

DRAFT 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 2022 (No. X)*

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 2022* (No. X) (the **Amendment Instrument**) is a legislative instrument for the purposes of the *Legislation Act 2003*.
3. A Statement of Compatibility with Human Rights (the Statement) is included within this Explanatory Statement. The Statement was completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Amendment Instrument promotes the realisation of human rights, and as such, is compatible with them.

Background

4. The *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2008* (No. 7) inserted Chapter 16 of the AML/CTF Rules that provided:
 - (a) where a person is the sender of an international funds transfer instruction transmitted out of Australia, or the recipient of an international funds transfer instruction transmitted into Australia, the person must give the AUSTRAC CEO a report about the instruction, in the approved form. The report must be given within 10 business days after the day the instruction was sent or received; and
 - (b) within the meaning of items 1 and 2 of the table in section 46 of the AML/CTF Act, the report must contain such information as specified in the AML/CTF Rules. The information specified in the AML/CTF Rules includes certain details of the payer, ordering institution, beneficiary institution and payee, relating to instructions transmitted into and out of Australia.

Amendment to Chapter 16

5. The Society for Worldwide Interbank Financial Telecommunications (SWIFT), has, up until now, used a proprietary messaging format known as the Message Transfer format.
6. SWIFT is migrating its messaging format to ISO 20022 which will impact the Australian domestic payments system.
7. The ISO 20022 messaging format contains a number of new information fields that are not addressed in the AML/CTF Act or the AML/CTF Rules.
8. The effect of this amendment to Chapter 16 will be that reports may contain any other details in the form of “Additional Information” relating to the instruction submitted to AUSTRAC to facilitate international funds transfer instruction reports in the ISO20022 format.
9. “Additional Information” means any additional information that may be present in transaction messages in their original format for electronic international funds transfer instruction.
10. This amendment to Chapter 16 prohibits including a tax file number (as defined in the *Income Tax Assessment Act 1997*) in a report required by subsection 45(2) of the AML/CTF Act. This prohibition is consistent with
11. *Privacy (Tax File Number) Rule 2015*, which provides the tax file number of an individual should not be disclosed by an entity unless it is permitted under taxation, personal assistance or superannuation laws. It is an offence under section 8WB of the *Taxation Administration Act 1953* to record TFNs unless one of the exemptions set out there applies.

REGULATION IMPACT STATEMENT

12. The Office of Best Practice and Regulation has advised that a Regulatory Impact Statement is not required as the amendments to the AML/CTF Rules are unlikely to have a more than minor regulatory impact.

SUNSETTING

13. Under item 6 of Regulation 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* this Instrument is not subject to sunset.
14. The AML/CTF Rules are designed to be enduring because they:
 - a. complement and provide the detail for the broader obligations set out in the AML/CTF Act, aid in meeting Australia’s international obligations and matters of international concern, and support the combatting of money laundering and terrorism financing

- b. assist industry in fulfilling their compliance with the AML/CTF Act and provide commercial and regulatory certainty for industry, and
- c. are subject to an ongoing process of development, refinement and review, involving scrutiny and feedback from a wide range of stakeholders including industry, the Financial Action Task Force, Australian Government agencies, law enforcement agencies, and other interested parties.

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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 amends Chapter 16 of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1) (AML/CTF Rules)*. The amendment includes a provision that reports may contain any other details in the form of “Additional Information” relating to the instruction submitted to AUSTRAC to facilitate international funds transfer instruction reports in the ISO20022 format.

3. This amendment to Chapter 16 prohibits including a tax file number (as defined in the *Income Tax Assessment Act 1997*) in a report required by subsection 45(2) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

Human rights implications

4. 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.

5. 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.

6. 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.

7. AUSTRAC collects personal information under the requirement of the AML/CTF Act to mitigate and manage the risk of money laundering and financing of terrorism. AUSTRAC considers that the collection of personal information under the AML/CTF Act, and by the operation of Chapter 16, is therefore not an arbitrary or unlawful interference with privacy.

8. 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. International funds transfer instruction reports 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. The information prescribed by the Instrument improves the intelligence value of international funds transfer instruction reports, promotes end-to-end transparency of transactions, and enables reporting entities to more appropriately apply risk-based AML/CTF approach and undertake sanctions screening.

9. Reporting entities must continue to 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*.

Conclusion

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

[signed]
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