

# EXPLANATORY STATEMENT

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

## ***Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2020 (No. 1)***

Issued by authority of Nicole Rose PSM, Chief Executive Officer, Australian Transaction Reports and Analysis Centre, in compliance with section 15J of the *Legislation Act 2003*

### **AUTHORITY**

Section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act), provides that the AUSTRAC CEO may, by legislative instrument, make Rules prescribing matters required or permitted by the AML/CTF Act to be prescribed by the Rules.

### **PURPOSE AND OPERATION OF THE INSTRUMENT**

These Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

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

A Statement of Compatibility with Human Rights (the **Statement**) has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Rules promote the realisation of human rights, and as such, are compatible with them. A copy of the Statement is at [Attachment B](#).

### **Background**

***Addition of Chapter 77 (Exemption from the applicable customer identification procedure for the purposes of Schedule 13 to the Coronavirus Economic Response Package Omnibus Act 2020)***

1. A new Chapter of the *Anti-Money and Counter-Terrorism Financing Rules* (AML/CTF Rules), Chapter 77, is part of the Australian Government's response to the COVID-19 pandemic. It is a time-limited measure that provides a reporting entity with an exemption from section 32 of the AML/CTF Act to facilitate the early release of superannuation to those individuals approved by the Australian Taxation Office (ATO) as meeting the relevant criteria.
2. The draft AML/CTF Rules will exempt a reporting entity that is providing designated service described in item 43 or 45 of table 1 in section 6 of the AML/CTF Act from the requirement to carry out the applicable customer identification procedure on their customers before making payments under the early release of superannuation initiative.
3. Reporting entities will still have suspicious matter reporting and ongoing customer due diligence obligations relating to the provision of the relevant designated service.

## **CONSULTATION**

4. Draft AML/CTF Rules were circulated for comment to the Superannuation Industry, Finance Sector Industry Groups, the Australian Federal Police, the Australian Taxation Office, the Australian Criminal Intelligence Commission, the Australian Banking Association and the Australian Financial Markets Authority.

## **REGULATION IMPACT STATEMENT**

5. The Office of Best Practice Regulation has advised that the proposed addition of Chapter 77 to the AML/CTF Rules is a change which implements a decision of Government that has already been taken in relation to the Coronavirus Economic Package. Therefore a Regulatory Impact Statement was not required to be prepared.

## **ATTACHMENT A**

### ***Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2020 (No. 1)***

#### **Section 1**

This section provides that the name of the Instrument is the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2020 (No. 1)*.

#### **Section 2**

This section sets out the date on which the Instrument will commence.

The Instrument commences on the day after it is registered on the Federal Register of Legislation.

#### **Section 3**

This section identifies the provision of the AML/CTF Act that authorises the making of the Instrument.

#### **Section 4**

This section provides that the instrument that is specified in Schedule 1 is amended as set out in the applicable items in that Schedule.

#### **Schedule 1—Amendments**

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

#### **Notes on items**

##### **Item 1**

This item adds Chapter 77 to the AML/CTF Rules.

## **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

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

### ***Australian Human Rights Commission Regulations 2019***

This Disallowable 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 Disallowable Legislative Instrument**

The Instrument will exempt a reporting entity that is providing designated service described in item 43 or 45 of table 1 in section 6 of the AML/CTF Act from the requirement to carry out the applicable customer identification procedure on their customers before making payments under the early release of superannuation initiative to those individuals approved by the Australian Taxation Office as meeting the relevant criteria.

### **Human rights implications**

The *Human Rights (Parliamentary Scrutiny) Act 2011* requires that Statements of Compatibility must be made by the rule-maker with regard to disallowable legislative instruments, and must contain an assessment of whether the legislative instrument is compatible with the rights and freedoms recognised in the seven core international human rights treaties that Australia has ratified.

The Instrument engages the right to an adequate standard of living, including food, water and housing, as outlined in Article 11 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

Article 11 of ICESCR requires countries who are party to the Covenant to recognise the right of everyone to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of living conditions. State Parties should take appropriate steps to ensure the realisation of this right.

The Instrument will allow reporting entities providing a designated service of a kind mentioned in item 43 or 45 of table 1 in section 6 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) to facilitate the timely payment of funds to eligible customers.

Taking this step will assist a significantly large number of individuals affected by the adverse economic effects of the COVID 19 pandemic to have essential and quick access to a portion of their superannuation or retirement savings. Timely access to these funds will help individuals pay imminent bills, including for groceries, water and rent. This is an appropriate measure to support an adequate standard of living during the COVID 19 pandemic.

The Instrument is consistent with the right for a person not to be subjected to arbitrary or unlawful interference with his or her privacy under Article 17 of the *International Covenant Civil and Political Rights* (ICCPR). Reporting entities that operate superannuation funds will collect personal information in order to identify the customer and establish an account. This

identification of the customer is an important part of a reporting entity's customer due diligence obligations under the AML/CTF Act. When handling this personal information collected pursuant to these obligations, reporting entities must comply with the *Privacy Act 1988*.

Reporting entities will collect limited personal information about a customer from the Australia Taxation Office (ATO) where the ATO has approved the early release of superannuation to the customer under subregulation 4.22B(3) of the *Retirement Savings Account Regulations 1997* or subregulation 6.19B(3) of the *Superannuation Industry (Supervision) Regulations 1994*.

This collection of personal information is necessary and proportionate to allow the reporting entity to confirm that the identity of the person that applied to the ATO for approval to receive an early payment from a specified account is the same as the identity of the customer who holds owns the specified account. The collection and use of a person's personal information in this way is not arbitrary or unlawful, and necessary to protect against incorrect payments and fraud.

## **Conclusion**

This Disallowable Legislative Instrument promotes the realisation of human rights, and as such, is compatible with them.

Nicole Rose PSM  
Chief Executive Officer  
Australian Transaction Reports and Analysis Centre