



***Explanatory Statement – Anti-Money Laundering and Counter-Terrorism
Financing Rules Amendment Instrument 2017 (No. 2) amending the Anti-Money
Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)***

**Purpose and operation of Anti-Money Laundering/Counter-Terrorism
Financing Rules (AML/CTF Rules) amending Chapter 22.**

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 22

2. Chapter 22 provides a conditional exemption from the AML/CTF Act for the item 33 and 35 designated services described in table 1 in section 6 of the AML/CTF Act. This exemption relates to the over-the-counter derivatives markets in Australia regarding the wholesale price of electricity, gas or renewable energy certificates involving specified market participants in the National Electricity Market (NEM) and Wholesale Electricity Market (WEM).
3. Chapter 22 has been amended to both broaden the class of entities entitled to receive the benefit of the exemption and the scope of the underlying commodities or products covered by the exemption as follows:
 - include all ‘Registered Participants’ under the NEM Rules as well as ‘Generators’ which have been exempted from registration under Rule 2.9.3 of the NEM Rules
 - include all ‘Rule Participants’ under the WEM Rules
 - include ‘Registered Participants’ under section 135A of the National Gas Rules for participation in the Declared Wholesale Gas Market
 - include ‘Registered Participants’ under section 135ABA of the National Gas Rules for participation in the Short Term Trading Market
 - not limit it to circumstance where the derivatives traded relate to the ‘wholesale price of electricity, gas or renewable energy certificates

4. It is considered that there is minimal money-laundering and terrorism-financing risk associated with the amendments and they will also reduce the regulatory burden for relevant reporting entities.

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

5. The *Human Rights (Parliamentary Scrutiny) Act 2011* requires a Statement of Compatibility declaring that the relevant instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act.
6. The Statement of Compatibility for the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2017 (No. 2)* is included in this Explanatory Statement at page 6. The acting 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*.

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 2017 (No. 2)*.

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 amendment:

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

Schedule 1

This schedule amends Chapter 22.

Notes on Paragraphs

Chapter 22

Item 1

This item repeals the existing Chapter 22 and substitutes a new Chapter 22.

Paragraph 22.1

This paragraph specifies that these AML/CTF Rules have been made under section 229 of the AML/CTF Act for the purposes of subsection 247(3) of the AML/CTF Act.

Paragraph 22.2

This paragraph specifies that the exemption applies to designated service described in item 35 of table 1 in section 6 of the AML/CTF Act and the commodities or products which are covered by the exemption.

Paragraph 22.3

This paragraph sets out the conditions that have to be satisfied for the exemption to apply in relation to paragraph 22.2.

Paragraph 22.4

This paragraph specifies that the exemption applies to designated service described in item 33 of table 1 in section 6 of the AML/CTF Act and the commodities or products which are covered by the exemption.

Paragraph 22.5

This paragraph sets out the conditions that have to be satisfied for the exemption to apply in relation to paragraph 22.4.

Paragraph 22.6

This paragraph defines the terms, ‘AFS licence’, ‘environmental products’, ‘National Electricity Rules’, ‘National Gas Rules’ and ‘Wholesale Electricity Market Rules’.

Legislative instruments

These AML/CTF Rules are legislative instruments as defined in section 8 of the *Legislation Act 2003*.

Likely impact

The amendments to Chapter 22 will have an impact on relevant reporting entities.

Assessment of benefits

The amendments to Chapter 22 will have a positive impact on specified market participants in the National Electricity Market and Wholesale Electricity Market. The regulatory savings as calculated under the Office of Best Practice Regulation Regulatory Burden Measurement Framework are detailed below:

Chapter 22 Amendments – Regulatory Cost Savings - Business calculated on an annual basis		
Number of reporting entities affected	28	Based on figures supplied by Industry Number of Energy Market Participants. 25% of Australian Financial Market Association (AFMA) members (100) are Energy Market Participants, and form 90% of the total Energy Market Participants. $25/100 \times 100 \times 100/90 = 28$ Energy Market Participants
Ongoing annual compliance costs	\$1,890,000	Industry provided an estimate of between \$60,000 and \$75,000 per reporting entity in direct and indirect compliance costs. Midpoint figure used for calculation = \$67,500.
Know Your Customer identification costs	\$700,000	Industry estimates \$25,000 in know your customer costs per reporting entities.
Total annual savings	\$2,590,000	

Total offset savings

Total annualised offset savings	\$2,590,000	Average savings over 10 years for business.
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Consultation

The amendments to Chapter 22 were published on the AUSTRAC website from 10 May 2016 to 7 June 2016. There was subsequent extensive liaison and consultation by AUSTRAC with AFMA (who represent many of the reporting entities affected by the exemption) in finalising the amendments following the public consultation period.

AUSTRAC has consulted with the Australian Taxation Office, the Department of Immigration and Border Protection, the Australian Federal Police, the Australian Criminal Intelligence Commission and the Office of the Australian Information Commissioner.

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 2017 (No. 2)

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 Chapter 22 to broaden the class of entities entitled to receive the benefit of the exemption and to broaden the scope of the underlying commodities or products covered by the exemption.

Human rights implications

It is considered that this Instrument does not engage any of the applicable rights or freedoms.

Conclusion

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

Gavin McCairns
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