



Australian Government

Australian Transaction Reports and Analysis Centre

Explanatory note for consultation

Under section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) the AUSTRAC Chief Executive Officer (CEO) may make rules prescribing matters required or permitted by any other provision of the AML/CTF Act.

Chapter 2 of the AML/CTF Rules in *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* provides the definition of 'designated business group' (DBG), which currently excludes partnerships such as law and accountancy practices from forming DBGs. As a result of a review of Chapter 2, AUSTRAC considers that the current definition does not adequately accommodate the circumstances of the legal and accounting professions, as they were formulated primarily for those reporting entities which operate within the corporate financial sector.

These draft AML/CTF Rules broaden the Chapter 2 definition to include law and accounting practices, subject to certain conditions. They also allow persons who assist in the provision of a designated service (such as administrative, paralegal or conveyancing companies), to be included in the definition.

AUSTRAC considers that to extend the operation of the AML/CTF Act to persons that are not reporting entities, officers of reporting entities or persons required to lodge specified reports, could be beyond the scope and intention of the AML/CTF Act and therefore rules allowing non-reporting entities to be members of a DBG would be without legal effect.

As a result, non-reporting entities have not been included in these draft AML/CTF Rules.



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Draft AML/CTF Rules for the definition of 'designated business group'

1. These Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) are made under section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) for the definition of 'designated business group' in section 5 of that Act.
2. Chapter 2 of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* is amended as follows:
 - (1) at the end of subparagraph 2.1.2(4)(b), omit '.' and insert '; or';
 - (2) insert after subparagraph 2.1.2(4)(b):
 - '(c) able to satisfy the following conditions:
be
 - (i) an accounting practice; or
 - (ii) a person, other than an individual, which the accounting practice in (i) controls; or
 - (iii) an accounting practice which is providing a designated service pursuant to a joint venture agreement, to which each member of the group is a party; or
 - (iv) a person that provides or assists in the provision of a designated service to the customers of the accounting practice;
 - and either:
 - (v) is a reporting entity; or
 - (vi) is an entity in a foreign country which, if it were resident in Australia would be a reporting entity; or
 - (d) be
 - (i) a law practice; or
 - (ii) a person, other than an individual, which the law practice in (i) controls; or
 - (iii) a law practice which is providing a designated service pursuant to a joint venture agreement, to which each member of the group is a party; or

(iv) a person that provides or assists in the provision of a designated service to the customers of the law practice;

and either:

(v) is a reporting entity; or

(vi) is an entity in a foreign country which, if it were resident in Australia would be a reporting entity.'

(3) at the end of subparagraph 2.1.3(5) omit '.' and insert ';' and the following:

'(6) 'accounting practice' means a business carried out by either of the following:

(a) an accountant (however described) that supplies professional accounting services; or

(b) a partnership or company that uses accountants (however described) to supply professional accounting services;

(7) 'law practice' means a business carried out by either of the following:

(a) a legal practitioner (however described) that supplies professional legal services; or

(b) a partnership or company that uses legal practitioners (however described) to supply professional legal services.'

Reporting entities should note that in relation to activities they undertake to comply with the AML/CTF Act, they will have obligations under the Privacy Act 1988, including the requirement to comply with the National Privacy Principles, even if they would otherwise be exempt from the Privacy Act. For further information about these obligations, please go to <http://www.privacy.gov.au> or call 1300 363 992.