Explanation of the provisions in the *Anti-Money Laundering and Counter-Terrorism Financing Legislation Amendment (Class Exemption and Other Matters) Amendment Rules 2026*

Schedule 1 – Amendments

Item 1 – Paragraph 1.21

1. This Item inserts the definition of 'gift card' in paragraph 1.21 of the instrument which means a stored value card that is a gift card within the meaning of Schedule 2 to the *Competition and Consumer Act 2010* (the Australian Consumer Law). This definition is referred to below in the new Chapter 6 providing exemptions related to transfers of value arising from the use of gift cards.

2. Under the Australian Consumer Law gift card means an article (whether in physical or electronic form) that:
    - is of a kind that is commonly known as a gift card or gift voucher; and
    - is redeemable for goods or services; or
    - an article of a kind specified in regulations made for the purposes of this paragraph;

    but does not include an article of a kind:
    - is redeemable for goods or services; and
    - can have its value increased after it is supplied other than because of a reversal of a payment made using the article or the correction of an error;
    - that is only redeemable in relation to one or more of the following:
        - electricity;
        - gas;
        - a telecommunications service.
3. This definition is adopted as it is well understood by participants in the stored value card sector.

Item 2 – Chapters 2 to 8

Chapter 2—Matters relating to professional services

4. Chapter 2 has been inserted into the Rules to specify additional circumstances to those in the Act in which receiving, holding and controlling and managing a customer's money (etc.) is not subject to AML/CTF regulation.

5. The new rule 2.1 excludes property management services from the scope of AML/CTF regulation under the designated service in item 3 of table 6 in section 6 of the Act. Specifically, the rule excludes services by a real estate agent that involve receiving, holding and controlling, or managing money, accounts or other property as part of the service of managing rental income or expenses through a trust account.

6. Rule 2.1 is consistent with the Parliamentary intention of item 3 of table 6 as articulated in the Explanatory Memorandum of the Act. Property management services are also not required to be regulated under the Financial Action Taskforce Recommendations.

7. Section 2.1 includes the payment of rent by the tenant to the real estate agency and then from the real estate agency to the landlord as well as payments and disbursements from the real estate agency trust account such as payment of strata fees, rates, smoke alarm testing and maintenance (for example).

Chapter 3—Exemption from initial customer due diligence—automatic teller machines

8. When a person withdraws money from an ATM, the operator of the ATM makes transferred value available to the person and is therefore a beneficiary institution. Chapter 3 has been inserted into the Rules to relieve ATM operators of the obligation to undertake initial CDD in the following circumstances:
    - The withdrawal is an occasional transaction - that is the person withdrawing money does not have an existing business relationship with the beneficiary institution such as holding a bank account. If the person withdrawing money is in a business relationship with the ATM operator, the reporting entity will already have undertaken CDD in relation to the person as their customer.
    - The instruction is for the withdrawal of money from an account held with a financial institution—the exception does not extend to withdrawals of virtual assets;
    - the instruction was given by use of an ATM;
    - the value will be made available to the payee as physical currency, and
    - the value transferred as a result of the withdrawal, and any other making available of transferred value which is linked or appears to be linked, is less than $10,000.
9. The exemption does not extend to ongoing CDD obligations under section 30 of the Act—for occasional transactions this means that ATM operators must monitor for unusual transactions and behaviours.

10. Chapter 3 will operate for a period of 10 years and repeal on 31 March 2036. This is intended to prompt a review of the exemption at an appropriate time, including whether the exemption should be contained in primary legislation.

Chapter 4—Exemption from initial customer due diligence—transfer of value to self-hosted virtual asset wallet

11. A business that transfers virtual assets to a self-hosted virtual asset wallet on behalf of a customer is making value available to the controller of the self-hosted virtual asset wallet and is therefore a beneficiary institution. Chapter 4 has been inserted into the Rules to relieve a beneficiary institution, such as a virtual asset service provider, of the obligation to undertake initial CDD about all holders of self-hosted virtual asset wallets in the circumstances where:

- the withdrawal of virtual assets is an occasional transaction, that is the controller of the self-hosted virtual asset wallet does not have an existing business relationship with the beneficiary institution;
- the instruction is for the withdrawal of virtual assets held by the reporting entity in an account provided to the payer or otherwise on deposit for the payer (e.g. in a custodial virtual asset wallet);
- the transferred virtual assets will be made available to the payee by depositing virtual assets into a self-hosted wallet controlled by the payee; and
- the value of the withdrawn virtual assets, and any other making available of transferred value which is linked or that appears to be linked, is less than $1,000.

12. Chapter 4 clarifies that it was not Parliament's intent to require the virtual asset service provider or other reporting entity to undertake initial CDD for all holders of third party self-hosted wallets.

13. Chapter 4 will operate for a period of 10 years and repeal on 31 March 2036. This is intended to prompt a review of the exemption at an appropriate time, including whether the exemption should be contained in primary legislation.

Chapter 5—Exemption from initial customer due diligence—transfer of value using gift card issued by reporting entity

14. The issuance of stored value cards and increasing value stored on stored value cards are designated services under items 21 to 24 of table 1 in section 6 of the Act. These designated services are subject to legislated thresholds of $1,000 (for stored value cards that permit withdrawal of cash) and $5,000 otherwise.

15. Some stored value cards, particularly open-loop stored value cards, can also trigger the transfer of value designated services in items 29, 30 and 31 of table 1 in section 6 of the Act. Transfer of value designated services do not have any thresholds. This means that before any transfer of value service is provided, the person who accepts the instruction to transfer value would ordinarily have to undertake initial customer due diligence about the holder of the card. This is not feasible for gift cards, where the holder of the card (the gift recipient) will often not be known to the issuer of the card.

16. Chapter 5 has been included in the Rules to provide a conditional exemption to carrying out initial CDD under section 39 of the Act for transfers of value arising from the use of open-loop gift cards issued by reporting entities.

17. The exemption from carrying out initial customer due diligence applies to transfer of value results from an instruction given by use of a gift card where:

- the acceptance of the instruction is an occasional transaction, i.e. the designated service is not provided as part of an ongoing business relationship;

- the gift card was issued by a reporting entity;
- the issuance of the stored value card is not a designated service—that is, the gift card is not above the applicable stored value card threshold;
- the value of the gift card cannot be increased unless as a result of a reverse of payment using the card or the correction of an error;
- no part of the value stored on the gift card may be withdrawn in cash;
- the value to be transferred is money (i.e. not virtual assets or property);
- the gift card can only be used to transfer value to a merchant providing goods or services through a permanent establishment in Australia;
- the ordering institution has reasonable grounds to believe that the administrator of the scheme in which the gift card can be used has taken reasonable steps to mitigate and manage the risk that the card will be used as an instrument of money laundering, financing of terrorism or other crimes.

18. The last point recognises that there are money laundering, terrorism financing and other crime risks associated with stored value cards, such as those set out in AUSTRAC's Stored Value Card Risk Assessment (2017). The risks arise both when a gift card is purchased by a victim of criminal activity at the instruction of the criminal, or where a gift card is used directly by a criminal in the furtherance of their illicit activities. Given the variety of gift card schemes and business models it is not possible to prescribe the steps that are reasonable in all cases, but administrators of gift card schemes should take reasonable steps to address risks highlighted by relevant agencies such as the National Anti-Scam Centre, the Australian Centre to Counter Child Exploitation and AUSTRAC.

19. Chapter 5 will operate for a period of 10 years and repeal on 31 March 2036. This is intended to prompt a review of the exemption at an appropriate time, including whether the exemption should be contained in primary legislation.

Chapter 6—Gift card issued by person not providing designated services

20. Chapter 6 sets out a conditional exemption from AML/CTF regulation for transfers of value arising from the use of gift cards where the instruction is accepted by a person who would otherwise be unregulated for AML/CTF purposes. This relates primarily to open-loop gift cards issued by shopping centres, gift card businesses and others where they accept the instruction to transfer value instead of a partner financial institution.

21. The exemption operates by ensuring that such businesses are not ordering institutions or beneficiary institutions, which means that the associated designated services in items 29 and 30 of table 1 in section 6 are not provided (such services can only be provided in the capacity of an ordering institution or beneficiary institution).
22. There is no need to exempt such people from being intermediary institutions since an intermediary institution can only exist in a value transfer chain where there is an ordering institution and a beneficiary institution.

23. Rule 6.1 specifies the conditions which must be satisfied for a person not to be an ordering institution:
    - the person accepts an instruction for the transfer of value that is given by use of a gift card;
    - the gift card was issued by the person in the course of carrying on a retail, shopping centre or gift card business that does not otherwise involve the provision of designated services;
    - issuing the stored value card was not a designated service, that is, it is below the relevant stored value card thresholds;
    - the value stored on the card cannot be increased unless as a result of a reverse of payment using the card or the correction of an error;
    - no part of the value stored on the card may be withdrawn in cash;
    - the stored value card may only be used to make payments to merchants providing goods or services through a permanent establishment in Australia;
    - the person has taken reasonable steps to mitigate and manage the risk that the card will be used as an instrument of money laundering, financing of terrorism or other crime.
24. All these conditions must be satisfied for the exemption to apply.
25. Rule 6.2 outlines the conditions that must be met for a person not to be a beneficiary institution and mirror the conditions for a person not to be an ordering institution. Chapter 6 will operate for a period of 5 years and repeal on 31 March 2031. This is intended to prompt a review of the exemption at an appropriate time, including whether the exemption should be contained in primary legislation.

Chapter 7—Services provided by barristers to Australian government bodies

26. In accordance with the exemption power in subsection 247(3), Chapter 7 provides that that Act does not apply to a designated service in the circumstances where a barrister provides a designated service listed in table 6 of section 6 to a client who is an Australian government body.

27. Many Commonwealth, State and Territory bodies directly engage barristers for advice and representation without an external instructing solicitor. In these circumstances, the barrister

will engage directly with the relevant government body. As these engagements do not involve an instructing solicitor, they would not fall within the exemption in subsection 6(6B) of the Act.

28. Australian government body is defined in section 5 of the Act to mean:
    a. the Commonwealth, a State or Territory; or
    b. an agency or authority of:
        i. the Commonwealth;
        ii. a State; or
        iii. a Territory.
29. At a general level, this definition covers Australian government bodies which are emanations of an Act of Parliament of a State or Territory.

30. At the Commonwealth level, Australian government body includes all Non-Corporate Commonwealth Entities, Corporate Commonwealth Entities, and Government Business Enterprises. At the State and Territory level, Australian government body includes government departments, agencies, offices, entities and local government councils/authorities.

31. Companies, trusts, partnerships or other associated entities created by council or councillors for the exercise of council functions or activities are not within the scope of the Chapter 7 exemption.

Chapter 8—Clearing and settlement facilities

32. In accordance with the exemption power in subsection 247(3), Chapter 8 prescribes that the Act does not apply to the provision of a designated service in table 6 of section 6 where that designated service is:
    - provided by the operator of a clearing and settlement facility; and
    - incidental to the operation of that clearing and settlement facility.
33. Clearing and settlement facilities can involve persons acting as nominee shareholders or corporate office holders purely to facilitate the operation of the clearing and settlement facility.

34. Chapter 8.1 incorporates the definition of 'clearing and settlement facility' as defined by the Corporations Act 2001. Under that Act, subsection 768A(1) defines a clearing and settlement facility as a facility that provides a regular mechanism for the parties to transactions relating to financial products to meet obligations to each other that arise from entering into the transactions.

35. Chapter 8 will operate for a period of 5 years and repeal on 31 March 2031. This is intended to prompt a review of the exemption at an appropriate time, including whether the exemption should be contained in primary legislation.