

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Justice

*Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

*Anti-Money Laundering and Counter-Terrorism Financing (Prescribed Foreign Countries)  
Regulation 2016*

Section 252 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

Section 5 of the Act provides that a *prescribed foreign country* means a foreign country declared by the regulations to be a prescribed foreign country for the purposes of the Act. Section 102 in Part 9 of the Act provides that the regulations may prohibit or regulate the entering into of transactions with persons or corporations in prescribed foreign countries.

Chapter 15 of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* provides that reporting entities (such as financial institutions) in Australia must apply enhanced customer due diligence when entering into or proposing to enter into a transaction and a party to the transaction is physically present in, or is a corporation incorporated in, a prescribed foreign country.

The regulation repeals the *Anti-Money Laundering and Counter-Terrorism Financing (Iran Countermeasures) Regulation 2014*, removing the prohibition on certain transactions with persons or corporations in Iran of \$20,000 or more. The purpose of doing so is to align Australia with international action taken under the Joint Comprehensive Plan of Action to repeal sanctions on Iran in return for commitments from Iran in relation to its nuclear program.

The regulation also re-enacts the declaration of Iran as a prescribed foreign country, as well as declaring the Democratic People's Republic of Korea (DPRK) to be a prescribed foreign country. As a result, reporting entities in Australia are required to apply enhanced customer due diligence to all transactions that involve persons or corporations in Iran or the DPRK.

In declaring each of Iran and the DPRK to be a prescribed foreign country, the regulation implements recommendations of the Financial Action Task Force for member jurisdictions to apply effective countermeasures in order to protect their financial sectors from the ongoing and substantial money laundering and terrorism financing risks emanating from Iran and the DPRK.

The Attorney-General's Department (AGD) consulted the Office of Best Practice Regulation in the preparation of these regulations, who advised that a Regulatory Impact Statement was not required (reference ID 19597). AGD also consulted AUSTRAC and the Department of Foreign Affairs and Trade (DFAT), who support the amendments. They advised that affected businesses would support removing the prohibition on transactions and that listing the DPRK as a prescribed foreign country would have a negligible regulatory burden. DFAT also advised that following the implementation of the JCPOA on 16 January 2016 Australia needs to act as quickly as possible to repeal sanctions on Iran to align with international action. As a result, no further consultation has been undertaken.

Details of the regulation are set out in [Attachment A](#).

The Statement of Compatibility with Human Rights set out in Attachment B is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The Act specifies no conditions that need to be satisfied before the power to make the regulation may be exercised.

The regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

## **ATTACHMENT A**

### **Details of the *Anti-Money Laundering and Counter-Terrorism Financing (Prescribed Foreign Countries) Regulation 2016***

#### **Section 1 – Name of Regulation**

This section provides that the title of the regulation is the *Anti-Money Laundering and Counter-Terrorism Financing (Prescribed Foreign Countries) Regulation 2016*.

#### **Section 2 – Commencement**

This section provides for the regulation to commence on the day after it is registered on the Federal Register of Legislative Instruments.

#### **Section 3 – Authority**

This section provides that the regulation is made under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (the Act).

#### **Section 4 – Schedule**

This section provides that the instrument specified in the Schedule is repealed.

#### **Section 5 – Definitions**

This section defines key terms used in the regulation.

#### **Section 6 – Declaration of prescribed foreign countries**

This section declares each of Iran and the Democratic People's Republic of Korea to be a *prescribed foreign country* for the purposes of the Act.

#### **Schedule 1 - Repeal**

This section provides that the whole of the *Anti-Money Laundering and Counter-Terrorism Financing (Iran Countermeasures) Regulation 2014* is repealed.

## **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 (Prescribed Foreign Countries) Regulation 2016**

This legislative 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**

Section 5 of *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (the AML/CTF Act) provides that a *prescribed foreign country* means a foreign country declared by the regulations to be a prescribed foreign country for the purposes of the AML/CTF Act. Section 102 in Part 9 of the AML/CTF Act provides that the regulations may prohibit or regulate the entering into of transactions with residents of a prescribed foreign country. Chapter 15 of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* (the Rules) provides that reporting entities in Australia must apply enhanced customer due diligence when entering into or proposing to enter into a transaction and a party to the transaction is physically present in, or is a corporation incorporated in, a prescribed foreign country.

The regulation repeals the *Anti-Money Laundering and Counter-Terrorism Financing (Iran Countermeasures) Regulation 2014*. This removes the prohibitions made in that regulation on certain transactions with persons or incorporations in Iran with a value of at least \$20,000. The purpose of doing so is to facilitate implementation of the Joint Comprehensive Plan of Action, which involves the international community repealing sanctions on Iran in return for commitments from Iran in relation to its nuclear program.

The regulation re-enacts the declaration of Iran as a prescribed foreign country, as well as declaring the Democratic People's Republic of Korea (DPRK) to be a prescribed foreign country. This requires reporting entities (such as financial institutions) in Australia to apply enhanced customer due diligence to all transactions that involve persons or corporations in Iran or the DPRK.

#### **Human rights implications**

This legislative instrument engages the protection against unlawful and arbitrary interference with privacy under Article 17 of the International Covenant on Civil and Political Rights (ICCPR).

The measures in the legislative instrument impact on privacy by requiring reporting entities in Australia use enhanced customer due diligence when a party to a relevant transaction is present in Iran or the DPRK. The particular enhanced procedures are set out in paragraph 15.10 of the Rules. The enhanced procedures may involve obtaining more detailed information or documentation relating to the proposed transaction or the customer's identity or financial circumstances.

Division 2 of Part 10 of the AML/CTF Act provides that if a reporting entity creates a transaction record in relation to the provision of a designated service, or a customer provides a document to the reporting entity in relation to the provision of a designated service, the reporting entity must retain a copy of the record for seven years.

Reporting entities have a range of reporting obligations under Part 3 of the AML/CTF Act, which include making reports to AUSTRAC about international funds transfers, suspicious transactions, and transactions over a specified threshold. Under section 49 of the AML/CTF Act, AUSTRAC and certain other Commonwealth agencies may request further information from reporting entities in relation to such reports. In addition, under Part 14 of the AML/CTF Act, authorised officers of government agencies may require reporting entities to provide information or documents relevant to the operation of the Act. This may include information obtained by reporting entities from or about customers under enhanced customer due diligence requirements.

The right in Article 17 may be subject to permissible limitations, where the limitations are lawful and not arbitrary. In order for an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR and be reasonable in the particular circumstances. The United Nations Human Rights Committee has interpreted the requirement of reasonableness to mean that any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case.

In this case, the limitations on Article 17 are reasonable, necessary, proportionate and not arbitrary, as they implement recommendations from the Financial Action Task Force (FATF) for all member jurisdictions to apply effective countermeasures to protect their financial sectors from the ongoing and substantial money laundering and terrorism financing risks emanating from Iran and the DPRK.

Reporting entities are bound by the Australian Privacy Principles (APPs) in the *Privacy Act 1988* in relation to actions they take to comply with their obligations under the AML/CTF Act. The APPs prohibit reporting entities from disclosing information they collect from or about customers except for lawful purposes.

Government agencies that obtain information from reporting entities under the AML/CTF Act are bound by the secrecy and access provisions of that Act. Agencies may only disclose such information for lawful purposes set out in the AML/CTF Act.

## **Conclusion**

This legislative instrument is compatible with human rights as to the extent that while it may limit human rights, those limitations are reasonable, necessary and proportionate.

**The Hon Michael Keenan MP**

**Minister for Justice**