

EXPLANATORY STATEMENT

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2020 (No. 2)

Issued by authority of Nicole Rose PSM, Chief Executive Officer, Australian Transaction Reports and Analysis Centre, in compliance with section 15J of the *Legislation Act 2003*

AUTHORITY

Section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (**AML/CTF Act**), provides that the AUSTRAC CEO may, by legislative instrument, make Rules prescribing matters required or permitted by the AML/CTF Act to be prescribed by the Rules.

PURPOSE AND OPERATION OF THE INSTRUMENT

These Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the Rules are set out in the [Attachment A](#).

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 Rules promote the realisation of human rights, and as such, are compatible with them. A copy of the Statement is at [Attachment B](#).

Background

Amendment to Part 4.15 (Procedure to follow where a customer cannot provide satisfactory evidence of identity)

1. Part 4.15 of the *Anti-Money and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* (**AML/CTF Rules**) allows reporting entities to use alternative identity proofing processes where
 - a. the reporting entity has been unable to establish the identity of a customer in accordance with the applicable customer identification requirements as set out in Chapter 4 of the AML/CTF Rules, and
 - b. the customer does not possess, and is unable to obtain, necessary information or evidence of identity.
2. As part of AUSTRAC's response to the COVID-19 Pandemic, the amendments to Part 4.15 insert additional wording to provide greater legal certainty for reporting entities who rely on alternative identity proofing processes to establish the identity of their customer where that customer possesses, but cannot produce or provide, the necessary information or evidence of identity due to COVID-19 Pandemic measures.

3. The amendment makes it explicit that where it is not possible to verify information, in accordance with an applicable customer identification procedure, based on an original, or certified copy or certified extract, of a document due to COVID-19 pandemic measures, a reporting entity may rely on a copy of a document. This includes documents such as trust deeds, partnership agreements, association constitutions, and co-operative registers.
4. COVID-19 Pandemic measures are those that are implemented or recommended by an Australian government body, or reasonable measures that are adopted by a reporting entity or a person, to prevent the spread of COVID-19. These measures include self-isolation or the closure of offices to prevent face-to-face interaction.
5. The additional wording in Part 4.15 is intended as a time-limited amendment that is specific to the duration of the COVID-19 Pandemic.

CONSULTATION

6. Draft AML/CTF Rules were circulated for comment to the Australian Banking Association, Australian Financial Markets Authority, Financial Services Council, Australian Federal Police, Australian Taxation Office, Australian Criminal Intelligence Commission, and Department of Home Affairs.

REGULATION IMPACT STATEMENT

7. The Office of Best Practice Regulation has advised that the proposed amendments to Part 4.15 of the AML/CTF Rules will have no more than a minor regulatory impact on businesses, individuals or community organisations. Therefore a Regulatory Impact Statement was not required to be prepared.

ATTACHMENT A

Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2020 (No. 2)

Section 1

This section provides that the name of the Instrument is the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2020 (No. 2)*.

Section 2

This section sets out the date on which the Instrument will commence.

The Instrument commences on the day after it is registered on the Federal Register of Legislation.

Section 3

This section identifies the provision of the AML/CTF Act that authorises the making of the Instrument.

Section 4

This section provides that the Instrument that is specified in Schedule 1 is amended as set out in the applicable items in that Schedule.

Schedule 1—Amendments

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

Notes on items

Item 1

This item repeals and substitutes a new Part 4.15 of the AML/CTF Rules.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Australian Human Rights Commission Regulations 2019

This Disallowable 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 Disallowable Legislative Instrument

The Instrument will amend Part 4.15 of the AML/CTF Rules to provide greater legal certainty for reporting entities who are seeking to rely on alternative identity proofing processes to establish the identity of their customer in circumstances where that customer possesses, but cannot produce or provide, relevant identity documents due to measures designed to prevent the spread of COVID-19.

Human rights implications

The *Human Rights (Parliamentary Scrutiny) Act 2011* requires that Statements of Compatibility must be made by the rule-maker with regard to disallowable legislative instruments, and must contain an assessment of whether the legislative instrument is compatible with the rights and freedoms recognised in the seven core international human rights treaties that Australia has ratified.

The Instrument engages the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, as outlined in Article 12 of the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*.

Article 12(2) of ICESCR requires countries who are party to the Covenant to take certain steps to achieve the full realisation of this right including those necessary for the prevention, treatment and control of epidemic, endemic, occupational and other diseases.

The Instrument will allow reporting entities to establish the identity of their customers using alternative identity proofing processes where that customer possesses, but cannot produce or provide, necessary information or evidence of identity because of measures designed to control a disease (COVID-19) and keep that customer safe and healthy. The Instrument will also allow reporting entities to rely on copies (such as scanned versions or photographs) of documents where original, or certified copies or certified extracts, of that document would ordinarily be required.

The Instrument ensures that customers can adhere to COVID-19 preventative measures while still receiving services. For example, individuals who are required to self-isolate for their own well-being may be able to access banking services from their home rather than attend a physical branch and risk contracting and spreading the disease.

The Instrument is also consistent with the right for a person not to be subjected to arbitrary or unlawful interference with his or her privacy under Article 17 of the *International Covenant Civil and Political Rights (ICCPR)*. Reporting entities who collect personal information under the Instrument in order to establish the identity of their customer will continue to be subject to the requirements of the *Privacy Act 1988*.

Conclusion

This Disallowable Legislative Instrument promotes the realisation of human rights, and as such, is compatible with them.

[signed]

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