



Australian Government

Australian Transaction Reports
and Analysis Centre

AUSTRAC Guidance Note

Exemptions and modifications
under the AML/CTF Act



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Anti-Money Laundering and Counter-Terrorism Financing Act 2006

1. Introduction

- 1.1 The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) is designed to assist in combating money laundering and the financing of terrorism. To achieve these aims, the AML/CTF Act places certain obligations on 'reporting entities' (defined in section 5 of the AML/CTF Act).
- 1.2 Under section 229 of the AML/CTF Act, the Chief Executive Officer (CEO) of the Australian Transaction Reports and Analysis Centre (AUSTRAC) may, in writing, make Anti-Money Laundering/Counter-Terrorism Financing Rules (AML/CTF Rules). The AML/CTF Rules are legislative instruments and are therefore binding.
- 1.3 AML/CTF Act sections 5, 6, 30, 39, 42, 44, 67, 93, 118 and 247, subsections 10(1), 45(6) and 45(7), paragraphs 107(1)(b) and 114(1)(d) and subparagraph 123(4)(a)(v), permit the AUSTRAC CEO to make rules exempting designated services from the AML/CTF Act or certain of its provisions.
- 1.4 The AUSTRAC CEO may also, under section 248 of the AML/CTF Act, by written instrument, make exemptions from or modifications of the application of the AML/CTF Act in relation to a specified person as outlined in paragraph 4.1 below.
- 1.5 The purpose of this guidance note is to provide information and assistance to persons seeking either exemption from certain provisions of the AML/CTF Act, or a declaration that one or more provisions apply as modified. Any person or entity with obligations under the AML/CTF Act may apply for an exemption from or modification of the application of the AML/CTF Act. AUSTRAC's Exemption Policy is also relevant to the subject matter of this guidance note (see http://www.austrac.gov.au/exemption_policy.html). AUSTRAC may issue further material to provide additional guidance and to address, among other things, emerging issues of which it becomes aware in the course of considering these types of applications.

2. Types of application

- 2.1** The AML/CTF Act does not specifically provide for applications for exemption. In practice, AUSTRAC requires a written application from any person seeking exemption from, or modification of, the application of the AML/CTF Act.
- 2.2** There are two types of applications for exemption or modification that may be made. The first ('type 1') is a request that the AUSTRAC CEO make rules (see part 3 below). The second ('type 2') is a request for an exemption or modification by the AUSTRAC CEO under section 248 of the AML/CTF Act (see part 4 below). Type 1 applications relate to the specific exemption provisions for designated services in the AML/CTF Act, as referred to in paragraph 1.3 above. Type 2 applications relate to exemptions or modifications of the operation of the AML/CTF Act in relation to a specified person as referred to in paragraph 1.4 above. AUSTRAC may issue further guidance relating to specific rule-related exemption provisions in the AML/CTF Act.
- 2.3** All applications for exemption or modification must:
- (a) be in writing;
 - (b) clearly identify the relevant provision(s) of the AML/CTF Act to which the application relates; and
 - (c) contain relevant necessary information (see paragraphs 3.2 and 4.2 below).

3. Type 1 application – exemption by AML/CTF Rules

- 3.1** A type 1 application may relate to any of the following:
- (a) exemption of a specified kind of designated service from the AML/CTF Act or certain provisions of the AML/CTF Act (see paragraphs 1.2 and 1.3 above); or
 - (b) under section 30 of the AML/CTF Act, prescription of a designated service as low-risk, thereby exempting that service from sections 32 and 34 of the AML/CTF Act (pre- and post-commencement identification); or
 - (c) exemption of a designated service, which is provided in specified circumstances, from the AML/CTF Act or certain provisions of the AML/CTF Act (see paragraphs 1.2 and 1.3 above).
- 3.2** A type 1 application should contain the following information:
- (a) the provision(s) of the AML/CTF Act from which exemption is sought;
 - (b) a description of the relevant designated service;
 - (c) if applicable, a description of a particular circumstance in which the relevant designated service is, or is to be, provided;
 - (d) an explanation as to why the exemption is sought, including (if appropriate) why it is not commercially feasible for persons who provide a particular designated service to comply with the relevant requirement(s) of the AML/CTF Act or any other reasons why, in the view of the applicant, it

is not appropriate that the particular provision(s) of the AML/CTF Act apply;

- (e) any assessment that has been prepared of the level of money laundering and/or terrorism financing risk that applies to the designated service and/or circumstance in which the service is provided, taking into account any relevant AUSTRAC or Financial Action Task Force (FATF) publications or guidance;
- (f) if relevant and to the extent possible, whether any third party's rights may be adversely or favourably affected should the application be granted and if so, how those rights are affected;
- (g) any other relevant supporting information; and
- (h) the applicant's contact details, including a mailing address to enable AUSTRAC to confirm receipt of and respond to the application.

4. Type 2 application – exemption or modification under section 248 of AML/CTF Act

4.1 A type 2 application may relate to any of the following:

- (a) exemption of a specified person from one or more provisions of the AML/CTF Act; or
- (b) declaring that the AML/CTF Act applies in relation to a specified person as if one or more provisions of the Act were modified as set out in the declaration.

4.2 A type 2 application should contain the following information:

- (a) a statement that the application for exemption or modification is being made under section 248 of the AML/CTF Act;
- (b) the provision(s) of the AML/CTF Act in relation to which the exemption or modification is sought;
- (c) a description of the relevant designated service;
- (d) if applicable, a description of the circumstance(s) in which the relevant designated service is, or is to be, provided;
- (e) an explanation as to why the exemption or modification is sought, including why and how any provisions of the AML/CTF Act should be modified and (if appropriate) why it is not commercially feasible for the applicant to comply with the relevant requirements(s) of the AML/CTF Act, or any other reasons why, in the view of the applicant, it is not appropriate that the particular provision(s) of the AML/CTF Act apply;
- (f) any assessment that has been prepared of the level of money laundering and/or terrorism financing risk faced in relation to the provision of the designated service(s) for which the exemption or modification is sought, or which may reasonably be expected to be faced, by the applicant, taking into account any relevant AUSTRAC or FATF publications or guidance;

- (g) if relevant and to the extent possible, whether any third party's rights may be adversely or favourably affected should the application be granted and if so, how those rights are affected;
- (h) any other relevant supporting information; and
- (i) the applicant's contact details, including a mailing address to enable AUSTRAC to confirm receipt of and respond to the application.

5. AUSTRAC's approach to assessing applications for exemption or modification

5.1 In determining whether an exemption or modification should be granted, AUSTRAC considers a number of factors including (but not limited to):

- (a) the merits of the application having regard to details provided by the applicant in relation to the matters referred to in 3.2 or 4.2 above as the case may be;
- (b) whether the application contains adequate relevant information supporting any of the matters referred to in 3.2 or 4.2 above as the case may be;
- (c) the matters set out in subsections 212(3) and (4) of the AML/CTF Act;
- (d) where appropriate, the comments of any of the persons set out in subsection 212(2) of the AML/CTF Act (see part 6 below);
- (e) whether granting the exemption or modification would be consistent with the intent and purpose of the AML/CTF Act and AML/CTF Rules; and
- (f) the level of any potential or existing money laundering and/or terrorism financing risk having regard to relevant factors including:
 - (i) the applicant's customer types, including any politically exposed persons;
 - (ii) the types of designated services the applicant provides;
 - (iii) the methods by which the applicant delivers designated services; and
 - (iv) the foreign jurisdictions with which the applicant deals.

5.2 All AUSTRAC decisions in relation to exemption and modification applications will be based on non-discriminatory criteria that recognise relevant federal, state or territory anti-discrimination legislation.

6. Consultation process

6.1 Subsection 212(2) of the AML/CTF Act requires the AUSTRAC CEO, in performing his or her functions, to consult with reporting entities or their representatives, the Commissioner of the Australian Federal Police, the Chief Executive Officer of the Australian Crime Commission, the Commissioner of Taxation, the Chief Executive Officer of Customs and the Office of the Privacy Commissioner. In accordance with section 17 of the *Legislative Instruments Act 2003*, where it is reasonably practical AUSTRAC undertakes appropriate

consultation with organisations and other stakeholders who are likely to be affected by proposed AML/CTF Rules.

6.2 In deciding whether or not to grant an exemption or modification, in addition to consulting reporting entities to whom any new or modified obligations would apply, or representatives of such reporting entities, the AUSTRAC CEO will consult with such of the above as is appropriate in the circumstances.

7. Processing time for applications

7.1 Any estimates of application processing times given by AUSTRAC officers are indicative only.

7.2 AUSTRAC will acknowledge applications within 48 hours of receipt, by email where an email address is provided. In the majority of cases, AUSTRAC will process type 1 applications within 60 days and type 2 applications within 30 days.

7.3 Applicants are encouraged to apply as early as possible and include in their application the information required in paragraphs 3.2 or 4.2 above (depending on the type of application).

7.4 AUSTRAC will only consider 'urgent' applications in exceptional circumstances; that is, those requesting a specific and/or short timeframe claiming priority over other applications. The applicant would be required to demonstrate that the urgency results from factors that were not reasonably foreseeable and/or were beyond their reasonable control.

7.5 AUSTRAC will use its best endeavours to consider applications within the timeframe sought in the application. However, in some cases such requests may not be met due to inadequate time within which a decision is sought. AUSTRAC will determine all applications as expeditiously as possible.

7.6 Applicants should submit a complete application in the first instance. An application will only progress where it contains all the information required by paragraphs 3.2 (type 1) and 4.2 (type 2).

7.7 Where practicable, AUSTRAC will notify the applicant of further information required and give the applicant an opportunity to provide such information. Considerable delays can be caused by the need to submit additional information after the initial submission date. If the applicant does not provide additional information within the time specified by AUSTRAC, the application will not progress and may ultimately be refused.

7.8 The applicant will be notified in writing of AUSTRAC's decision in relation to the application and the reasons for that decision.

8. Publication of decisions

8.1 Any exemption granted as a result of a type 1 application will be by way of AML/CTF Rules, which are legislative instruments and, once made and registered, will be available via AUSTRAC's website.

8.2 Any exemption or modification granted as a result of a type 2 application is required by subsection 248(5) of the AML/CTF Act to be made available on AUSTRAC's website.

9. How to lodge a type 1 or type 2 application

9.1 Applications should be addressed to:

General Manager
Regulatory Policy
Australian Transaction Reports and Analysis Centre
PO Box 5516
West Chatswood NSW 1515

Further information

AUSTRAC officers are able to assist reporting entities, their staff and the public in providing general information relating to the AML/CTF Act. Enquiries can be directed to the AUSTRAC Help Desk via:

- email to help_desk@austrac.gov.au
- telephone 02 9950 0827 or 1300 021 037 (a local call within Australia).

The information contained in this document is intended only to provide a summary and general overview on these matters. It is not intended to be comprehensive. It does not constitute, nor should it be treated as, legal advice or opinions. This document may contain statements of policy which reflect AUSTRAC's administration of the legislation in carrying out its statutory functions. The Commonwealth accepts no liability for any loss suffered as a result of reliance on this publication. AUSTRAC recommends that independent professional advice be sought.

The information contained herein is current as at the date of this document.

Reporting entities should also keep in mind that they may have obligations under the *Privacy Act 1988*. To determine whether you are covered by this Act and what your obligations might be, please go to <http://www.privacy.gov.au> or call 1300 363 992 for further information.

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