



## *Application for exemptions and modifications under the AML/CTF Act*

*Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

### **1. Introduction**

- 1.1. The purpose of this guidance note is to provide information and assistance to persons seeking to apply for an exemption from or modification to their *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) obligations.
- 1.2. The 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).
- 1.3. 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 and Counter-Terrorism Financing Rules (AML/CTF Rules). The AML/CTF Rules are legislative instruments and are therefore binding.
- 1.4. The 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) - permits the AUSTRAC CEO to make rules exempting designated services from the AML/CTF Act or certain of its provisions.
- 1.5. The AUSTRAC CEO may also, under section 248 of the AML/CTF Act, by written instrument, make exemptions from or modifications to the application of the AML/CTF Act in relation to a specified person or class of persons as outlined in paragraph 4.1 below.
- 1.6. This guidance note should be read in conjunction with AUSTRAC's [Exemption Policy](#) which is relevant to the subject matter of this guidance note.
- 1.7. 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 applications

- 2.1. The AML/CTF Act does not specifically provide for applications for exemption. Generally, written applications have to be submitted by any person(s) or on behalf of any person(s) that have obligations under the AML/CTF Act.
- 2.2. There are two types of applications for exemption or modification that may be made under the AML/CTF Act:
  - a) **Applications that request that the AUSTRAC CEO make AML/CTF Rules (exemption by Rule):** AML/CTF Rules have general application over reporting entities in regard to the designated service which the Rule is addressing. AML/CTF Rules do not therefore name specific reporting entities. Part 3 below sets out further information about exemption and modification by Rule.
  - b) **Applications under section 248 that request an exemption or modification by the AUSTRAC CEO (section 248 exemption/modification):** these applications are generally made on behalf of a specified person or class of persons. A section 248 exemption/modification therefore may apply to and name a specified person or class of persons. Part 4 below sets out further information about section 248 exemption and modification.
- 2.3. The applicant must ensure that applications for exemption by Rule and section 248 exemption/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. Exemption by Rule application – exemption by AML/CTF Rules

- 3.1. An exemption by Rule 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 1.3 and 1.4 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 (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 1.3 and 1.4 above).
- 3.2. An exemption by Rule application must contain the following information:
  - a) the name of the reporting entity/reporting entities, including the entity's Australian business number (ABN) or Australian company number (ACN), that are applying for the exemption.
  - b) the provision(s) of the AML/CTF Act from which exemption is sought;

- c) a description of the relevant designated service (including an unambiguous statement that identifies which item(s) from the tables in section 6 of the AML/CTF Act are provided by the reporting entity or entities that would be the subject of the exemption);
- d) if applicable, a detailed description of the particular circumstance(s) in which the relevant designated service is, or is to be, provided. If this is not applicable, the application must indicate that it is not applicable;
- e) a detailed explanation as to why the exemption is sought, including (if appropriate) why it is not commercially feasible for the reporting entity or entities 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;
- f) an estimate of any one-off costs and any ongoing costs of complying with the relevant provision(s) of the AML/CTF Act from which the exemption is sought, and a detailed explanation for the estimate. For example, the one-off cost in establishing an AML/CTF Program and the ongoing costs of complying with the AML/CTF Program. The Commonwealth Regulatory Burden Measure (RBM) tool provides a uniformed approach to determining costs on business, individuals and community organisations and is the preferred approach for developing a cost estimate to be provided to AUSTRAC. To access the RBM tool please visit [the Office of Best Practice Regulation website](https://rbm.obpr.gov.au/home.aspx) (<https://rbm.obpr.gov.au/home.aspx>);
- g) 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. If no assessment has been prepared, the application must provide a detailed explanation as to why no assessment has been prepared;
- h) if relevant and to the extent possible, detailed explanation of any issues of competitive neutrality (i.e. - 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). If this is not relevant, the application must indicate that it is not relevant;
- i) any other relevant supporting information. If this is not relevant, the application must indicate that it is not relevant; and
- j) the applicant's contact details, including a mailing address to enable AUSTRAC to confirm receipt of and respond to the application.

3.3. If the exemption by Rule application does not contain any of the information from paragraph 3.2 above, AUSTRAC will consider the application as invalid.

3.4. Due to the general applicability of exemptions by Rule, applications for this exemption type are generally made by a group of entities, or on behalf of a group of entities, such as through an industry association.

## 4. Section 248 exemption/modification application – exemption from or modification to AML/CTF Act provisions

- 4.1. A section 248 exemption/modification application may relate to any of the following:
- a) exemption of a specified person or class of persons from one or more provisions of the AML/CTF Act; or
  - b) a declaration that the AML/CTF Act applies in relation to a specified person or class of persons as if one or more provisions of the AML/CTF Act were modified as set out in the declaration.
- 4.2. A section 248 exemption/modification application must 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 name of the reporting entity/reporting entities, including the entity's Australian business number (ABN) or Australian company number (ACN), that are applying for the exemption;
  - c) the provision(s) of the AML/CTF Act in relation to which the exemption or modification is sought;
  - d) a description of the relevant designated service (including an unambiguous statement that identifies which item(s) from the tables in section 6 of the AML/CTF Act are provided by the reporting entity or entities that would be the subject of the exemption);
  - e) if applicable, a description of the particular circumstance(s) in which the relevant designated service is, or is to be, provided. If this is not applicable, the application must indicate that it is not applicable;
  - f) a detailed 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 reporting entity or entities 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;
  - g) an estimate of one-off costs and if applicable, any ongoing costs of complying with the relevant provisions(s) of the AML/CTF Act from which the exemption is sought, and a detailed explanation for the estimate. For example, the one-off cost in establishing an AML/CTF Program and the ongoing costs of complying with the AML/CTF Program. The Commonwealth Regulatory Burden Measure (RBM) tool provides a uniformed approach to determining costs on business, individuals and community organisations and is the preferred approach for developing a cost estimate to be provided to AUSTRAC. To access the RBM tool please visit the [Office of Best Practice Regulation website](https://rbm.obpr.gov.au/home.aspx) (<https://rbm.obpr.gov.au/home.aspx>);

- h) 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. If no assessment has been prepared, the application must provide a detailed explanation as to why no assessment has been prepared;
- i) if relevant and to the extent possible, detailed explanation of any issues of competitive neutrality (i.e. - 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). If this is not relevant, the application must indicate that it is not relevant;
- j) any other relevant supporting information. If this is not relevant, the application must indicate that it is not relevant; and
- k) the applicant's contact details, including a mailing address to enable AUSTRAC to confirm receipt of and respond to the application.

4.3. If section 248 exemption/modification application does not contain any of the information from paragraph 4.2 above, AUSTRAC will consider the application as invalid.

## **5. AUSTRAC's approach to assessing applications for exemption or modification under the AML/CTF Act**

5.1. In determining whether an exemption or modification under the AML/CTF Act 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 paragraphs 3.2 or 4.2 above as the case may be;
- b) whether the application contains adequate relevant information supporting the matters referred to in paragraphs 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, including:
  - i. the integrity of the financial system;
  - ii. crime reduction;
  - iii. the desirability of ensuring that the regulatory considerations are addressed in a way that does not impose unnecessary financial and administrative burden on reporting entities;
  - iv. the desirability of adopting a risk-based approach;
  - v. competitive neutrality;
  - vi. competition;
  - vii. economic efficiency;
  - viii. privacy; and

- ix. any relevant FATF recommendations and United Nations conventions and resolutions;
- 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.

## 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 CEO of the Australian Crime Commission, the Commissioner of Taxation, the CEO of the Australian Customs and Border Protection Service, and the Office of the Privacy Commissioner. The AUSTRAC CEO will consult with such persons as is appropriate in the circumstances.
- 6.2. In accordance with section 17 of the *Legislative Instruments Act 2003*, where it is reasonably practical, AUSTRAC will undertake appropriate consultation with organisations and other stakeholders who are likely to be affected by proposed AML/CTF Rules.
- 6.3. For exemption by Rule applications, draft AML/CTF Rules are published on the AUSTRAC website for a public consultation period, which generally is four weeks. However, if interested parties are unable to make a submission within that time, they may request an extension to the period. Requests for extensions should be addressed to:

Director  
Rules  
Australian Transaction Reports and Analysis Centre  
PO Box 13173  
Law Courts  
Melbourne VIC 8010
- 6.4. Requests for extensions can also be submitted by email to [aml\\_ctf\\_rules@austrac.gov.au](mailto:aml_ctf_rules@austrac.gov.au)
- 6.5. On rare occasions, AML/CTF Rules may be made and registered without proceeding to public consultation. This may take place for Rules which are of a minor or machinery nature.

## 7. Processing an application

- 7.1. Applicants are encouraged to seek legal advice to assist the applicant in its application.
- 7.2. Generally, where an application is made in accordance with part 10 below, AUSTRAC will acknowledge applications within seven business days of receipt, by email where an email address is provided. When an application is acknowledged, applicants will be advised of the AUSTRAC case officer handling their matter.
- 7.3. An application must contain all the information required by paragraphs 3.2 (exemption by Rule) and 4.2 (section 248 exemption/modification), otherwise the application will be considered invalid and will not be processed.
- 7.4. The processing time for exemption by Rules and section 248 exemption/modification applications differ due to the consultation requirements specific to each.
- 7.5. As exemption by Rule application involves the making of AML/CTF Rules which are legislative instruments of general application, they are published for public consultation as outlined in paragraph 6.3. During public consultation, legal or policy issues may be raised and the resolution of such issues may require further periods of public consultation.
- 7.6. As section 248 exemption/modification have specific, rather than general application, they are not subject to a period of public consultation. AUSTRAC considers the matters as set out in part 4 above and consults with the relevant entities as set out in part 6.
- 7.7. AUSTRAC endeavours to process all exemption applications as expeditiously as possible. The time required to process applications can be impacted by factors including where a matter involves a new or complex policy or legal issue.
- 7.8. Where practicable, AUSTRAC will notify the applicant of additional information required to support the application and give the applicant an opportunity to provide such information. If the applicant does not provide additional information within the time specified by AUSTRAC, the application may ultimately be considered withdrawn or refused by AUSTRAC.
- 7.9. 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. Generally a self-imposed deadline will not be a sufficient basis for urgent consideration.
- 7.10. Applicants will be notified in writing of AUSTRAC's decision in relation to their application and the reasons for that decision.
- 7.11. All AUSTRAC decisions in relation to exemption and modification applications will be based on non-discriminatory criteria that recognise relevant federal anti-discrimination legislation.

## 8. Publication of decisions

- 8.1. Any exemption granted as a result of an exemption by Rule application will be by way of AML/CTF Rules, which are legislative instruments and, once made and registered, will be published on the AUSTRAC website.
- 8.2. Any exemption or modification granted as a result of a section 248 exemption/modification application is required by subsection 248(5) of the AML/CTF Act to be made available on the AUSTRAC website.

## 9. Changes to and revocation of section 248 exemption/modification

- 9.1. Section 248 exemption or modification instruments will generally include a condition that the person granted the exemption or modification notify AUSTRAC within a specified timeframe of any change to their business or the provision of designated services which will affect the exemption in place.
- 9.2. Upon receipt of a change notification, AUSTRAC will assess the impact of the change on the exemption or modification, with regard to the factors set out in part 5 above, and will consult with relevant entities as set out in part 6, as required.
- 9.3. Based on these considerations, AUSTRAC will determine the appropriate action. For example, a change notification may result in the revocation of an exemption where due to the change to the business or designated services provided, the exemption is no longer required or the risk profile has changed to the extent that the exemption is no longer viable.

## 10. How to lodge an application for exemption or modification

- 10.1. Applications should be addressed to:  
Director  
Planning, Coordination and Relief  
Australian Transaction Reports and Analysis Centre  
PO Box 5516  
West Chatswood NSW 1515
- 10.2. Applications can also be submitted by email to [exemptions@austrac.gov.au](mailto:exemptions@austrac.gov.au)

## 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 Contact Centre via:

- email to [help\\_desk@austrac.gov.au](mailto:help_desk@austrac.gov.au)
- telephone 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 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 Australian Privacy Principles, even if they would otherwise be exempt from the Privacy Act. For further information about these obligations, please refer to the [Office of the Australian Information Commissioner](#) or call 1300 363 992.

June 2015

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Australian Transaction Reports and Analysis Centre (AUSTRAC)

PO Box 5516

West Chatswood NSW 1515

**Telephone:** 1300 021 037

**Facsimile:** 02 9950 0071

**Website:** [www.austrac.gov.au](http://www.austrac.gov.au)

**Email:** [help\\_desk@austrac.gov.au](mailto:help_desk@austrac.gov.au)