

**Explanatory Statement – *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2014 (No. 6)* amending the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)***

**1. Purpose and operation of Anti-Money Laundering/Counter‑Terrorism Financing Rules (AML/CTF Rules) adding Chapter 71**

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.

**Addition of Chapter 71**

1. Items 1-3 in Table 1 in subsection 6(2) of the AML/CTF Act apply to ADIs (Authorised Deposit-taking Institutions), banks, building societies, credit unions and persons specified in the AML/CTF Rules. ADI is defined in section 5 of the AML/CTF Act as:

# a body corporate that is an ADI for the purposes of the *Banking Act 1959*; or

# the Reserve Bank of Australia; or

# a person who carriers on State banking within the meaning of paragraph 51(xii) of the Constitution.

1. The designated services above are those of opening an account (item 1), allowing a person to become a signatory to an account (item 2) and allowing transactions to be conducted on an account (item 3). Section 5 defines “account” to include a “credit card account”.
2. The *Banking Regulations 1966* (Banking Regulations) have been amended with effect from 1 January 2015 to open up credit card issuing and acquiring to non-ADIs. This will allow non-ADIs to become credit card issuers and credit card acquirers in the Visa and MasterCard credit card schemes.
3. This Instrument amends the AML/CTF Rules to ensure that subsequent to the amendments to the Banking Regulations, a person who is a credit card issuer or acquirer (or both) and is not an ADI, bank, building society or credit union will be a reporting entity for the purposes of the AML/CTF Act.

**Statement of Compatibility with the *Human Rights (Parliamentary Scrutiny) Act 2011***

1. The *Human Rights (Parliamentary Scrutiny) Act 2011* was passed on 25 November 2011 and came into effect on 4 January 2012. It introduced a requirement for a Statement of Compatibility to accompany all new Bills and disallowable legislative instruments.
2. The Statement of Compatibility for the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2014 (No. 6)* is included in this Explanatory Statement at page 5. The AUSTRAC CEO, as the rule-maker of this legislative instrument, has stated that it 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*.

**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 2014 (No. 6).*

**Section 2**

This section specifies that the Instrument commences on 1 January 2015.

**Section 3**

This section contains the details of the amendments:

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

**Schedule 1**

This schedule adds a new chapter, Chapter 71.

**3. Notes on Items**

**Schedule 1**

1. **Chapter 71**

**Item 1**

**Paragraph 71.1**

This paragraph specifies that Chapter 71 is made under section 229 for the purposes of paragraph (e) of Items 1, 2 and 3 in Table 1 of subsection 6(2) of the AML/CTF Act, which relates to specifying a person as a provider of the designated service set out in each item of the table.

**Paragraph 71.2**

This paragraph sets out that a person who carries out the activities of credit card issuing or credit card acquiring (or both) and meets the conditions described is a person who is specified for the purposes of paragraph (e) of Item 1 in Table 1 of subsection 6(2) of the AML/CTF Act.

**Paragraph 71.3**

This paragraph sets out that a person who carries out the activities of credit card issuing or credit card acquiring (or both) and meets the conditions described is a person who is specified for the purposes of paragraph (e) of Item 2 in Table 1 of subsection 6(2) of the AML/CTF Act.

**Paragraph 71.4**

This paragraph sets out that a person who carries out the activities of credit card issuing or credit card acquiring (or both) and meets the conditions described is a person who is specified for the purposes of paragraph (e) of Item 3 in Table 1 of subsection 6(2) of the AML/CTF Act.

**Paragraph 71.5**

This paragraph defines ‘credit card acquiring’, ‘credit card issuing’, ‘credit card transaction’, ‘merchant’ and ‘payment system’.

**4. Legislative instruments**

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

**5. Likely impact**

Chapter 71 will impact on those persons that carry out the activities of credit card issuing or credit card acquiring (or both) and who currently are not reporting entities under the AML/CTF Act. These persons will be required to apply for enrolment on the Reporting Entities Roll and comply with various obligations under the AML/CTF Act, such as customer identification and verification, transaction reporting and adopting and maintaining an AML/CTF program.

**6. Assessment of benefits**

Before the commencement of the credit card reforms, on 1 January 2015, all credit card issuers and acquirers were reporting entities for the purposes of the AML/CTF Act because they were ADIs. Chapter 71 will ensure that all credit card issuers and acquirers, both ADIs and non-ADIs, will be reporting entities for the purposes of the AML/CTF Act following the commencement of the credit card reforms.

**7. Consultation**

Subsection 212(2) of the AML/CTF Act requires the AUSTRAC CEO to consult with reporting entities and 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 performing his or her functions.

In consideration of this and consistent with best practice consultation principles, AUSTRAC published draft AML/CTF Rules adding Chapter 71 for public consultation on AUSTRAC’s website from 25 November 2014 to 9 December 2014.

**8. Ongoing consultation**

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

**Statement of Compatibility with Human Rights**

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

***Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2014 (No. 6)***

This 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 legislative instrument**

The Instrument adds Chapter 71 to the Anti-Money Laundering/Counter-Terrorism Financing Rules (AML/CTF Rules) to implement changes to the AML/CTF Rules which are consequential to the amendments to the *Banking Regulations* *1966* and ensure that a person who is a credit card issuer or acquirer (or both) and is not an ADI, bank, building society or credit union will be a reporting entity for the purposes of the AML/CTF Act.

**Human rights implications**

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

**Conclusion**

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

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