

EXPLANATORY STATEMENT

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2020 (No. 3)

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 of Part 4.15

1. There is increased recognition that government, community and business need to work together to improve the outcomes for those experiencing family and domestic violence (FDV). This includes ensuring that victims of FDV who are leaving or have left an abusive relationship can access a bank account independent of their abuser.
2. Perpetrators of FDV may exert control by not allowing those they abuse to have their own bank account, or by withholding their identification documents (ID). Additionally, an abused person may flee their relationship without their ID. Having left the relationship, they then may not have a permanent address, or their new address differs from the address shown on their ID. This may present challenges for an abused when opening bank accounts.
3. Part 4.15 of the *Anti-Money Laundering and Counter-Terrorism Financing Rules* (AML/CTF Rules) sets out existing processes for reporting entities to follow in limited and exceptional circumstances where a customer is unable to provide satisfactory evidence of their identity.

4. The amendment of the headnote to Part 4.15 makes it plain that a reporting entity can use the processes described in Part 4.15 when their customer is experiencing or has experienced FDV.

CONSULTATION

5. Draft amendments to the AML/CTF Rules were circulated for comment to Industry and Consumer Representative Groups.

REGULATION IMPACT STATEMENT

6. The Office of Best Practice Regulation has advised that the proposed amendment of Part 4.15 to the AML/CTF Rules is a minor change and a Regulatory Impact Statement was not required to be prepared.

Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2020 (No. 3)

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. 3)*.

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 replaces Part 4.15 to the *Anti-Money Laundering and Counter-Terrorism Financing 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 amends the headnote to Part 4.15 of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007* to clarify that a reporting entity can use the processes described in Part 4.15 to carry out the applicable customer identification procedure when their customer is experiencing or has experienced family and domestic violence (FDV).

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 following human rights and freedoms which require countries to take measures to protect persons from exploitation, violence and abuse:

- Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- Article 13 of the CEDAW, and
- Article 19 of the Convention on Rights of a Child (CROC).

Article 2 of CEDAW provides that parties agree to pursue the elimination of discrimination against women, including by introducing new laws or policies, changing existing discriminatory laws and providing sanctions for discrimination where appropriate. The Instrument will support victims of (FDV) establish financial independence which will in turn address the impacts on women of gender-based violence.

Article 13 of the CEDAW provides that parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular the right to bank loans, mortgages and other forms of financial credit. The Instrument will assist victims of FDV overcome the challenges of opening a bank account and facilitate access to finance which will help eliminate discrimination against women in economic affairs.

Article 19 of the CROC provides that parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical

or mental violence, injury or abuse, neglect or negligent treatment. The Instrument will assist child victims of FDV by facilitating an environment that is not financially-dependent on a violent parent or guardian.

The Instrument is 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 that provide victims of FDV with access to financial services, such as a bank account, will be required to collect personal information in order to identify the customer and establish an account. This identification of the customer is an important part of a reporting entity's customer due diligence obligations under the AML/CTF Act. When handling this personal information collected pursuant to these obligations, reporting entities must comply with the *Privacy Act 1988*.

Conclusion

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

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