



Australian Government

Australian Transaction Reports and Analysis Centre

Explanatory Statement – *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2015 (No. 1)* 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) amending Chapters 4, 63 and 65

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 4

2. The *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2014 (No. 3)* introduced new customer due diligence requirements which took effect on 1 June 2014. That Instrument amended Chapter 4 (relating to customer identification and verification) to include procedures for collecting and verifying beneficial owner information (Part 4.12) and politically exposed persons information (Part 4.13).
3. Paragraph 4.12.2 provides an exemption for reporting entities from beneficial owner identification requirements if certain criteria are met by the customer. Subparagraph 4.12.2(2)(d) has been amended to clarify its intention and operation for reporting entities.

Amendments to Chapters 63 and 65

4. Chapter 63 of the AML/CTF Rules specifies the enrolment information to be provided or related to a person applying for enrolment. Part A of the Schedule to Chapter 63 specifies the enrolment details to be provided by a person applying for enrolment, while Part B of the Schedule specifies the information to be obtained and retained by a person applying for enrolment.
5. Chapter 65 specifies the information which must be included in a request to remove a person's name and enrolment details from the Roll.
6. The amendments to Chapter 63 and 65 are consequential to the introduction of the AUSTRAC Industry Contribution. The *Australian Transaction Reports*

and Analysis Centre Industry Contribution Act 2011 (the Industry Contribution Act) and the *Australian Transaction Reports and Analysis Centre Industry Contribution (Collection) Act 2011* (the Collection Act) give effect to the 2014 Budget announcement that the Australian Government would replace the cost recovery arrangements administered by AUSTRAC (known as the AUSTRAC Supervisory Levy) with an industry contribution to fund AUSTRAC's regulatory and intelligence functions.

7. The amendments to Chapter 63 also reflect proposed changes to the calculation of the levy, which will be determined by the Minister for Justice by legislative instrument (Ministerial Determination), as specified in the Industry Contribution Act.

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

8. 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.
9. The Statement of Compatibility for the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2015 (No. 1)* is included in this Explanatory Statement at page 6. 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 2015 (No. 1)*.

Section 2

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

Section 3

This section contains the details of the amendments:

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

Schedule 1

This schedule sets out the amendment to Chapter 4.

Schedule 2

This schedule sets out the amendments to Chapters 63 and 65.

3. Notes on Items

Schedule 1

1. Chapter 4

Item 1

This item clarifies the operation of subparagraph 4.12.2(2)(d) by the insertion of the words ‘the same as’.

Schedule 2

1. Chapter 63

Item 1

This item removes the reference to the commencement of the Chapter, as this is now redundant.

Item 2

This item amends the definitions of ‘annual financial statements’, ‘authorised individual’, ‘earnings’, ‘foreign company’, ‘leviable entity’ and ‘related bodies corporate’. In addition, the definition of ‘levy’ has been removed and replaced with ‘instalment of levy’ and a definition for ‘previous financial year’ has been added.

Item 3

This item corrects a grammatical error.

Item 4

This item changes the heading to Item 21 in Part A of the Schedule in Chapter 63 to reflect the new AUSTRAC Industry Contribution.

Item 5

This item amends the earnings information which must be provided by certain entities enrolling on the Reporting Entities Roll. Item 21 reflects that the AUSTRAC Industry Contribution will only take into account earnings of foreign companies, or subsidiaries of foreign companies, derived from operations in Australia.

Item 6

This item amends the reference of ‘census date’ to ‘census day’, consistent with the Industry Contribution Act.

2. Chapter 65

Item 1

This item removes the reference to the commencement of the Chapter, as this is now redundant.

Item 2

This item inserts the new short title of the Collection Act.

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

The amendment to Chapter 4 clarifies the operation of the subparagraph and will have a positive impact on reporting entities as its meaning and intent have been clarified.

As the amendments to Chapters 63 and 65 are machinery changes which are consequential to the introduction of the AUSTRAC Industry Contribution by the Industry Contribution and Collection Acts, the regulatory impact of these changes on reporting entities will be minor.

6. Assessment of benefits

The amendment to Chapter 4 will clarify the modification of the requirements to collect and verify beneficial owner information for a customer which is a foreign listed public company, as contained in subparagraph 4.12.2(2). This will benefit reporting entities seeking to rely on this modification.

The amendments to Chapter 63 will lessen the regulatory impact on reporting entities enrolling on the Roll, as reporting entities which are foreign companies or subsidiaries of foreign companies will only be required to provide earnings information regarding earnings derived from operations in Australia, rather than their total earnings.

The amendments to Chapter 65 are neutral as they are machinery changes relating to the removal of the reference to the commencement of the Chapter and the insertion of the new short title of the Collection Act.

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.

AUSTRAC did not undertake public consultation on the amendment to Chapter 4 as it is a minor amendment.

AUSTRAC published draft AML/CTF Rules amending Chapters 63 and 65 for public consultation on AUSTRAC's website from 25 September 2014 to 24 October 2014 and also consulted with the above agencies.

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 2015 (No. 1)

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 amends Chapters 4, 63 and 65 of the Anti-Money Laundering/Counter-Terrorism Financing Rules (AML/CTF Rules) to:

- clarify the meaning of a subparagraph in Chapter 4; and
- implement changes to Chapters 63 and 65 of the AML/CTF Rules which are consequential to the AUSTRAC Industry Contribution as established by the *Australian Transaction Reports and Analysis Centre Industry Contribution Act 2011* and the *Australian Transaction Reports and Analysis Centre Industry Contribution (Collection) Act 2011*. These Acts replace the cost recovery arrangement previously administered by AUSTRAC, which was known as the AUSTRAC Supervisory Levy.

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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