



Australian Government
AUSTRAC

EXPLANATORY STATEMENT

Issued by authority of the Acting AUSTRAC CEO

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

*Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment
(Chapters 21, 51 and 78) Instrument 2023*

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**). These 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 (Chapters 21, 51 and 78 Amendments) Instrument 2023* (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 included 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 human rights.

Background

(i) Amendments to Chapter 21 - Issuing or selling a security or derivative

1. Chapter 21 of the AML/CTF Rules exempts from the AML/CTF Act the issue of an interest in a litigation funding scheme in circumstances where:
 - (a) the person issuing the interest holds an Australian Financial Services Licence; and
 - (b) the litigation funding scheme is either:
 - (i) registered with the Australian Securities and Investments Commission; or
 - (ii) under subsection 601ED(2) of the *Corporations Act 2001*, not required to be registered.

2. The *Corporations Amendment (Litigation Funding) Regulations 2022* exempts litigation funding schemes from meeting the definition of a managed investment scheme (MIS) in section 9 of the *Corporations Act 2001*. Consequently, the issuing of an interest in a litigation funding scheme is no longer a designated service for the purposes of Item 35 of Table 1 in subsection 6(2) of the AML/CTF Act (issuing or selling a security or derivative). Therefore the exemption in Chapter 21 is now redundant.
3. The amendments remove the redundant provisions from Chapter 21.

(ii) Amendment to Chapter 51

4. Part 51.2 of the AML/CTF Rules currently specifies Western Union Business Solutions (Australia) Pty Ltd for the purposes of the definitions of financial institution and non-financier in section 5 of the AML/CTF Act, and for the purposes of subparagraphs 8(1)(c)(v), 8(1)(d)(v), 8(2)(c)(v), 9(1)(c)(v), 9(1)(d)(v) and 9(2)(c)(v) of that Act. Western Union Business Solutions (Australia) Pty Ltd has changed its name to Convera Australia Pty Ltd.
5. The amendment replaces the old name with the new name.

(iii) Amendment to Chapter 78 – Wise Australia Pty Ltd

6. The *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment (Chapter 78 Amendments) Instrument 2022* amended Chapter 78 of the AML/CTF Rules following Transferwise Australia Pty Ltd’s change of name to Wise Australia Pty Ltd. The amendment incorrectly named “Wise Payments Ltd” as “Wise Limited”.
7. The amendment to Chapter 78 replaces the incorrect name with the correct name.

CONSULTATION

8. The amendments to Chapters 21, 51 and 78 are minor in nature and consultation was not undertaken.

SUNSETTING

9. Under item 6 of Regulation 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* this Instrument is not subject to sunseting.
10. 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.

IMPACT ANALYSIS

11. The Office of Impact Analysis considers the proposal is unlikely to have a more than minor impact, as the amendments introduce no additional burden or changes in behaviour. As such, the preparation of an Impact Analysis (IA) is not required.

ATTACHMENT A

Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment (Chapters 21, 51 and 78) Instrument 2023

Section 1 – Name

This section provides that the name of the Instrument is the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment (Chapters 21, 51 and 78) Instrument 2023*.

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 day after registration.

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 amends Chapters 21, 51 and 78.

Notes on items

Schedule 1

Item 1 – Chapter 21

This item repeals paragraph 21.3(5).

Item 2 – Chapter 21

This item repeals paragraph 21.4(4A).

Item 3 – Chapter 51

This item omits “Western Union Business Solutions (Australia) Pty Ltd” where occurring and substitutes “Convera Australia Pty Ltd”.

Item 4 – Chapter 78

This item omits ‘Wise Limited’ and substitutes ‘Wise Payments Limited’.

ATTACHMENT B

STATEMENT OF COMPATABILITY WITH HUMAN RIGHTS

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

Australian Human Rights Commission Regulations 2019

Amendments to the Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1) (AML/CTF Rules) amending Chapters 21, 51 and 78

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

(i) Amendments to Chapter 21 of the AML/CTF Rules

The Instrument amends Chapter 21 to remove provisions in the Chapter that have been made redundant by the *Corporations Amendment (Litigation Funding) Regulations 2022*. Those Regulations exempt litigation funding schemes from meeting the definition of a managed investment scheme (MIS) in section 9 of the Corporations Act 2001 and as a consequence, the issuing of an interest in a litigation funding scheme is no longer a designated service for the purposes of Item 35 of Table 1 in subsection 6(2) of the AML/CTF Act (issuing or selling a security or derivative).

(ii) Amendment to Chapter 51 of the AML/CTF Rules

The Instrument amends Part 51.2 of Chapter 51 by replacing the previous name of the entity “Western Union Business Solutions (Australia) Pty Ltd” with the current name “Convera Australia Pty Ltd”.

(iii) Amendment to Chapter 78 of the AML/CTF Rules

The Instrument amends Chapter 78 by replacing the incorrect name “Wise Limited” with the correct name “Wise Payments Limited”.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

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