



**Explanatory Statement – *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2018 (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 Chapters 3, 4, 10, 18, 19, 37, 45, 57, 70 and 74, repealing Chapters 44 and 53, and adding Chapter 76.**

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 3 (Correspondent Banking)**

2. Chapter 3 has been amended so that the requirements in sections 97-99 of the AML/CTF Act only apply to correspondent banking relationships that involve a ‘vostro account’ (as opposed to both vostro and nostro, as previously applied).

**Amendments to Chapter 4 (Customer Due Diligence)**

3. Chapter 4 has been amended to reflect the amendments to Chapter 45 set out below at paragraph 13.

**Amendments to Chapter 10 (Gambling ACIP Exemptions)**

4. The *Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2017* (AML/CTF Amendment Act) added the definition of ‘betting instrument’ to the AML/CTF Act and amended items 7 and 8 designated services of table 3 in subsection 6(4) of the AML/CTF Act to include ‘betting instruments’. Chapter 10 has been amended to incorporate these changes in the customer due diligence and record keeping thresholds.

**Chapter 12 (Electronic funds transfer instructions)**

5. The Amendment Act removed the definition of ‘e-currency’ from the AML/CTF Act. Chapter 12 has been amended to remove the reference from Chapter 12.

### **Chapter 18 (Reportable details for suspicious matters)**

6. Chapter 18 has been amended to include additional requirements to report information relating to suspicious transactions involving digital currency. These include information about the type of digital currency, backing assets, and digital identifiers (for example IP address).

### **Chapter 19 (Reportable details for threshold transactions)**

7. Chapter 19 has been amended to replace references to e-currency with references to digital currency, and to require information, if known, about the digital identifiers of the customer and recipient of the digital currency.
8. The phrase ‘where the threshold transaction involves digital currency’ used in subparagraph 19.3(8)(b) does not impose a threshold reporting requirement on designated services provided by a third party that are ancillary to the transaction. For example, where a customer deposits \$10,000 or more in physical currency into an account held by the Digital Currency Exchange Provider at a bank, as payment for digital currency, the designated service provided by the bank (item 3 of table 1 in subsection 6(2)) is not a transaction that involves digital currency. Therefore the information specified in subparagraph 19.3(8)(b) does not have to be included in the threshold transaction report lodged with AUSTRAC by the bank.
9. The designated service provided by the Digital Currency Exchange Provider (item 50A of table 1 in subsection 6(2)) is a transaction that involves digital currency. Therefore the information specified in subparagraph 19.3(8)(b) has to be included in the threshold transaction report lodged with AUSTRAC by the Digital Currency Exchange Provider.
10. The Chapter has also been amended to remove the obsolete references to designated services items 51 and 53 of table 1 in subsection 6(2) of the AML/CTF Act.

### **Chapter 37 (Exemption from threshold transaction reporting)**

11. Chapter 37 has been amended to reflect the removal of designated services items 51 and 53 of table 1 in subsection 6(2) of the AML/CTF Act from the Act.

### **Chapter 44 (Removing a Person’s Name and Registrable Details from the Register of Providers of Designated Remittance Services)**

12. The Chapter is repealed because the Register of Providers of Designated Remittance Services no longer exists, having been replaced by the Remittance Sector Register.

### **Chapter 45 (Debt Collection)**

13. Chapter 45 has been amended to remove references to designated services items 51 and 53 of table 1 in subsection 6(2) of the AML/CTF Act.

**Chapter 53 (Exemption from threshold transaction reporting for certain designated services relating to Australian Government Entities and authorised deposit-taking institutions)**

14. The designated services specified in Chapter 53 are items 51 and 53 of table 1 in subsection 6(2) of the AML/CTF Act. As the AML/CTF Amendment Act removed these designated services from the AML/CTF Act, Chapter 53 has become redundant.

**Chapter 57 (Matters to be considered by the AUSTRAC CEO in considering applications for registration)**

15. The AML/CTF Amendment Act amended subsection 75C(2) of the AML/CTF Act by adding ‘other serious crime’ to the list of risk factors that the AUSTRAC CEO must have regard to when deciding if it is appropriate to register a provider of a registrable designated remittance service. Chapter 57 has been amended to incorporate this requirement.

**Chapter 70 (Renewal of registration)**

16. Chapter 70 has been amended to add ‘other serious crime’ to the list of risk factors that the AUSTRAC CEO must have regard to when deciding if it is appropriate to renew the registration of a provider of a designated remittance service.

**Chapter 74 (Exemption for licensed trustee companies)**

17. Chapter 74 is amended to remove references to designated services items 51 and 53 of table 1 in subsection 6(2) of the AML/CTF Act.

**Chapter 76 (Digital Currency Register)**

18. Chapter 76 covers registration on the Digital Currency Register, the renewal of registration, suspension of registration, cancellation of registration, requirements to update and correct information on the register, the process for correction of entries on the register, and the publication of information relating to the register.
19. The Chapter sets out the requirements including the information that needs to be provided by a person applying for registration as a Digital Currency Exchange Provider. The Chapter also sets out the matters the AUSTRAC CEO must have regard to when determining if it is appropriate to register an applicant.
20. Chapter 76 sets out the processes for renewal of registration, including application and the decision by the AUSTRAC CEO on whether or not to renew the registration.
21. Chapter 76 also sets out the matters that must be considered by the AUSTRAC CEO when considering to suspend or cancel the registration of a Digital Currency Exchange provider. These are consistent with the matters that the

AUSTRAC CEO must have regard to when considering the suspension or cancellation of a remitter's registration.

22. The Chapter sets out the process for correcting entries on the Digital Currency Exchange Register, and the parameters for the publication of information relating to the register.

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

23. 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.
24. The Statement of Compatibility for the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2018 (No. 2)* is included in this Explanatory Statement at page 9. 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*.

### **Notes on sections**

#### **Section 1**

25. This section sets out the name of the Instrument, i.e. *the Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2018 (No. 2)*.

#### **Section 2**

26. This section specifies that the Instrument commences on 3 April 2018.

#### **Section 3**

27. 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**

28. This schedule amends Chapters 3, 4, 10, 12, 18, 19, 37, 45, 57, 70 and 74, repeals Chapters 44 and 53, and adds Chapter 76.

## **Notes on items**

### **Chapter 3**

#### **Item 1**

29. This item adds ‘and supervision’ to ‘the existence and quality of any anti-money laundering and counter-terrorism financing regulation’ in paragraphs 3.1.2(4) and (5).

#### **Item 2**

30. This item inserts a reference to vostro accounts in paragraphs 3.1.5(1)-(3).

#### **Item 3**

31. This item removes the reference to nostro accounts from paragraph 3.2.2.

### **Chapter 4**

#### **Item 4**

32. This item amends the table at paragraph 4.14.1 to reflect the amendments to Chapter 45 set out below at paragraph 44.

### **Chapter 10**

#### **Item 5**

33. This item amends paragraph 10.2.4 to add a reference to items 7 and 8 designated services of table 3 in subsection 6(4) of the AML/CTF Act.

#### **Item 6**

34. This item adds subparagraph (2) to paragraph 10.2.6 to include in the conditional exemption, items 7 and 8 designated services of table 3 in subsection 6(4) of the AML/CTF Act.

### **Chapter 12**

#### **Item 7**

35. Paragraph 12.3 has been deleted to remove the reference to ‘e-currency’ from Chapter 12.

### **Chapter 18**

#### **Item 8**

36. This item adds to paragraph 18.2, subparagraph (21A) which specifies additional information to be included in a suspicious matter report when the designated service being reported on, involves digital currency.

## **Item 9**

37. This item adds the definitions of ‘Digital currency wallet’ and ‘Unique device identifiers’ to Chapter 18.

## **Chapter 19**

### **Item 10**

38. This item replace references to e-currency with references to digital currency and specifies additional information to be included in a threshold transaction report when the transaction involves digital currency.

### **Item 11**

39. This item amends subparagraph 19.3(17) to reflect that item 51 and 53 designated services of table 1 in subsection 6(2) of the AML/CTF Act specified in the paragraph have been removed from the AML/CTF Act by the AML/CTF Amendment Act.

### **Item 12**

40. This item adds the definitions of ‘Digital currency wallet’ and ‘Unique device identifiers’ to Chapter 19.

## **Chapter 37**

### **Item 13**

41. This item amends subparagraph 37.2(3) to reflect the deletion of subparagraph (4).

### **Item 14**

42. This item deletes subparagraph 37.2(4) as the item 51 and 53 designated services of table 1 in subsection 6(2) of the AML/CTF Act specified in the paragraph have been removed from the AML/CTF Act by the AML/CTF Amendment Act.

## **Chapter 44**

### **Item 15**

43. Because of the amendments made to the AML/CTF Act by the *Combating the Financing of People Smuggling and Other Measures Act 2011* and the replacement of the Register of Providers of Designated Remittance Services with the Remittance Sector Register, the Chapter is redundant and has been repealed by this item.

## **Chapter 45**

### **Item 16**

44. Paragraph 45.3 has been amended by this item to remove the obsolete references to designated services items 51 and 53 of table 1 in subsection 6(2) of the AML/CTF Act.

## **Chapter 53**

### **Item 17**

45. The designated services specified in Chapter 53 are items 51 and 53 of table 1 in subsection 6(2) of the AML/CTF Act. As the Amendment Act removed these designated services from the AML/CTF Act, Chapter 53 is redundant and has been repealed by this item.

## **Chapter 57**

### **Item 18**

46. Paragraph 57.2 has been amended by adding ‘other serious crime’ to the list of risk factors that the AUSTRAC CEO must have regard to when deciding if it is appropriate to register a provider of a registrable designated remittance service.

## **Chapter 70**

### **Item 19**

47. Paragraph 70.10(2) has been amended to add ‘other serious crime’ to the list of risk factors that the AUSTRAC CEO must have regard to when deciding if it is appropriate to renew the registration of a provider of a designated remittance service.

## **Chapter 74**

### **Item 20**

48. Paragraph 74.2 has been amended by removing the obsolete references to items 51 and 53 of table 1 in subsection 6(2) of the AML/CTF Act.

## **Chapter 76**

### **Item 21**

49. This item adds Chapter 76 to the AML/CTF Rules. This Chapter sets out the processes and obligations with respect to registration on the Digital Currency Exchange Register, including renewal of registration, suspension of registration, cancellation of registration, review of reviewable decisions, updating and correction of information on the register, and publication of information.

## **Legislative instruments**

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

## **Likely impact**

51. The amendments to Chapters 3, 4, 10, 12, 18, 19, 37, 44, 45, 53, 57, 70 and 74, and the addition of Chapter 76 will have an impact on reporting entities, though the overall regulatory burden is considered to be reduced.

## **52. Assessment of benefits**

53. The amendments to Chapters 3, 4, 10, 12, 18, 19, 37, 45, 57, 70 and 74 are machinery changes required by amendments to the AML/CTF Act following the passing of the AML/CTF Amendment Act.
54. The repeal of Chapters 44 and 53 remove redundant Chapters from the AML/CTF Rules.
55. The addition of Chapter 76 to the AML/CTF Rules is necessary to operationalise the amendments to the AML/CTF Act following the passing of the AML/CTF Amendment Act. These amendments address a regulatory gap and strengthen and streamline Australia's anti-money laundering and counter-terrorism financing regime.
56. The Office of Best Practice Regulation (OBPR) advised AUSTRAC that a Regulatory Impact Statement (RIS) is not required for these amendments. A RIS on the AML/CTF Amendment Act estimating annual regulatory savings of \$36.1 million was prepared and certified by the Attorney-General's Department.

## **Consultation**

57. The amendments to Chapters 3, 4, 10, 12, 18, 19, 37, 45, 57, 70 and 74, the repeal of Chapters 44 and 53, and the addition of Chapter 76 were published on the AUSTRAC website from 16 January 2018 to 13 February 2018.
58. AUSTRAC has consulted with the Australian Taxation Office, the Department of Home Affairs, the Australian Federal Police, the Australian Criminal Intelligence Commission and the Office of the Australian Information Commissioner.

## **Ongoing consultation**

59. 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 2018 (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 Chapters 3, 4, 10, 12, 18, 19, 37, 45, 57, 70 and 74, repeals Chapters 44 and 53 of the AML/CTF Rules, and adds Chapter 76 to the AML/CTF Rules to operationalise the amendments made to the AML/CTF Act by the AML/CTF Amendment Act.

#### **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.

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