



## Australian Government

### Australian Transaction Reports and Analysis Centre

#### Explanatory note for consultation

Section 5 of the *Anti-Money Laundering and Counter-Terrorism Financing Act* (AML/CTF Act) defines 'exempt legal practitioner service' as being 'a service that, under the AML/CTF Rules, is taken to be an exempt legal practitioner service for the purposes of this Act.' These AML/CTF Rules provide that definition.

The *Replacement Explanatory Memorandum* of the AML/CTF Act states, with regard to 'exempt legal practitioner service', that the 'definition is relevant to items 46 and 47 of table 1'.

Item 46 relates to the 'providing of a custodial or depository service...in the course of carrying on a business...and the service is not an exempt legal practitioner service.' Item 47 relates to the 'providing of a safe deposit box...in the course of carrying on a business...and the service is not an exempt legal practitioner service.'

The AML/CTF Act defines 'providing a custodial or depository service' by inclusive reference to the *Corporations Act 2001* (Corporations Act) section 766E(1) but subject to the exceptions in section 766E(3) of the Corporations Act. Section 766E(1) states:

For the purposes of this Chapter, a person (the provider) provides a custodial or depository service to another person (the client) if, under an arrangement between the provider and the client, or between the provider and another person with whom the client has an arrangement, (whether or not there are also other parties to any such arrangement), a financial product, or a beneficial interest in a financial product, is held by the provider in trust for, or on behalf of, the client or another person nominated by the client.

The exceptions in section 766E(3) of the Corporations Act include conduct prescribed by regulations made for the purposes of that paragraph. Corporations Regulation 7.1.40 provides an exemption for lawyers in relation to the acquiring, holding or disposing of a cash management trust interest, subject to the conditions set out in that regulation.

The exemption provided by these draft AML/CTF Rules is intended to cover services by legal practitioners in the nature of a custodial or depository service *other than* those described in section 766E(1) of the Corporations Act. It is noted that the AML/CTF Act definition of 'providing a custodial or depository service' is an *inclusive* one.

This exemption will benefit ordinary legal services, while preserving competitive neutrality in continuing AML/CTF Act coverage of services captured by section 766E(1) of the Corporations Act.

These draft AML/CTF Rules are also intended to exempt from the designated service contained in item 47, legal practitioners who in the ordinary course of legal practice provide a safe deposit box or similar service other than in relation to physical currency (which is defined in the AML/CTF Act as being coin and printed money).

These Rules remove the financial and administrative burden of compliance from legal practitioners in appropriate cases, while maintaining competitive neutrality by ensuring that legal practitioners who compete directly with financial services providers remain regulated under the AML/CTF Act.



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#### **Draft Anti-Money Laundering and Counter-Terrorism Financing Rules for the definition of 'exempt legal practitioner service'**

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 'exempt legal practitioner service' in section 5 of that Act.
2. For the definition of 'exempt legal practitioner service' in section 5 of the AML/CTF Act, a service is taken to be an 'exempt legal practitioner service' if:
  - (1) it is provided in the ordinary course of carrying on a law practice and is a custodial or depository service other than conduct that under section 766E(1) of the *Corporations Act 2001* constitutes providing a custodial or depository service; or
  - (2) it is provided in the ordinary course of carrying on a law practice and is a safe deposit box or similar facility other than in relation to physical currency.
3. In these Rules:

'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.*