

EXPLANATORY STATEMENT

Issued by authority of the AUSTRAC CEO

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

*Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment
Instrument 2020 (No. 5)*

AUTHORITY

1. 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 Anti-Money Laundering and Counter-Terrorism Financing Rules (AML/CTF Rules). These Rules are set out in the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.

PURPOSE AND OPERATION OF THE INSTRUMENT

2. The *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2020 (No. 5)* (the Amendment Instrument) inserts Chapter 78 of the AML/CTF Rules. This Chapter applies to one reporting entity, TransferWise Australia Pty Ltd ABN 38 616 463 855 (TransferWise Australia), and has been made to ensure that TransferWise Australia continues to report international funds transfer instructions (IFTIs) after it becomes an authorised-deposit taking institution (ADI). An ADI is a financial institution licenced by the Australian Prudential Regulation Authority to carry on a banking business under subsection 9(3) of the *Banking Act 1959*.

3. At the time of making the Amendment Instrument, TransferWise Australia is a non-financier providing the designated services described in items 31 and 32 of table 1 in subsection 6(2) of the AML/CTF Act. TransferWise Australia provides these designated services when it sends or receives instructions to make money available in Australia or a foreign country under a designated remittance arrangement. The counterparties to these instructions are other companies in the TransferWise Group. The instructions are reported as IFTIs under item 3 or 4 of the table in section 46 of the AML/CTF Act, and the reports are completed with the information specified in Chapter 17 of the AML/CTF Rules.

4. When TransferWise Australia becomes an ADI, it will provide the designated services described in items 29 and 30 of table 1 in subsection 6(2) of the AML/CTF Act. TransferWise Australia will provide these designated services in the capacity of an ordering and beneficiary institution, rather than under a designated remittance arrangement. Sections 8 and 9 of the AML/CTF Act define an ordering or beneficiary institution as an ADI, bank, building society, credit union or a person specified in the AML/CTF Rules. The designated services described in items 29 and 30 are reported as IFTIs under items 1 or 2 of the table in section 46 of the AML/CTF Act, and the

reports are completed with the information specified in Chapter 16 of the AML/CTF Rules.

5. Due to an anomaly in the regulatory framework, TransferWise Australia, as an ADI, will have no obligation to report instructions related to the provision the designated services described in items 29 and 30 because no other company in the TransferWise Group is, or is in the process of becoming, an ordering or beneficiary institution.

6. Paragraphs 78.2 and 78.3 of the AML/CTF Rules, as inserted by item 1 of Schedule 1, correct this anomaly by specifying companies in the TransferWise Group (other than TransferWise Australia) as ordering and beneficiary institutions for the purposes of the AML/CTF Act. The regulatory impact of these provisions is limited by the conditions in paragraphs 78.4 and 78.5, as inserted by item 1, that exclude ordering and beneficiary institutions other than TransferWise Australia from reporting IFTIs if they deal with the specified entities. Taken together, the provisions in Chapter 78 preserve the current requirement for TransferWise Australia to report IFTIs without placing additional reporting obligations on other reporting entities.

7. Item 2 of Schedule 1 establishes a transition period to enable TransferWise Australia to transition to reporting IFTIs with the details required by Chapter 16 of the AML/CTF Rules.

8. The Amendment Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

9. Details of the Amendment Instrument are set out in Attachment A.

10. A Statement of Compatibility with Human Rights is at Attachment B.

CONSULTATION

11. TransferWise Australia was consulted in the development of the Amendment Instrument to ensure its effectiveness.

12. Consultation was also undertaken with the Australian Prudential Regulation Authority, Australian Taxation Office, Office of the Australian Information Commissioner, Australian Federal Police, Australian Criminal Intelligence Commission, Australian Border Force and Department of Home Affairs.

13. Public consultation has not occurred due to the limited nature of the changes. The Amendment Instrument only affects TransferWise Australia.

REGULATION IMPACT STATEMENT

14. The Office of Best Practice and Regulation has advised that the proposed amendment is unlikely to have more than a minimal regulatory impact on business, community organisations or individuals. Therefore, the preparation of a Regulation Impact Statement was not required for the proposal.

Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2020 (No. 5)

Section 1—Name

1. This section provides that the name of the Instrument is the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2020 (No. 5)*.

Section 2—Commencement

2. This section provides for the commencement of each provision in the Instrument, as set out in the table subsection 2(2).

Section 3—Authority

3. This section provides that the Instrument is made under section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

Section 4—Schedules

4. This section provides that the instrument 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—After Chapter 77

5. This item inserts Chapter 78 of the AML/CTF Rules.

Item 2—Application and transitional provisions

6. This item provides application and transitional provisions that apply to Chapter 78 of the AML/CTF Rules, as inserted by item 1.

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

1. This Disallowable Legislative Instrument (the 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 Instrument

2. The Instrument inserts Chapter 78 of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* (AML/CTF Rules). This Chapter applies to one reporting entity, TransferWise Australia Pty Ltd ABN 38 616 463 855 (TransferWise Australia), and has been made to ensure that TransferWise Australia continues to report international funds transfer instructions (IFTIs) after it becomes an authorised-deposit taking institution (ADI). For the purposes of the IFTI reporting obligation, an ADI is treated as an ordering and beneficiary institution.

Human rights implications

3. 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.

4. The Instrument engages the right to privacy in Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR). Article 17 of the ICCPR provides that no one shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence. The right to privacy also requires respect for private and confidential information, including the storing, use and sharing of such information.

5. The use of the term ‘arbitrary’ means that any interference with privacy must be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in the given circumstances. The United Nations Human Rights Committee has interpreted ‘reasonableness’ to imply that any limitation must be proportionate and necessary in the circumstances. The right to privacy can be limited by necessity in a democratic society in the interests of national security or public order.

6. The Instrument requires TransferWise Australia, as an ordering and beneficiary institution, to continue reporting IFTIs to AUSTRAC when it deals with

other companies in the TransferWise Group that are not ordering and beneficiary institutions. IFTIs contain the information specified in chapters 16 or 17 of the AML/CTF Rules, which includes personal information.

7. To the extent that the Instrument limits the right to privacy, those limitations are necessary, reasonable and proportionate to achieving the legitimate objectives of protecting national security and public order. IFTIs provide an important source of information to AUSTRAC and other Commonwealth agencies on overseas transactions that may be connected with money laundering, terrorism financing or other serious crimes.

8. TransferWise Australia, as a reporting entity, must comply with the *Privacy Act 1988* when collecting and disclosing personal information for the purposes of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act). The information contained in an IFTI report is protected under the secrecy provisions in Part 11 of the AML/CTF Act.

Conclusion

9. This Instrument is compatible with human rights. To the extent that the Instrument may limit human rights, those limitations are reasonable, necessary and proportionate.