



## Australian Government

### Australian Transaction Reports and Analysis Centre

#### **Explanatory Statement – Amendment of *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No.1)* and *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2010 (No.3)***

#### **1. Purpose and operation of Anti-Money Laundering and Counter-Terrorism Financing Rules (AML/CTF Rules) amending Chapter 19 and adding Chapter 53**

1. Section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) provides that the AUSTRAC Chief Executive Officer (AUSTRAC CEO) may, by writing, make AML/CTF Rules prescribing matters required or permitted by any other provision of the AML/CTF Act.

#### **Amendments to Chapter 19**

2. Division 3 of Part 3 of the AML/CTF Act deals with reports about threshold transactions. A ‘threshold transaction’ is a transaction relating to the transfer of physical currency, where the transfer is \$10,000 or more, or a transaction involving the transfer of money in the form of e-currency, where the total amount of e-currency which is transferred is \$10,000 or more.
3. Section 43 of the AML/CTF Act provides that if a reporting entity commences to provide, or provides, a designated service to a customer that involves a threshold transaction, the reporting entity must give the AUSTRAC CEO a report about the transaction within 10 business days after the day of the transaction.
4. Chapter 19 (Reportable details for threshold transactions) of the AML/CTF Rules specifies what details must be included in a threshold transaction report (TTR) to the AUSTRAC CEO.
5. Chapter 19 was registered on 20 December 2007, and its commencement implemented in two stages: those reportable details about the customer making the threshold transaction commenced on 12 December 2008, while the reportable details regarding a person conducting the transaction who is not the customer (the ‘agent reportable details’), are due to commence on 1 October 2011.

(a) ***amendments to the agent reportable details – information required in certain circumstances***

6. Paragraph 19.3(17)(a)(ii) specifies the details which must be reported by a reporting entity in circumstances where the person carries out a transaction relevant to the item 51 (collecting physical currency) or item 53 (delivering physical currency) designated services. In such circumstances, reporting entities do not need to collect the details for their threshold transaction report of the individual conducting the transaction, when they are acting on behalf, or an employee of a business such as a cash carrier.
7. As a result of industry submissions in regard to reporting entities supplying the item 51 and item 53 designated services, subparagraph 19.3(17)(iii) has been added to address industry concerns that the current provisions of Chapter 19 may mean that it is necessary for a cash carrier to collect the details of their customer's staff members each and every time they pick up or deliver physical currency of \$10,000 or more.
8. The inclusion of subparagraph 19.3(17)(iii) means that reporting entities supplying the item 51 and 53 designated services do not need to collect the staff details of their customers as long as the provision of the designated service falls under an agreement for services which must be scheduled five business days or more before the designated service is provided.
9. The term 'agreement for services' relates to written, implied and oral contracts as all of these contracts are used in the cash carrier industry with their customers.
10. The requirement for 'five business days or more' relates to the mitigation of potential risk which may arise where an unauthorised provision of the designated service may be organised for illegitimate purposes either by a member of the staff of the cash carrier or a member of the staff of the cash carrier's customer.
11. The requirement will lessen the possibility of this occurring as the instruction to provide the service will probably be detected and verified by the cash carrier during the time between the provision of the instruction (either by the cash carrier or customer staff member) and the service being carried out.
12. Where 19.3(17) applies, the reporting entity must supply AUSTRAC with a statement to the effect that one of these three situations is applicable in respect to the transaction. However, there is still an obligation to supply the customer details under 19.3(1)-(14) in addition to the statement that 19.3(17)(a)(i)(ii) or (iii) is applicable. When a reporting entity is unable to ascertain whether the circumstances in 19.3(15) apply, the reporting entity can assume that the transaction was carried out by the customer.

### **Addition of Chapter 53**

13. Division 3 of Part 3 of the AML/CTF Act deals with reports about threshold transactions. A 'threshold transaction' is a transaction relating to the transfer of physical currency, where the transfer is \$10,000 or more, or a transaction involving the transfer of money in the form of e-currency, where the total amount of e-currency which is transferred is \$10,000 or more.
14. Section 43 of the AML/CTF Act provides that if a reporting entity commences to provide, or provides, a designated service to a customer that involves a threshold transaction, the reporting entity must give the AUSTRAC CEO a report about the transaction within 10 business days after the day of the transaction.
15. Chapter 19 (Reportable details for threshold transactions) of the AML/CTF Rules specifies what details must be included in a threshold transaction report (TTR) to the AUSTRAC CEO.
16. Chapter 53 exempts those reporting entities providing item 51 (collecting of physical currency) and item 53 (delivering physical currency) designated services in table 1 of subsection 6(2) of the AML/CTF Act in circumstances where the provision of the designated service involves a threshold transaction and one or more of the following applies:
  - (a) the transaction is between an Australian Government Entity (AGE) and an authorised deposit-taking institution (ADI) with which it holds an account;
  - (b) the transaction is between one AGE and another AGE;
  - (c) the transaction takes place within one part of an AGE and another part of the same AGE; or
  - (d) the transaction takes place between one part of an ADI and another part of the same ADI.
17. AUSTRAC considers that it is an unnecessary financial and administrative burden on reporting entities to report threshold transactions in the above circumstances.
  - (b) ***Structure of Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2011 (No.6)***
18. *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2011 (No.6)* makes amendments to two Instruments, *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No.1)*, in respect to the addition of Chapter 53, and *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2010 (No.3)* in respect to the version of Chapter 19 which will come into effect on 1 October 2011.

19. *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No.1)* also contains the version of Chapter 19 that will come into effect on 1 October 2011 but as a ‘Note’. This ‘Note’ of *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No.1)* cannot be amended as it is not legally in force and is only included in that Instrument as a reference. As a result, to legally amend the version of Chapter 19 due to come into effect on 1 October 2011, *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2010 (No.3)* must be amended and this is undertaken by *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2011 (No.6)*.

## **2. Notes on sections**

### **Section 1**

This section sets out the name of the instrument, i.e. the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2011 (No.6)*.

### **Section 2**

This section specifies that the instrument commences on the day after it is registered.

### **Section 3**

This section contains the details of the amendments:

Schedule 1 amends *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2010 (No.3)*, and

Schedule 2 amends *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No.1)*.

### **Schedule 1**

This schedule amends Chapter 19 due to come into effect on 1 October 2011.

## **3. Notes on items**

### **Item 1 - subparagraph 19.3(17)**

This item substitutes for the existing subparagraph 19.3(17), a new subparagraph which contains the addition of subparagraph 19.3(17)(a)(iii) relating to circumstances where a threshold transaction report does not need be submitted by the provider of the item 51 or item 53 designated services.

### **Schedule 2**

This schedule adds Chapter 53.

### **3. Notes on Paragraphs**

#### **Paragraph 53.1**

This paragraph specifies that these AML/CTF Rules have been made under section 229 of the AML/CTF Act for the purposes of subsection 44(3) of that Act.

#### **Paragraph 53.2**

This paragraph specifies that the section 43 obligation under the AML/CTF Act to supply threshold transaction reports, does not apply to those reporting entities providing the item 51 and item 53 designated services, subject to certain circumstances as listed in paragraph 53.3.

#### **Paragraph 53.3**

This paragraph specifies the circumstances in which the exemption will apply. They relate to transactions between an Australian Government Entity (AGE, such as AusAid) and an authorised deposit-taking institution (ADI, such as a bank) with which the AGE holds an account; between one AGE and another AGE; a transaction which takes place within the AGE or a transaction which takes place within an ADI.

#### **Paragraph 53.4**

This paragraph defines ‘Australian Government Entity’ and ‘service points’.

### **4. Legislative instruments**

These AML/CTF Rules are legislative instruments as defined in section 5 of the *Legislative Instruments Act 2003*.

### **5. Likely impact**

These AML/CTF Rules will have an impact on any reporting entity that provides a designated service covered by these AML/CTF Rules.

### **6. Assessment of benefits**

The amendments to Chapter 19 and the addition of Chapter 53 will reduce the regulatory burden for reporting entities supplying the item 51 and item 53 designated services, as they will not be required to submit a threshold transaction report when certain circumstances apply.

### **7. Consultation**

AUSTRAC has consulted with the Australian Taxation Office, the Australian Customs and Border Protection Service, the Australian Federal Police, the Australian Crime Commission and the Office of the Australian Information Commissioner in relation to these AML/CTF Rules.

AUSTRAC also published the draft AML/CTF Rules on its website.

## **8. Ongoing consultation**

AUSTRAC will conduct ongoing consultation with stakeholders on the operation of these AML/CTF Rules.