



Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2014 (No. 4)

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

I, John Lance Schmidt, Chief Executive Officer, Australian Transaction Reports and Analysis Centre, make this Instrument under section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

Dated 5 August 2014

[Signed]

John Lance Schmidt
Chief Executive Officer
Australian Transaction Reports and Analysis Centre

1 Name of Instrument

This Instrument is the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2014 (No. 4)*.

2 Commencement

This Instrument commences on the day after it is registered.

3 Amendment

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

Schedule 1 Amendment of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.

1. Chapter 8

Item 1 At the end of subparagraph 8.9.1(2)

Omit .

Insert ; and

- (3) the obligations that apply to the reporting entity under section 51F of the AML/CTF Act and Chapter 64 of the AML/CTF Rules; and
- (4) where the reporting entity is a remittance dealer, the obligations that apply to the remittance dealer under section 75M of the AML/CTF Act (as applicable) to advise:
 - (a) the AUSTRAC CEO of material changes in circumstances and other specified circumstances under subsections 75M(1) and 75M(3) of the AML/CTF Act; or
 - (b) the registered remittance network provider of material changes in circumstances and other specified circumstances under subsection 75M(2) of the AML/CTF Act.

Note: Remittance dealers should also refer to Chapter 60 of the AML/CTF Rules which specifies the material changes to registration details which must be reported to the AUSTRAC CEO.

2. Chapter 9

Item 1 At the end of **subparagraph 9.9.1(2)**

Omit .

Insert ; and

- (3) the obligations that apply to each of the reporting entities under section 51F of the AML/CTF Act and Chapter 64 of the AML/CTF Rules; and
- (4) where a reporting entity in the designated business group is a remittance dealer, the obligations that apply to the remittance dealer under section 75M of the AML/CTF Act (as applicable) to advise:
 - (a) the AUSTRAC CEO of material changes in circumstances and other specified circumstances under subsections 75M(1) and 75M(3) of the AML/CTF Act; or
 - (b) the registered remittance network provider of material changes in circumstances and other specified circumstances under subsection 75M(2) of the AML/CTF Act.

Note: Remittance dealers should also refer to Chapter 60 of the AML/CTF Rules which specifies the material changes to registration details which must be reported to the AUSTRAC CEO.

3. Chapter 27

Item 1 For **subparagraph 27.2(2)** relating to the definition of *beneficial owner*

Omit

- (2) ‘beneficial owner’ in respect of a company, means any individual who owns through one or more share holdings more than 25 per cent of the issued capital in the company;

Substitute

- (2) ‘beneficial owner’ has the same meaning as in Chapter 1 of these AML/CTF Rules;

Item 2 For **subparagraph 27.2(6)** relating to the definition of *enforcement action*

Omit

- (6) ‘enforcement action’ includes any action of a corrective nature in respect of an alleged breach of a law taken by a regulatory body of the Commonwealth or a State or Territory, or a government body;

Substitute

- (6) 'enforcement action' includes any action of a corrective or punitive nature in respect of an alleged breach of a law taken by a regulatory body of the Commonwealth or a State or Territory, or a government body;

4. Chapter 56

Item 1 For paragraph 56.1.

Omit

- 56.1. These Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) are made under section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) for the purposes of subsection 75(4) and paragraph 75B(3)(b) of that Act and in reliance on section 4 of the *Acts Interpretation Act 1901*. These Rules come into effect on the date that section 75 and section 75B of the AML/CTF Act comes into effect.

Substitute

- 56.1. These Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) are made under section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) for the purposes of subsection 75(4) and paragraph 75B(3)(b) of that Act and in reliance on section 4 of the *Acts Interpretation Act 1901*. Sections 136 and 137 of the AML/CTF Act apply to each paragraph of this Chapter.

Item 2 For subparagraph 56.3.(3)

Omit

- (3) include a declaration made by the authorised individual that the applicant has assessed the other person in accordance with that person's obligations under the AML/CTF Act and AML/CTF Rules; and

Substitute

- (3) include a declaration made by the authorised individual that the applicant has assessed the other person and its key personnel in accordance with the applicant's obligations and that person's obligations under the AML/CTF Act and AML/CTF Rules; and

Item 3 For **subparagraph 56.8.(5)** relating to the definition of *beneficial owner*

Omit

- (5) 'beneficial owner' in respect of a company, means any individual who owns through one or more share holdings more than 25 per cent of the issued capital in the company;

Substitute

- (5) 'beneficial owner' has the same meaning as in Chapter 1 of these AML/CTF Rules;

Item 4 For **subparagraph 56.8.(13)** relating to the definition of *enforcement action*

Omit

- (13) 'enforcement action' includes any action of a corrective nature in respect of an alleged breach of a law taken by a regulatory body of the Commonwealth or a State or Territory, or a government body;

Substitute

- (13) 'enforcement action' includes any action of a corrective or punitive nature in respect of an alleged breach of a law taken by a regulatory body of the Commonwealth or a State or Territory, or a government body;

Item 5 For **Chapter 56**, wherever occurring

Omit

Note 2: A reporting entity intending to disclose a NPHC or information from it to AUSTRAC should ensure that they comply with any requirements of CrimTrac in regard to that disclosure.

Substitute

Note 2: A reporting entity intending to disclose a NPHC or information from it to AUSTRAC should ensure that it complies with any requirements of CrimTrac in regard to that disclosure.

Item 6 For **item 15(g)** in **Part A of Schedule 2 in Chapter 56**

Omit

- (g) full address (not being a post box address);

Substitute

- (g) full business address (not being a post box address);

Item 7 For item 3 in Part B of Schedule 2 in Chapter 56

Omit

3. The original or a certified copy (as applicable) of the consent of the registered remittance network provider to the registration of the other person as a remittance affiliate of that registered remittance network provider;

Substitute

3. The original or a certified copy (as applicable) of the consent of the other person to be registered as a remittance affiliate of that registered remittance network provider;

Item 8 For item 15(g) in Part A of Schedule 3 in Chapter 56

Omit

- (g) full address (not being a post box address);

Substitute

- (g) full business address (not being a post box address);

5. Chapter 58

Item 1 For paragraph 58.1.

Omit

- 58.1. These Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) are made under section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) for the purposes of paragraph 75G(1)(c) and subsection 75G(3) of that Act and in reliance on section 4 of the *Acts Interpretation Act 1901*. These Rules come into effect on the date that section 75G of the AML/CTF Act comes into effect.

Substitute

- 58.1. These Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) are made under section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) for the purposes of paragraph 75G(1)(c) and subsection 75G(3) of that Act and in reliance on section 4 of the *Acts Interpretation Act 1901*.

Item 2 For paragraph 58.2.

Omit

- 58.2. The AUSTRAC CEO must have regard to the matters specified in the Schedule to this Chapter when deciding if it is appropriate to cancel the registration of a person under paragraph 75G(1)(c) of the AML/CTF Act.

Note: Section 75Q of the AML/CTF Act requires that, except in urgent cases, the AUSTRAC CEO must provide a person with the opportunity to make a submission before any decision is taken to cancel their registration.

Substitute

- 58.2. Without limiting the matters to which the AUSTRAC CEO may have regard, the AUSTRAC CEO may have regard to the matters specified in the Schedule to this Chapter when deciding if it is appropriate to cancel the registration of a person under paragraph 75G(1)(c) of the AML/CTF Act.

Note: Section 75Q of the AML/CTF Act requires that, except in urgent cases, the AUSTRAC CEO must provide a person with the opportunity to make a submission before any decision is taken to cancel their registration.

Item 3 For subparagraph 58.4.(1) relating to the definition of *beneficial owner*

Omit

- (1) ‘beneficial owner’ means, in respect of a company, any individual who owns through one or more share holdings more than 25 per cent of the issued capital in the company;

Substitute

- (1) ‘beneficial owner’ has the same meaning as in Chapter 1 of these AML/CTF Rules;

Item 4 For subparagraph 58.4.(2) relating to the definition of *enforcement action*

Omit

- (2) ‘enforcement action’ includes any action of a corrective nature in respect of an alleged breach of a law taken by a regulatory body of the Commonwealth or a State or Territory, or a government body;

Substitute

- (2) ‘enforcement action’ includes any action of a corrective or punitive nature in respect of an alleged breach of a law taken by a regulatory body of the Commonwealth or a State or Territory, or a government body;

Item 5 For items 2 and 3 in the **Schedule**

Omit

2. The original or a certified copy (as applicable) of the report of the most recent due diligence assessment that has been carried out on the person, by the registered remittance network provider who has made the application, of the suitability of the person to be a remittance affiliate of the registered remittance network provider.
3. Whether the information provided in the application for registration made under subsection 75B(1) or (2), was not true and correct at the time the application was made.

Substitute

2. If the person is a registered remittance affiliate, the original or a certified copy (as applicable) of the report of the most recent due diligence assessment that has been carried out on the person, by the registered remittance network provider who applied for registration of the person, to determine the suitability of the person to be a remittance affiliate of the registered remittance network provider.
3. Whether the following were not true and correct, or were materially misleading (whether by inclusion or omission), at the time the information or advice was provided:
 - (a) the information provided in any application for registration made under subsection 75B(1) or (2) of the AML/CTF Act;
 - (b) the information provided in any application for the renewal of registration made for the purposes of section 75J of the AML/CTF Act;

Note: Chapter 70 of the AML/CTF Rules specifies the requirements for making an application for the renewal of registration on the Remittance Sector Register.

- (c) any advice to the AUSTRAC CEO given under paragraph 75M(1)(d) of the AML/CTF Act of any change in circumstances that could materially affect the person's registration;
- (d) any advice to the AUSTRAC CEO given under the AML/CTF Rules made for the purposes of paragraph 75M(1)(e) of the AML/CTF Act;
- (e) any advice to the AUSTRAC CEO given under subsection 75M(3) of the AML/CTF Act by a registered remittance network provider of changes notified to it by a registered remittance affiliate under subsection 75M(2) of the AML/CTF Act.

Note: Chapter 60 of these AML/CTF Rules sets out the requirements for advising the AUSTRAC CEO of material

changes of circumstances and other matters required by section 75M of the AML/CTF Act.

4. Whether the person has contravened a provision of the AML/CTF Act or a requirement of the AML/CTF Rules, and if so, the details of each instance for the person including the nature, severity and frequency of the breach.

6. Chapter 59

Item 1 For paragraph 59.1.

Omit

- 59.1. These Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) are made under section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) for the purposes of subsection 75H(1) of that Act and in reliance on section 4 of the *Acts Interpretation Act 1901*. These Rules come into effect on the date that section 75H of the AML/CTF Act comes into effect.

Substitute

- 59.1. These Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) are made under section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) for the purposes of subsection 75H(1) of that Act and in reliance on section 4 of the *Acts Interpretation Act 1901*.

Item 2 For paragraph 59.3. substitute

- 59.3. In respect to matters relating to the grounds for suspension, any of the following are grounds for suspension of registration:
 - (1) Whether the person or any of its key personnel:
 - (a) has been charged, prosecuted and/or convicted in relation to money laundering, financing of terrorism, terrorism, people smuggling, fraud, a serious offence, an offence under the AML/CTF Act, or an offence under the *Financial Transaction Reports Act 1988* (FTR Act);
 - (b) has been the subject of a civil penalty order made under the AML/CTF Act;
 - (c) has been the subject of civil or criminal proceedings or enforcement action, in relation to the management of an entity, or commercial or professional activities, which were determined adversely to the person or any of its key personnel (including by the person or any of its key personnel consenting to an order or

direction, or giving an undertaking, not to engage in unlawful or improper conduct) and which reflected adversely on the person's competence, diligence, judgement, honesty or integrity;

and if so, the details of each instance as the case may be, for the person and each of its key personnel;

Note: The above does not affect the operation of Part VIIC of the Crimes Act 1914, which means that certain convictions which are spent convictions are not required to be disclosed under these AML/CTF Rules.

- (2) The AUSTRAC CEO is satisfied on reasonable grounds that the person has contravened a civil penalty provision of the AML/CTF Act;
- (3) The AUSTRAC CEO has commenced action to cancel the registration of the person under section 75G of the AML/CTF Act, and that action has not been completed;
- (4) The person has contravened:
 - (a) any condition imposed on the registration under subsection 75E(1) of the AML/CTF Act; or
 - (b) a provision of the AML/CTF Act or a requirement in the AML/CTF Rules;
- (5) The AUSTRAC CEO suspects on reasonable grounds that the person may contravene a provision of the AML/CTF Act;
- (6) The AUSTRAC CEO reasonably believes that the following were not true and correct, or were materially misleading (whether by inclusion or omission), at the time the information or advice was provided:
 - (a) the information provided in any application for registration made under subsection 75B(1) or (2) of the AML/CTF Act;
 - (b) the information provided in any application for the renewal of registration made for the purposes of section 75J of the AML/CTF Act;

Note: Chapter 70 of the AML/CTF Rules specifies the requirements for making an application for the renewal of registration on the Remittance Sector Register.

- (c) any advice to the AUSTRAC CEO given under paragraph 75M(1)(d) of the AML/CTF Act of any change in circumstances that could materially affect the person's registration;

- (d) any advice to the AUSTRAC CEO given under the AML/CTF Rules made for the purposes of paragraph 75M(1)(e) of the AML/CTF Act;
- (e) any advice to the AUSTRAC CEO given under subsection 75M(3) of the AML/CTF Act by a registered remittance network provider of changes notified to it by a registered remittance affiliate under subsection 75M(2) of the AML/CTF Act.

Note: Chapter 60 of these AML/CTF Rules sets out the requirements for advising the AUSTRAC CEO of material changes of circumstances and other matters required by section 75M of the AML/CTF Act.

Item 3 For **subparagraph 59.10.(1)** relating to the definition of *beneficial owner*

Omit

- (1) ‘beneficial owner’ means, in respect of a company, any individual who owns through one or more share holdings more than 25 per cent of the issued capital in the company;

Substitute

- (1) ‘beneficial owner’ has the same meaning as in Chapter 1 of these AML/CTF Rules;

Item 4 For **subparagraph 59.10.(2)** relating to the definition of *enforcement action*

Omit

- (2) ‘enforcement action’ includes any action of a corrective nature in respect of an alleged breach of a law taken by a regulatory body of the Commonwealth or a State or Territory, or a government body;

Substitute

- (2) ‘enforcement action’ includes any action of a corrective or punitive nature in respect of an alleged breach of a law taken by a regulatory body of the Commonwealth or a State or Territory, or a government body;

7. Chapter 60

Item 1 For paragraph 60.1. *substitute*

- 60.1. These Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) are made under section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) for the purposes of paragraphs 75M(1)(e) and (2)(b) and subsection 75(4) of that Act and in reliance on section 4 of the *Acts Interpretation Act 1901*. Sections 136 and 137 of the AML/CTF Act apply to each paragraph in this Chapter.

Item 2 After paragraph 60.1. *insert*

Person registered as a remittance network provider, an independent remittance dealer or a remittance affiliate of a registered remittance network provider that applied for registration on its own behalf

Item 3 For paragraph 60.2.

Omit

- 60.2. For the purpose of paragraph 75M(1)(e), the following matters are specified:
- (1) a material change in any of the registration details of the person as set out in Part A of Schedules 1, 2 and 3 (except for the information specified in paragraph 19 of Schedules 1, 2 and 3) of Chapter 56, as the case may be, including:
 - (a) any change to the registration details of the key personnel, including any change in the number of key personnel;

Substitute

- 60.2. For the purpose of paragraph 75M(1)(e) of the AML/CTF Act, the following matters are specified:
- (1) a material change in any of the registration details of the person as set out in Part A of Schedules 1, 2 and 3 of Chapter 56 of these AML/CTF Rules, as the case may be, including:
 - (a) any change to the registration details of the key personnel of the person, including:
 - (i) any change in the number of key personnel;
 - (ii) in situations where new key personnel have been appointed or commenced since the registration of the person on the Remittance Sector Register, a declaration by the person that:

- (A) a National Police Certificate (NPC) or a National Police History Check (NPHC) has been obtained, or an application has been made for a NPC or NPHC, for the new key personnel;
- (B) the person has obtained, or will, obtain and retain the information specified in the Schedule to this Chapter; and
- (C) each of the key personnel of the person has been subject to, and satisfied, the employee due diligence program of the person;

Item 4 After paragraph 60.3. insert

Person registered as a remittance affiliate of a registered remittance network provider

Item 5 For paragraph 60.4.

Omit

- 60.4. For the purpose of paragraph 75M(2)(b), the following matters are specified:
- (1) a material change in any of the registration details of the person as set out in Part A (except for the information specified in paragraph 19 of Schedule 2) of Chapter 56, including:
 - (a) any change to the registration details of the key personnel, including any change in the number of key personnel;

Substitute

- 60.4. For the purpose of paragraph 75M(2)(b) of the AML/CTF Act, the following matters are specified:
- (1) a material change in any of the registration details of the person as set out in Part A of Schedule 2 in Chapter 56 of these AML/CTF Rules, including:
 - (a) any change to the registration details of the key personnel of the person, including:
 - (i) any change in the number of key personnel;
 - (ii) in situations where new key personnel have been appointed or commenced since the registration of the person on the Remittance Sector Register, a declaration by the person that:

- (A) a National Police Certificate (NPC) or a National Police History Check (NPHC) has been obtained, or an application has been made for a NPC or NPHC, for the new key personnel;
- (B) the person has obtained, or will, obtain and retain the information specified in the Schedule to this Chapter; and
- (C) each of the key personnel of the person has been subject to, and satisfied, the employee due diligence program of the person;

Item 6 *Repeal paragraph 60.7.*

Item 7 *Repeal the following Privacy notice at the end of Chapter 60*

Reporting entities should note that in relation to activities they undertake to comply with the AML/CTF Act, they will have obligations under the Privacy Act 1988, including the requirement to comply with the Australian Privacy Principles, even if they would otherwise be exempt from the Privacy Act. For further information about these obligations, please go to <http://www.oaic.gov.au> or call 1300 363 992.

Item 8 *After paragraph 60.6. insert*

60.7. In this Chapter:

- (1) ‘accredited agency’ means an agency approved by CrimTrac to access the National Police Checking Service;

Note: In 2013, the list of accredited agencies as specified by CrimTrac was available on the CrimTrac website (www.crimtrac.gov.au).

- (2) ‘Australian Police Force’ means ACT Policing, the Australian Federal Police, the New South Wales Police Service, the Northern Territory Police, the Queensland Police Service, the Victoria Police, the South Australia Police, the Tasmania Police Service and the Western Australia Police;
- (3) ‘beneficial owner’ has the same meaning as in Chapter 1 of these AML/CTF Rules;
- (4) ‘company’ has the same meaning as in the *Corporations Act 2001*;
- (5) ‘control’ has the meaning given by section 50AA of the *Corporations Act 2001*;

- (6) 'CrimTrac' means the agency which was established in July 2000 through an Inter-Governmental Agreement signed by the Australian Government Minister for Justice and Customs and by State and Territory Police Ministers on behalf of their respective governments;
- (7) 'disclosable convictions' means a conviction that:
 - (a) has been recorded by a court; and
 - (b) has not been spent under the laws of the country in which the conviction was recorded;
- (8) 'enforcement action' includes any action of a corrective or punitive nature in respect of an alleged breach of a law taken by a regulatory body of the Commonwealth or a State or Territory, or a government body;
- (9) 'entity' has the same meaning as in the *Corporations Act 2001*;
- (10) 'fraud' means dishonestly obtaining a benefit by deception or other means;
- (11) 'key personnel':
 - (a) in the case of a company, corporation sole or body politic, is a natural person that is:
 - (i) a beneficial owner; or
 - (ii) an officer as defined in section 9 of the *Corporations Act 2001*, or an employee or agent of the body corporate with duties of such responsibility that his or her conduct may fairly be assumed to represent the body corporate's policy;
 - (b) in the case of an individual, trust or partnership, is a natural person that is an employee or agent of the individual, trust or partnership with duties of such responsibility that his or her conduct may fairly be assumed to represent the policy of the individual, trust or partnership;
- (12) 'National Police Certificate' means a document that contains a certification, effective on a national basis, that the natural person to whom it relates either has no disclosable convictions or has a disclosable conviction that is detailed in the Certificate; and
 - (a) if the natural person to whom it relates is a resident of Australia, is issued by an Australian police force; or
 - (b) if the natural person to whom it relates is a resident of another country, is issued by a police force of that other country;

- (13) 'National Police Checking Service Support System' means the information database administered by CrimTrac which supports the process of national police history checking;
- (14) 'National Police History Check' means a police history record check carried out by CrimTrac within Australia through the National Police Checking Service and provided to an accredited agency, which contains the information specified in subparagraph 1(b) of Part B of Schedules 1, 2 and 3 of Chapter 56;
- (15) 'people smuggling' means conduct that amounts to:
- (a) an offence against Division 73 of the *Criminal Code*; or
 - (b) an offence against Subdivision A, Division 12, Part 2 of the *Migration Act 1958*; or
 - (c) an offence against a law of a foreign country or of a part of a foreign country that corresponds:
 - (i) to an offence referred to in paragraph (a) or (b); or
 - (ii) with the *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime*;
- (16) 'person' has the same meaning as in the AML/CTF Act;
- (17) 'reference number' means an identifier (including an Organisation Registration Number supplied by CrimTrac) allocated by an accredited agency to the National Police History Check request, which identifies the search results obtained by that agency from the National Police Checking Service Support System;
- (18) 'serious offence' means an offence which is:
- (a) an offence against a law of the Commonwealth, or a law of a State or Territory, punishable on indictment by imprisonment for life or 2 or more years, that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence) regardless of whether the offence proceeds summarily or on indictment; or
 - (b) an offence against a law of a foreign country constituted by conduct that, if it had occurred in Australia, would have constituted a serious offence.

A 'serious offence' in relation to a person other than an individual means an offence which would have been a serious offence if the person had been an individual;

- (19) 'subsidiary' has the same meaning as in the *Corporations Act 2001*.
- (20) 'terrorism' means conduct that amounts to:
 - (a) an offence against Division 101 or 102 of the *Criminal Code*; or
 - (b) an offence against a law of a State or Territory that corresponds to an offence referred to in paragraph (a); or
 - (c) an offence against a law of a foreign country or of a part of a foreign country that corresponds to an offence referred to in paragraph (a).

Item 9 After subparagraph 60.7.(20)(c) *insert*

Schedule

Information to be obtained and retained pursuant to subsection 75(4) of the AML/CTF Act

- 1. For all key personnel who either are appointed or commence after the date of registration of a person on the Remittance Sector Register, the registered person must obtain and retain:
 - (a) the original or certified copy (as applicable) of a National Police Certificate (or foreign equivalent if one is able to be obtained) (NPC); or
 - (b) a National Police History Check (NPHC) which:
 - (i) has been obtained from an accredited agency;
 - (ii) specifies the full name and date of birth of the natural person to whom the NPHC relates;
 - (iii) provides relevant information regarding the natural person to whom the NPHC relates, which will enable the applicant to make an informed decision as to whether that natural person has any disclosable convictions arising from any court outcomes within Australia which are disclosable;
 - (iv) specifies the reference number allocated to the NPHC by the accredited agency;
 - (v) specifies the name of the accredited agency which obtained the NPHC; and
 - (vi) specifies the date on which the NPHC was released.

Note 1: Subsection 6E(1A) of the Privacy Act 1988 applies the Australian Privacy Principles to all reporting entities in relation to their activities under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006.

Note 2: A reporting entity intending to disclose a NPHC or information from it to AUSTRAC should ensure that it complies with any requirements of CrimTrac in regard to that disclosure.

Reporting entities should note that in relation to activities they undertake to comply with the AML/CTF Act, they will have obligations under the Privacy Act 1988, including the requirement to comply with the Australian Privacy Principles, even if they would otherwise be exempt from the Privacy Act. For further information about these obligations, please go to <http://www.oaic.gov.au> or call 1300 363 992.

8. Chapter 63

Item 1 For subparagraph 63.5.(5) relating to the definition of *beneficial owner*

Omit

- (5) ‘beneficial owner’, in respect of a company, means any individual who owns through one or more share holdings more than 25 per cent of the issued capital in the company;

Substitute

- (5) ‘beneficial owner’ has the same meaning as in Chapter 1 of these AML/CTF Rules;

9. Chapter 65

Item 1 After subparagraph 65.4.(5)(4)

Omit .

Item 2 For subparagraph 65.5.(2) relating to the definition of *beneficial owner*

Omit

- (2) ‘beneficial owner’, in respect of a company, means any individual who owns through one or more share holdings more than 25 per cent of the issued capital in the company;

Substitute

- (2) ‘beneficial owner’ has the same meaning as in Chapter 1 of these AML/CTF Rules;

10. New Chapter 70

Item 1 After Chapter 69

Insert

CHAPTER 70 Renewal of registration

70.1 These Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) are made under section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) for the purposes of section 75J of that Act. Sections 136 and 137 of the AML/CTF Act apply to each paragraph of this Chapter.

Application period

70.2 A reporting entity which is:

- (1)
 - (a) a registered remittance network provider; or
 - (b) a registered independent remittance dealer;may apply to the AUSTRAC CEO, within the 90 day period preceding the day on which their registration would otherwise cease, for a renewal of that registration;
- (2) a registered remittance network provider may apply to the AUSTRAC CEO, within the 90 day period preceding the day on which the registration of a registered remittance affiliate of the registered remittance network provider would cease, for a renewal of the registration of the registered remittance affiliate.

Applications for renewal of registration

Remittance Network Provider

70.3 An application for renewal of registration as a remittance network provider must be made by an authorised individual on behalf of the registered remittance network provider and contain a declaration that:

- (1) the registration details of the registered remittance network provider as they appear on the Remittance Sector Register are correct and current at the time of the declaration;
- (2) the enrolment details of the registered remittance network provider as they appear on the Reporting Entities Roll are correct and current at the time of the declaration;
- (3) the remittance network provider has complied with the requirements of section 75M of the AML/CTF Act and the Schedule to Chapter 60 of the AML/CTF Rules;
- (4) the authorised individual has notified the AUSTRAC CEO as to whether the remittance network provider and any of its key personnel have been:

- (a) charged, prosecuted and/or convicted in relation to money laundering, financing of terrorism, terrorism, people smuggling, fraud, a serious offence, an offence under the AML/CTF Act, or an offence under the *Financial Transaction Reports Act 1988* (FTR Act);
 - (b) subject of a civil penalty order made under the AML/CTF Act;
 - (c) the subject of civil or criminal proceedings or enforcement action, in relation to the management of an entity, or commercial or professional activities, which were determined adversely to the remittance network provider or any of its key personnel (including by the remittance network provider or any of its key personnel consenting to an order or direction, or giving an undertaking, not to engage in unlawful or improper conduct) and which reflected adversely on the competence, diligence, judgement, honesty or integrity of the remittance network provider or any of its key personnel;
- (5) the remittance network provider has complied with the requirements of subsection 75M(3) of the AML/CTF Act with respect to any remittance affiliate;
 - (6) the information given in the declaration is true, accurate and complete; and
 - (7) the applicant understands that criminal or civil penalties may apply for giving false or misleading information, or for omitting any matter or thing without which the information is misleading.

Independent Remittance Dealer

70.4 An application for renewal of registration as an independent remittance dealer must be made by an authorised individual on behalf of the registered independent remittance dealer and contain a declaration that:

- (1) the registration details of the registered independent remittance dealer as they appear on the Remittance Sector Register are correct and current at the time of the declaration;
- (2) the enrolment details of the registered independent remittance dealer as they appear on the Reporting Entities Roll are correct and current at the time of the declaration;
- (3) the independent remittance dealer has complied with the requirements of section 75M of the AML/CTF Act and the Schedule to Chapter 60 of the AML/CTF Rules;
- (4) the authorised individual has notified the AUSTRAC CEO as to whether the independent remittance dealer and any of its key personnel have been:

- (a) charged, prosecuted and/or convicted in relation to money laundering, financing of terrorism, terrorism, people smuggling, fraud, a serious offence, an offence under the AML/CTF Act, or an offence under the *Financial Transaction Reports Act 1988* (FTR Act);
- (b) subject of a civil penalty order made under the AML/CTF Act;
- (c) the subject of civil or criminal proceedings or enforcement action, in relation to the management of an entity, or commercial or professional activities, which were determined adversely to the independent remittance dealer or any of its key personnel (including by the independent remittance dealer or any of its key personnel consenting to an order or direction, or giving an undertaking, not to engage in unlawful or improper conduct) and which reflected adversely on the competence, diligence, judgement, honesty or integrity of the independent remittance dealer or any of its key personnel;
- (5) the information given in the declaration is true, accurate and complete; and
- (6) the applicant understands that criminal or civil penalties may apply for giving false or misleading information, or for omitting any matter or thing without which the information is misleading.

Remittance Affiliate

70.5 An application for renewal of the registration of a registered remittance affiliate of a registered remittance network provider must be made by an authorised individual of the registered remittance network provider and contain a declaration that:

- (1) the registration details of the registered remittance affiliate as they appear on the Remittance Sector Register are correct and current at the time of the declaration;
- (2) the enrolment details of the registered remittance affiliate as they appear on the Reporting Entities Roll are correct and current at the time of the declaration;
- (3) the remittance affiliate has complied with the requirements of section 75M of the AML/CTF Act and the Schedule to Chapter 60 of the AML/CTF Rules;
- (4) the authorised individual has notified the AUSTRAC CEO as to whether the remittance affiliate and any of its key personnel have been:

- (a) charged, prosecuted and/or convicted in relation to money laundering, financing of terrorism, terrorism, people smuggling, fraud, a serious offence, an offence under the AML/CTF Act, or an offence under the *Financial Transaction Reports Act 1988* (FTR Act);
 - (b) subject of a civil penalty order made under the AML/CTF Act;
 - (c) the subject of civil or criminal proceedings or enforcement action, in relation to the management of an entity, or commercial or professional activities, which were determined adversely to the remittance affiliate or any of its key personnel (including by the remittance affiliate or any of its key personnel consenting to an order or direction, or giving an undertaking, not to engage in unlawful or improper conduct) and which reflected adversely on the competence, diligence, judgement, honesty or integrity of the remittance affiliate or any of its key personnel;
- (5) the remittance network provider has obtained consent from the remittance affiliate for it to be registered as a remittance affiliate of the remittance network provider;
 - (6) the information given in the declaration is true, accurate and complete; and
 - (7) the applicant understands that criminal or civil penalties may apply for giving false or misleading information, or for omitting any matter or thing without which the information is misleading.

Provisional continuation of registration

70.6 If an application has been made to the AUSTRAC CEO for the renewal of registration of a person:

- (1) within the application period specified in paragraph 70.2; and
- (2) the application contains the declarations required under paragraphs 70.3, 70.4 or 70.5, as applicable;

the registration of the person will continue in effect until the later of the following times:

- (3) where the AUSTRAC CEO has decided the application for renewal of registration of the person under paragraph 70.9 and has given written notice of the decision in accordance with paragraph 70.11 – the date on which the decision of the AUSTRAC CEO takes effect, as specified in this notice; or
- (4) where the AUSTRAC CEO or other delegated decision-maker has reconsidered a decision not to renew the registration of a person under paragraph 70.18 and has given written notice of the reconsidered decision in accordance with paragraph 70.19 – the date on which the reconsidered decision takes effect, as specified in this notice.

Steps to be taken by the AUSTRAC CEO before making certain decisions

- 70.7 Before making a decision under subparagraph 70.9(2) or paragraph 70.18 affirming that decision in relation to one or more persons, the AUSTRAC CEO must give a written notice to each of the persons containing:
- (1) the terms of the proposed decision; and
 - (2) if the proposed decision is not to renew a registration – the date on which the decision is proposed to take effect; and
 - (3) the reasons for the proposed decision; and
 - (4) a statement that the person may, within 28 days of the giving of the notice, make a submission in relation to the proposed decision.
- 70.8 The AUSTRAC CEO is not required to give a notice for the purposes of paragraph 70.7 if the AUSTRAC CEO is satisfied that it is inappropriate to do so because of the urgency of the circumstances.

Determining application for the renewal of registration of a person

- 70.9 The AUSTRAC CEO may decide to:
- (1) renew the registration of the person – with or without conditions pursuant to section 75E of the AML/CTF Act; or
 - (2) not renew the registration of the person.
- 70.10 Notwithstanding paragraph 70.9, if an application has been made to the AUSTRAC CEO for the renewal of registration of a person, the AUSTRAC CEO must renew the registration if the AUSTRAC CEO is satisfied that it is appropriate to do so, having regard to:
- (1) the declarations required, and any further information provided under paragraphs 70.3, 70.4 or 70.5, as applicable;
 - (2) whether renewing the registration of the person would involve a significant money laundering, financing of terrorism or people smuggling risk;
 - (3) the legal and beneficial ownership and control of the applicant, a remittance affiliate of the applicant, or any other person;
 - (4) the kinds of designated services provided by the applicant or by a remittance affiliate of the applicant;
 - (5) the consent of a remittance affiliate of the applicant, if applicable; and
 - (6) any other matter that the AUSTRAC CEO considers is relevant to the renewal of registration of the person.

Notice of decision on renewal of registration

- 70.11 The AUSTRAC CEO must, as soon as practicable after making a decision under paragraph 70.9, give written notice to the person of:
- (1) the decision to renew the person's registration in accordance with paragraph 70.9(1); or

- (2) the decision not to renew the person's registration in accordance with paragraph 70.9(2).

70.12 If the AUSTRAC CEO decides to renew the registration of a person, the notice of that decision must:

- (1) be given to:
 - (a) the person; and
 - (b) if the person is a remittance affiliate, the registered remittance network provider of that affiliate; and
- (2) contain the date the decision was made by the AUSTRAC CEO, the terms of the decision and the date the decision will take effect; and
- (3) if applicable, detail the conditions to which the renewed registration is subject.

Note: Section 75E of the AML/CTF Act allows the AUSTRAC CEO to impose conditions to which the registration of a person is subject.

70.13 If the AUSTRAC CEO decides not to renew the registration of a person, the notice of that decision must:

- (1) be given to:
 - (a) the person; and
 - (b) if the person is a remittance affiliate, the registered remittance network provider of that affiliate;

and contain:

- (2) the date the decision was made by the AUSTRAC CEO;
- (3) the terms of the decision;
- (4) the reasons for the decision;
- (5) the date which the registration of the person will cease to have effect; and
- (6) a statement setting out particulars of the person's right to have the decision reviewed.

Period for which registration will be renewed

70.14 If the AUSTRAC CEO decides to renew the registration of a person, the renewed registration will commence on the date of effect specified in the notice of the decision to renew the registration pursuant to paragraph 70.9(1), and will cease at the earliest of the following times:

- (1) three years after the date of effect specified in the notice; or
- (2) if any of paragraphs 75F(1)(a), (b), (d) and (e) of the AML/CTF Act apply – the relevant earlier date determined in accordance with these paragraphs.

Note: Paragraph 75J(2)(g) of the AML/CTF Act allows the AUSTRAC CEO to make AML/CTF Rules to specify the period for which renewed registrations have effect.

Review of decision to refuse renewal of registration

- 70.15 A person affected by a decision of the AUSTRAC CEO under paragraph 70.9(2) of these AML/CTF Rules may, if dissatisfied with the decision, apply to the AUSTRAC CEO for the decision to be reconsidered.
- 70.16 The application for review must:
- (1) be in writing;
 - (2) set out the reasons why the decision should be reviewed;
 - (3) be made to the AUSTRAC CEO within:
 - (a) 30 days of the date of the decision of the AUSTRAC CEO made under paragraphs 70.9(2) and 70.18; or
 - (b) such longer period as the AUSTRAC CEO (whether before or after the end of the 30 day period) allows.
- 70.17 After receiving an application under paragraph 70.15, the AUSTRAC CEO must reconsider the decision personally or cause the decision to be reviewed by a delegate to whom the AUSTRAC CEO's power under section 222 of the AML/CTF Act is delegated (the person) who:
- (1) was not involved in making the decision; and
 - (2) occupies a position in AUSTRAC that is senior to that occupied by any person involved in making the decision.
- 70.18 The person reviewing the decision must:
- (1) affirm, vary or revoke the decision; and
 - (2) if the person revokes the decision, make such other decision (if any) as the person thinks appropriate.
- 70.19 The person must, as soon as practicable after making a decision under paragraph 70.18, give written notice to the applicant of:
- (1) the decision;
 - (2) if the decision is to refuse a renewal of the person's registration – the date the decision takes effect; and
 - (3) the reasons for the decision.
- 70.20 A failure to comply with the requirements of paragraph 70.13 (about giving notice) in relation to a decision to refuse a renewal of registration does not affect the validity of the decision.

Failure to apply for a renewal of registration

- 70.21 If an application for a renewal of registration is not made within the appropriate application period specified in paragraph 70.2:
- (1) the registration of the person will cease at the end of the current registration period; and
 - (2) the AUSTRAC CEO will remove the person from the Remittance Sector Register in accordance with subsections 75K(3) – (6) of the AML/CTF Act, as applicable.

Note: Under paragraphs 75F(1)(c) and 75J(3)(a) of the AML/CTF Act, the current default registration period is 3 years from the day the registration takes effect. There are currently no AML/CTF Rules which specify other registration periods.

70.22 In this Chapter:

- (1) 'authorised individual' means a natural person who is:
 - (a) a beneficial owner; or
 - (b) an officer as defined in section 9 of the *Corporations Act 2001*; or
 - (c) is an employee of the person registered on the Remittance Sector Register who has been authorised in writing by the registered person to act in this capacity;
- (2) 'beneficial owner' has the same meaning as in Chapter 1 of these AML/CTF Rules;
- (3) 'control' has the same meaning given by section 50AA of the *Corporations Act 2001*;
- (4) 'enforcement action' includes any action of a corrective or punitive nature in respect of an alleged breach of a law taken by a regulatory body of the Commonwealth or a State or Territory, or a government body;
- (5) 'fraud' means dishonestly obtaining a benefit by deception or other means;
- (6) 'key personnel' means:
 - (a) in the case of a company, corporation sole or body politic, is a natural person that is:
 - (i) a beneficial owner; or
 - (ii) an officer as defined in section 9 of the *Corporations Act 2001*, or an employee or agent of the body corporate with duties of such responsibility that his or her conduct may fairly be assumed to represent the body corporate's policy;
 - (b) in the case of an individual, trust or partnership, is a natural person that is an employee or agent of the individual, trust or partnership with duties of such responsibility that his or her conduct may fairly be assumed to represent the policy of the individual, trust or partnership;
- (7) 'people smuggling' means conduct that amounts to:
 - (a) an offence against Division 73 of the *Criminal Code*; or
 - (b) an offence against Subdivision A, Division 12, Part 2 of the *Migration Act 1958*; or
 - (c) an offence against a law of a foreign country or of a part of a foreign country that corresponds:

- (i) to an offence referred to in paragraph (a) or (b); or
 - (ii) with the *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime*;
 - (8) 'person' has the same meaning as in the AML/CTF Act;
 - (9) 'serious offence' means an offence which is:
 - (a) an offence against a law of the Commonwealth, or a law of a State or Territory, punishable on indictment by imprisonment for life or 2 or more years, that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence) regardless of whether the offence proceeds summarily or on indictment; or
 - (b) an offence against a law of a foreign country constituted by conduct that, if it had occurred in Australia, would have constituted a serious offence.
- A 'serious offence' in relation to a person other than an individual means an offence which would have been a serious offence if the person had been an individual;
- (10) 'terrorism' means conduct that amounts to:
 - (a) an offence against Division 101 or 102 of the *Criminal Code*; or
 - (b) an offence against a law of a State or Territory that corresponds to an offence referred to in paragraph (a); or
 - (c) an offence against a law of a foreign country or of a part of a foreign country that corresponds to an offence referred to in paragraph (a).

Reporting entities should note that in relation to activities they undertake to comply with the AML/CTF Act, they will have obligations under the Privacy Act 1988, including the requirement to comply with the Australian Privacy Principles, even if they would otherwise be exempt from the Privacy Act. For further information about these obligations, please go to <http://www.oaic.gov.au> or call 1300 363 992.