

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
(Nominee of Custodian) Instrument 2024*

AUTHORITY

1. 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

2. The *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment (Nominee of Custodian) Instrument 2024* (the **Amendment Instrument**) is a legislative instrument for the purposes of the *Legislation Act 2003*.
3. A Statement of Compatibility with Human Rights (the Statement) is included within this Explanatory Statement. The Statement was completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Amendment Instrument promotes the realisation of human rights, and as such, is compatible with them.

Background

4. The *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2019* (No. 2) amended Chapters 4 and 15 of the AML/CTF Rules to:
 - (a) provide reporting entities with relief from certain identification requirements in Chapter 4 and Chapter 15 of the AML/CTF Rules for corporate customers who are ‘custodians’ (as defined) by adding subparagraphs 4.4.3(5)(d), 4.4.5(5)(d) and paragraphs 4.4.18 - 4.4.19 to Chapter 4, making minor amendments to subparagraphs 4.4.3(1) and 4.4.5(1), adding two notes to Chapter 15 and some minor amendments in both Part 4.4 and Chapter 15 to cross-reference exemptions listed in paragraph 4.4.18.
 - (b) The amendments responded to issues raised by industry regarding practical difficulties encountered in complying with the previous requirements of Part 4.4 (Applicable customer identification procedure with respect to

trustees) of the AML/CTF Rules, as many custodian-type trust arrangements do not have many features of an ordinary trust such as a full trust name, settlor, or trust deed.

- (c) These issues were addressed by adding new paragraphs 4.4.18 and 4.4.19 to Part 4.4, which exempt reporting entities from:
- (i) carrying out specific applicable customer identification and verification requirements in relation to the underlying customers of a custodian when providing designated services to eligible custodians; and
 - (ii) conducting certain ongoing customer due diligence requirements in Chapter 15 regarding the collection and verification of beneficial owner information in relation to such underlying customers of custodians (though note that reporting entities still need to comply with obligations in Chapter 15 regarding the collection, verification, update, and review of Know Your Customer (KYC) information on the custodian in its capacity as trustee of the trust).

5. The omission of nominees of custodians was an oversight.

Amendments to Chapters 4 and 15 to incorporate a definition nominees of custodians

6. The proposed amendments provide a definition of ‘nominee of a custodian’ which:
- a. is limited to a related body corporate of a ‘custodian’ who meets the existing definition under paragraph 4.4.19 of the AML/CTF Rules; and
 - b. includes a requirement for the nominee to provide the relevant reporting entity with certification that their appointing custodian has given them certification that they:
 - i. satisfy the geographical link or are on the Reporting Entity Roll; and
 - ii. have carried out all applicable customer identification procedures in relation to their underlying customers.
7. The proposed amendments to Chapters 4 and 15 apply the same customer due diligence relief afforded to customers who are custodians, to customers who are nominees of custodians.

IMPACT ANALYSIS

8. These proposed amendments to the AML/CTF Rules are unlikely to have a more than minor regulatory impact.

SUNSETTING

9. Under item 6 of Regulation 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* this draft Instrument, if made, will not be 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.

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

1. This draft Disallowable Legislative Instrument (the **draft 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

2. The draft Instrument amends Chapters 4 and 15 of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1) (AML/CTF Rules)*. The amendment provides for a definition of nominee of a custodian.

3. In the absence of this amendment there will be an unequal regulatory burden between custodians who do not use nominees, and those who do.

Human rights implications

4. 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.

5. Because the amendment to Chapter 4 and Chapter 15 are machinery changes the draft Instrument will not engage any of the applicable rights or freedoms, including the right to privacy and reputation contemplated by Article 17 of the *International Covenant on Civil and Political Rights*.

Conclusion

This draft Instrument is compatible with human rights. To the extent that the draft Instrument may limit human rights, those limitations are reasonable, necessary and proportionate.



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