

EXPLANATORY STATEMENT

Issued by authority of the AUSTRAC CEO

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment (Cross-border Movements) Instrument 2022

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 Anti-Money Laundering and Counter-Terrorism Financing Rules (AML/CTF Rules). The AML/CTF Rules are set out in the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.

PURPOSE AND OPERATION OF THE INSTRUMENT

The *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment (Cross-border Movements) Instrument 2022* (the **Amendment Instrument**) is a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the Amendment Instrument are set out in Attachment A.

A Statement of Compatibility with Human Rights (the **Statement**) is at Attachment B. The Statement was completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Amendment Instrument is compatible with them.

Background

(i) Substitution of Chapter 24 and repeal of Chapters 24, 25 and 26 - Anti Money Laundering and Counter Terrorism Rules for reports about cross border movements of monetary instruments

Existing legislative requirements

1. The existing provisions in Division 2 of Part 4 of the AML/CTF Act require that the movement of physical currency of \$10,000 or more into or out of Australia be reported to the AUSTRAC CEO, or a customs or police officer. The offence provision is contained in section 53(1) and the civil penalty provision is contained in section 53(3).
2. According to the existing section 53(8) of the AML/CTF Act, a report must be in the approved form, contain the relevant information specified in the AML/CTF Rules, and comply with the applicable timing rule in section 54(1).
3. The existing provisions in Division 3 of Part 4 of the AML/CTF Act also require a person to disclose that they are carrying bearer negotiable instruments (BNIs), such as travellers cheques, valued at \$10,000 or more when requested by a police or customs officer at the border.

Reforms to Part 4 of the AML/CTF Act

4. In December 2020, Parliament passed the *Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Act 2020*. The Act will amend Part 4 of the AML/CTF Act, the *Proceeds of Crime Act 2002* and the *Surveillance Devices Act 2004* to create a single reporting requirement for the cross-border movement of monetary instruments, which will be defined to include physical currency and BNIs.
5. The reforms to Part 4 of the AML/CTF Act commence on 17 June 2022.

Substitution of Chapter 24 and repeal of Chapters 24, 25 and 26

6. This Instrument supports the creation of a single reporting requirement for the cross-border movement of monetary instruments by:
 - a. repealing the existing Chapter 24 - Anti-Money Laundering and Counter-Terrorism Financing Rules for *movements of physical currency* into or out of Australia, and substituting Chapter 24;
 - b. repealing the existing Chapter 25 - Anti-Money Laundering and Counter-Terrorism Financing Rules for *receipts of physical currency* from outside Australia'; and
 - c. repealing the existing Chapter 26 - Anti-Money Laundering and Counter-Terrorism Financing Rules for *movements of bearer negotiable instruments* into or out of Australia.
7. Chapter 24 supports the implementation of the reforms to Part 4 of the AML/CTF Act, by setting out:
 - a. the information to be contained in a report about movement of monetary instruments into or out of Australia, submitted by a person moving the monetary instrument (**the traveller**), as specified in subsection (2);
 - b. the information to be contained in a report about movement of monetary instruments moved into Australia, submitted by a person receiving or sending the monetary instrument, as specified in subsection (4); and
 - c. the timing rule for the submission of a report about movement of monetary instruments into or out of Australia, as specified in subsection (3).

Applicable timing rule

8. The reforms to Part 4 of the AML/CTF Act involve repealing Divisions 1, 2 and 3, including section 54 which currently provides the applicable timing rule for movements of physical currency into and out of Australia. Following these reforms, the AML/CTF Rules will provide the applicable timing rule for

movements of monetary instruments into and out of Australia. This is addressed in subsection (3) of Chapter 24.

9. Chapter 24 allows for the person sending the monetary instrument into Australia to submit a report before the movement of the monetary instrument takes place.
10. Where the person is sending the monetary instrument out of Australia, the report must be given before the instrument is irrevocably committed by the person to a postal service or to another person (as the case may be).
11. In relation to travellers leaving Australia, Chapter 24 allows the person to submit a report about the cross border movement of monetary instruments no later than when they reach the place where customs officers examine baggage, or at the last opportunity that the person has to give the report before leaving Australia. The report must accurately reflect the traveller's circumstances at the time they move across the border.
12. In relation to travellers entering Australia, Chapter 24 allows the person to submit a report about the cross border movement of monetary instruments no later than when the person reaches the place at which customs officers examine baggage; or if there is no such place, at the first opportunity that the person has to give the report after arrival in Australia.

(ii) Amendments to Chapter 34 – Affixing of notices about cross-border movement reporting obligations

Amendment to existing Chapter 34 - Form and content of notices affixed pursuant to Section 61

13. Section 61 of the AML/CTF Act provides a power to affix notices about reporting obligations under Part 4 of the Act, the form and contents of which are specified in the AML/CTF Rules, to any part of an aircraft or ship, or any other place specified in the Rules.
14. The amendments to Chapter 34 revise the form and contents of notices about reporting obligations that can be affixed in ports to inform travellers of reporting obligations. The revisions reflect the reforms to Part 4 of the AML/CTF Act.

CONSULTATION

15. Draft AML/CTF Rules on the substitution of Chapter 24, amendment to Chapter 34, and the repeal of Chapters 24, 25 and 26 were released on 11 March 2022 for a four-week period of public consultation. Ongoing consultation with industry was undertaken following the public consultation period.

SUNSETTING

16. Under item 6 of Regulation 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* this Instrument is not subject to sunseting.

17. The AML/CTF Rules are designed to be enduring because they:
- a. complement and provide the detail for the broader obligations set out in the AML/CTF Act, aid in meeting Australia's international obligations and matters of international concern, and support the combatting of money laundering and terrorism financing
 - b. assist industry in fulfilling their compliance with the AML/CTF Act and provide commercial and regulatory certainty for industry, and
 - c. are subject to an ongoing process of development, refinement and review, involving scrutiny and feedback from a wide range of stakeholders including industry, the Financial Action Task Force, Australian Government agencies, law enforcement agencies, and other interested parties.

REGULATION IMPACT STATEMENT

18. The Office of Best Practice and Regulation has advised that a Regulatory Impact Statement is not required because the substitution of Chapter 24, amendment to Chapter 34, and the repeal of Chapters 25 and 26 are unlikely to have a more than minor regulatory impact.

***Anti-Money Laundering and Counter-Terrorism Financing Rules
Amendment (Cross-border Movements) Instrument 2022***

Section 1—Name

This section provides that the name of the Instrument is the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2022 (No. 2)*.

Section 2—Commencement

This section provides for the commencement of each provision in the Instrument, as set out in the table in subsection 2(1).

The amendments in Schedule 1 commence on the latter of the day after the instrument is signed and 17 June 2022.

Section 3—Authority

This section provides that the Instrument is made under section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

Section 4—Schedules

This section provides details of the amendment:

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

Schedule 1

This Schedule repeals Chapters 24, 25, and 26 and substitutes a new Chapter 24, and amends Chapter 34 of the AML/CTF Rules.

Notes on items

Schedule 1

Item 1—Chapter 24

This item repeals Chapters 24, 25, and 26 and substitutes a new Chapter 24 in the AML/CTF Rules.

Paragraph 24.1 provides that the Chapter is made for the purposes of paragraphs 53(7)(b), 53(7)(d), and 54(4)(b).

Sub-paragraph 24.1(1) clarifies that a report under section 53 of the AML/CTF Act (reports about movements of monetary instruments into or out of

Australia) must contain the information specified in subsection (2) (to the extent known), and be given in accordance with the applicable timing rules specified in subsection (3).

Subparagraph 24.1(2) specifies the information required for a report under section 53 of the AML/CTF Act (reports about movements of monetary instruments into or out of Australia):

- (a) for an individual, the person's full name, date and place of birth, the country or countries of citizenship, residential address, phone number, Australian residency, for non-residents - the person's address and telephone number while in Australia, the person's occupation, business or principal activity, and the person's ABN;
- (b) for non-individuals, the person's full name, business or principal activity, address, telephone number, and if the person is registered in Australia – the person's ABN, ACN and ARBN (as applicable);
- (c) if the person is moving the monetary instrument on behalf of another person (the other person), the other person's name, address, telephone number, occupation or principle activity and ABN, ACN and ARBN (as applicable);
- (d) if the person is delivering the monetary instrument to another person (the other person), the other person's name, address, telephone number, occupation or principle activity and ABN, ACN and ARBN (as applicable);
- (e) whether the movement is into or out of Australia;
- (f) the kind of monetary instrument being moved;
- (g) the monetary instrument amount;
- (h) the currency of the monetary instrument;
- (i) if the monetary instrument is a bearer negotiable instrument, the details of the bearer negotiable instrument;
- (j) if an individual is bringing the monetary instrument into or out of Australia, whether they are travelling into or out of Australia, the town or city where they are entering or leaving Australia, the date of arrival or departure, the person's passport number and country of issue and details of other passports held, the flight number or name of vessel, and the overseas city and country the monetary instrument is being taken to or brought from;
- (k) if the monetary instrument is being sent into or out of Australia, the means by which it is being sent, the name, address and telephone number

of the individual or service provider carrying the monetary instrument, if the monetary instrument is being shipped - the name of the vessel, the country from which it is sent, and the date sent;

- (l) if the monetary instrument is being sent into or out of Australia, the name, address, telephone number, occupation or principle activity and ABN, ACN and ARBN (as applicable) of the person to whom it is being sent; and
- (m) a declaration that the information provided is true accurate and complete.

Subparagraph 24.1(3) specifies the timing rule applicable to a report under section 53 of the AML/CTF Act about movements of monetary instruments into or out of Australia. The report must be given:

- (a) If the person brings the monetary instrument into Australia, no later than when the person reaches the place at which customs examine baggage, or if there is no such place, at the first opportunity after arrival in Australia;
- (b) If the person moves the monetary instrument by sending it into Australia, before the movement takes place;
- (c) If the person takes the monetary instrument out of Australia, no later than when the person reaches the place at which customs examine baggage, or if there is no such place, before the last opportunity to give the report before leaving Australia; and
- (d) If the person sends the monetary instrument out of Australia, before the time when the instrument is irrevocably committed to a postal service or other person (as the case may be).

Subparagraph 24.1(4) specifies the information required for a report under section 54 of the AML/CTF Act (reports about receipts of monetary instruments moved into Australia):

- (a) for an individual, the person's full name, date and place of birth, the country or countries of citizenship, residential address, phone number, Australian residency, for non-residents - the person's address and telephone number while in Australia, the person's occupation, business or principal activity, and the person's ABN;
- (b) for non-individuals, the person's full name, business or principal activity, address, telephone number, and if the person is registered in Australia – the person's ABN, CAN and ARBN (as applicable);
- (c) if the person received the monetary instrument on behalf of another person (the other person), the other person's name, address, telephone number,

occupation or principle activity and ABN, ACN and ARBN (as applicable);

- (d) if the person is delivering the monetary instrument to another person (the other person), the other person's name, address, telephone number, occupation or principle activity and ABN, ACN and ARBN (as applicable);
- (e) the kind of monetary instrument;
- (f) the monetary instrument amount;
- (g) the currency of the monetary instrument;
- (h) if the monetary instrument is a bearer negotiable instrument, the details of the bearer negotiable instrument;
- (i) the means by which the monetary instrument was moved into Australia;
- (j) the name of the individual or service provider who moved the monetary instrument;
- (k) if the monetary instrument was sent into Australia, the name, telephone number, address, and ABN, ACN and ARBN (as applicable) of the person who sent the monetary instrument;
- (l) the city and country from where the monetary instrument was moved;
- (m) the city, town or port where the monetary instrument was received; and
- (n) a declaration that the information provided is true, accurate and complete.

24.2 sets out a definition of 'passport' for the purpose of Chapter 24.

Item 2 – Paragraph 34.3

This item revises the content of a written notice about reporting obligations for the purpose of section 61(1)(b) of the AML/CTF Act.

Item 3 – Paragraph 34.3

This item revises the content of a written notice about reporting obligations for the purpose of section 61(1)(b) of the AML/CTF Act. The revisions reflect the reforms to Part 4 of the AML/CTF Act.

Item 4 – Paragraph 34.3

This item revises the content of a written notice about reporting obligations for the purpose of section 61(1)(b) of the AML/CTF Act. The revisions reflect the reforms to Part 4 of the AML/CTF Act.

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 (the **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 Instrument

The existing provisions in Division 2 of Part 4 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act)* require that the movement of physical currency of \$10,000 or more into or out of Australia be reported to the AUSTRAC CEO, or a customs or police officer.

The existing provisions in Division 3 of Part 4 of the AML/CTF Act also require a person to disclose that they are carrying bearer negotiable instruments (BNIs), such as travellers cheques, valued at \$10,000 or more when requested by a police or customs officer at the border.

In December 2020, Parliament passed the *Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Act 2020*. The Act will amend Part 4 of the AML/CTF Act to create a single reporting requirement for the cross-border movement of monetary instruments, which will be defined to include physical currency and BNIs.

The Instrument amends the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1) (AML/CTF Rules)* by repealing Chapters 24, 25 and 26 and substituting a new Chapter 24 which sets out the information to be contained in reports about movements of monetary instruments into or out of Australia, and the timing of such reports.

The Instrument also amends the AML/CTF Rules by amending Chapter 34 to revise the form and contents of notices about reporting obligations that can be affixed in ports to inform travellers of reporting obligations.

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 to privacy and reputation.

Substitution of Chapter 24 and repeal of Chapters 24, 25 and 26

While persons moving monetary instruments into or out of Australia, and persons sending or receiving monetary instruments moved into Australia will be required to provide the information specified in Chapter 24, the Instrument reflects the reforms to Part 4 of the Act, by creating a single reporting requirement for cross-border movement of monetary instruments including physical currency and BNIs. The Instrument does not amend the existing requirements in relation to the types of information collected about the movement of physical currency or BNIs.

Article 17 of the ICCPR

Article 17 of the International Covenant on Civil and Political Rights (ICCPR) provides that no one shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence. The use of the term ‘arbitrary’ means that any interference with privacy must be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in the particular circumstances. The United Nations Human Rights Committee has interpreted ‘reasonableness’ to imply that any limitation must be proportionate and necessary in the circumstances. The right to privacy can be limited by necessity in a democratic society in the interests of national security or public order.

AUSTRAC collects personal information under the requirement of the AML/CTF Act to mitigate and manage the risk of money laundering and financing of terrorism. AUSTRAC considers that the collection of personal information under the AML/CTF Act, and by the operation of Chapter 24, is therefore not an arbitrary or unlawful interference with privacy. AUSTRAC has considered the types of information prescribed by the Instrument and is of the opinion that the collection of this information is necessary, reasonable, and proportionate to achieving the legitimate object of the AML/CTF Act.

AUSTRAC therefore considers that the amendments to Chapter 24 and repeal of Chapters 25 and 26 engages and is consistent with the right to privacy articulated in Article 17 of the ICCPR.

Amendments to Chapter 34

AUSTRAC considers that the amendments to Chapter 34 do not engage any of the applicable rights or freedoms.

[signed]
Nicole Rose PSM
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