. Article 17 of the ICCPR accords everyone the right to protection against arbitrary or unlawful interference with their privacy, family, home or correspondence. This includes the right to protection from interferences with a person's personal information and property, particularly where it is a family home. Interferences are permissible so long as they are authorised by law, are not arbitrary, and would be reasonable, necessary and proportionate to achieving a legitimate objective.

14. The UN Human Rights Committee has not defined 'privacy', however it should be understood to comprise freedom from unwarranted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy.

15. The term 'unlawful' in Article 17 means no interference can take place except in cases authorised by law. What is 'arbitrary' will be determined by the circumstances of each case. In order for an interference with the right to privacy not to be arbitrary, the interference must be for a reason consistent with the provisions, aims and objectives of the ICCPR and be reasonable in particular circumstances. The United Nations Human Rights Committee has interpreted reasonableness in this context to imply that any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case.

16. Article 17 of the ICCPR provides two separate obligations. Article 17(1) establishes that a person should not be subject to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation, while Article 17(2) states that everyone has the right to the protection of the law against such interference or attacks.

Part 2 of the Regulations engage Article 17 through requiring cash dealers to verify the identity of their customers through the collection of personal information. To comply with the Regulations, a cash dealer will require a person (customer) to provide their information and/or documentation, which may give rise to an interference with that customer's privacy.

17. The regulations concerning the collection of personal information for identity verification are necessary to protect Australia's financial system, and society more broadly, from threats such as identity and economic crimes.

18. These regulations are reasonable and proportionate, as they provide for a measured identification framework that, through a points system, allow a person to choose the combination of documents/identifiers they wish to provide to the cash dealer and limits the sharing of personal information to the minimum amount necessary to adequately confirm their identity.

19. To the extent that the Regulations may limit the right to privacy, any limitation of those rights is aimed at the legitimate objective of maintaining public order by ensuring Australia's financial system is resilient against money laundering and terrorism financing. The collection and recording of this information by cash dealers is necessary and proportionate to achieving the legitimate objective this purpose.

20. Further, a cash dealer only has obligations under the FTR Act in circumstances where the provision of that service is not a designated service under the AML/CTF Act. In practice, this means that the regulations in question which relate to this Article have a very limited scope of application.

21. In addition, the limitation on the right to privacy is proportionate and not arbitrary as there are appropriate safeguards that apply to cash dealers under the *Privacy Act 1988* and subsequently, they must abide by the Australian Privacy Principles in Schedule 1 of the *Privacy Act 1988*.

22. The Regulations are clearly lawful, in that they are prescribed by law and the above analysis provides that, if these provisions limit the right to privacy, that these limitations are not arbitrary and are reasonable, necessary and proportionate in achieving legitimate objectives.

## **Conclusion**

23. The Regulations are 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*. To the extent that these measures may limit those rights

and freedoms, such limitations are reasonable, necessary and proportionate in achieving legitimate objectives.

**The Hon Peter Dutton MP**  
**Minister for Home Affairs**