



**Australian Government**

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**Australian Transaction Reports  
and Analysis Centre**

**Productivity Commission Study: Regulator  
Engagement with Small Business**

**Australian Transaction Reports and Analysis Centre**

## About AUSTRAC

1. AUSTRAC's purpose is to protect the integrity of Australia's financial system and contribute to the administration of justice through its expertise in countering money laundering and the financing of terrorism<sup>1</sup>.
2. The agency's purpose is achieved through two interdependent and complementary functions: Australia's financial intelligence unit (FIU); and Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regulator.
3. In its regulatory role, AUSTRAC oversees compliance with the requirements of the [Anti-Money Laundering and Counter-Terrorism Financing Act 2006](#) (AML/CTF Act), the Anti-Money Laundering and Counter-Terrorism Financing Rules (AML/CTF Rules), and the [Financial Transaction Reports Act 1988](#) (FTR Act) by a wide range of financial services providers, bullion dealers, designated remittance service providers, the gambling industry (including casinos, bookmakers and gaming machine venues, that is, pubs and clubs) and other reporting entities, as well as cash dealers (as defined in the FTR Act). AUSTRAC undertakes a range of supervisory activities from education, guidance, compliance assessment through to enforcement.
4. AUSTRAC has a total regulated population of approximately 13,421 reporting entities<sup>2</sup> across a range of industry sectors of which approximately 70 per cent of these reporting entities are classified as small business<sup>3</sup>.
5. In its FIU role, AUSTRAC analyses financial transaction data provided by 'reporting entities' and 'cash dealers' through financial transaction reports. Transaction data is analysed to produce financial intelligence which is then disseminated to Australian law enforcement, national security, human services and revenue agencies, and certain international counterparts, with which AUSTRAC has established and maintains strong relationships. The information is used to assist in the investigation and prosecution of serious criminal activity including organised crime, tax evasion and money laundering. AUSTRAC disseminates information to 39 domestic Commonwealth, State and Territory agencies and has in place 66 exchange agreements with counterpart international FIUs for the exchange of financial intelligence.

## AML/CTF Act obligations

6. The AML/CTF Act establishes the legislative framework under which a reporting entity which provides a designated service to a customer, has obligations to:
  - enrol with AUSTRAC
  - register with AUSTRAC if the reporting entity provides remittance services

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<sup>1</sup> Refer to the AUSTRAC website at the following link: <http://www.austrac.gov.au/>

<sup>2</sup> The completed survey for the Productivity Commission cited a total of 13,290 reporting entities. The amount in this briefing is accurate and up to date as of 30 April 2013.

<sup>3</sup> This is according to the definition used in the ABS (a business which employs less than 20 full time equivalent staff).

- implement and maintain an AML/CTF program to identify, assess and mitigate and manage the risk of money laundering and terrorism financing (known as Part A of an AML/CTF Program)
- identify their customers and undertake ongoing customer due diligence (known as Part B of an AML/CTF Program)
- lodge transaction reports and compliance reports with AUSTRAC
- comply with various AML/CTF related record-keeping obligations.

## International standards

7. Australia's AML/CTF framework has been developed in response to the recommendations of the Financial Action Task Force (FATF), which sets the international global standards for combating money laundering, terrorism financing and proliferation financing for weapons of mass-destruction.
8. In February 2012, FATF endorsed the revised [\*International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation\*](#) (FATF Recommendations). FATF assesses compliance with the Recommendations through a country evaluation and monitoring process. FATF is due to commence the 4th Round Mutual Evaluation of countries against the revised recommendations in the second half of 2013. Australia will be one of the first countries to be assessed against the revised standards.
9. FATF's new [\*Methodology for assessing technical compliance with the FATF Recommendations and the Effectiveness of AML/CFT systems\*](#) (Methodology) sets out how FATF will determine whether a country is sufficiently compliant with the Recommendations and whether its AML/CTF regime is effective in fighting money laundering and the financing of terrorism. The Methodology comprises two inter-linked components:
  - *Technical compliance assessment* - addresses the specific requirements of each of the FATF Recommendations, principally as they relate to the relevant legal and institutional framework of the country, and the powers and procedures of competent authorities.
  - *Effectiveness assessment* - assesses the extent to which a country achieves a defined set of outcomes that are central to a robust AML/CTF system and analyses the extent to which a country's legal and institutional framework is producing the expected results.

## AUSTRAC's regulated population

10. As at 30 April, 2013, AUSTRAC had a total of 13,421 entities enrolled on the Reporting Entity Roll. The regulated population comprises reporting entities from the following four main industry sectors:

Industry sector	Description
<b>Banks and other lenders</b>	This sector comprises approximately 1,100 entities, covering 'authorised deposit taking institutions' (including domestic banks, foreign bank branches and subsidiaries, credit unions and building societies) and other lending institutions (including finance companies, micro lenders and specialist credit providers).
<b>Non-bank financial service providers</b>	This sector comprises approximately 2,600 entities providing a variety of services such as financial planning, funds management, stockbroking, custody, superannuation and life insurance. The entities in this sector range from large, sophisticated organisations through to small businesses.
<b>Gambling and bullion service providers</b>	This diverse sector comprises approximately 4,300 entities, including casinos, TABs, hotels and clubs with electronic gaming machines, corporate bookmakers, bookmakers and bullion dealers.
<b>Money service businesses</b>	This large and diverse sector comprises approximately 5,200 entities, including remittance service providers, cash carriers and currency exchange dealers.

11. As previously noted, AUSTRAC estimates that of the total regulated population approximately 70 percent is classified as small business, that is, with 20 or less employees. The main industry sectors with small businesses include alternative remittance (independent and affiliates), bookmakers, hotels which operate gaming machines, trustees of managed investment schemes and financial service intermediaries.

12. One of the primary regulatory challenges AUSTRAC faces is the size and diversity of its regulated population. The tools available under the AML/CTF Act (described in detail below) provide the AUSTRAC CEO with the flexibility to regulate this diverse population while minimising the regulatory burden.

13. AUSTRAC deals with a range of corporate structures including sole proprietors, corporations, trusts, partnerships and incorporated associations. The regulated population comprises large sophisticated and well-resourced global corporations, such as the large domestic and foreign banks to sole proprietor businesses which have limited resources, capacity and sophistication. The size, scope and sophistication of a reporting entity is generally, but not always, commensurate with the level of money laundering or terrorist financing risk arising from its products, services or customer base.

## The Alternative Remittance Sector

14. The alternative remittance sector is recognised by the international AML/CTF community and AUSTRAC's domestic law enforcement partners as being vulnerable to money laundering and terrorism financing. To ensure compliance with the international standards established by the FATF, the *Combating the Financing of People Smuggling and Other Measures Act 2011* amended Part 6 of the AML/CTF Act and introduced new registration requirements for the alternative remittance sector.
15. In general terms these reforms include the following obligations:
  - require a person seeking registration to provide the AUSTRAC CEO with information relevant to their suitability for registration
  - allow the AUSTRAC CEO to obtain information from other persons to determine whether the person is suitable to be registered
  - allow the AUSTRAC CEO to refuse, suspend, cancel or impose conditions on the registration of a remittance network provider, remittance affiliate or independent remittance dealer. The applicant or registered remittance provider will also be able to make an application to request an independent review of a decision by the AUSTRAC CEO
  - allow the AUSTRAC CEO to issue infringement notices for certain breaches of registration requirements
  - require remittance network providers to undertake some AML/CTF Act reporting obligations on behalf of their affiliates
  - establish a new Remittance Sector Register (which replaces the old Register of Providers of Designated Remittance Services)
  - allow the AUSTRAC CEO to make public details from the Remittance Sector Register.
16. In developing the legislation AUSTRAC worked closely with the Attorney-General's Department. The process involved extensive consultation with the alternative remittance sector, including the release of stakeholder consultation papers, a Draft Exposure Bill and meetings with remittance providers.
17. A comprehensive Regulatory Impact Statement (RIS) was undertaken by an external provider and included in the [Explanatory Memorandum](#) to the Bill.
18. The RIS considered the nature and extent of the ML/TF problems across the sector; the objective of the proposed Government action; the options and an impact assessment of the regulatory options.
19. The RIS recognised that a large proportion of the alternative remittance sector comprises small business operators. In order to fully understand the sector and the potential costs and impacts of regulation a cross-section of remittance providers were

surveyed. The survey focused on the types of tasks performed and the timeframes involved.

20. The RIS concluded that the proposed model of regulation, which was based on the commercial operating structures, offered significantly reduced compliance costs for remittance affiliates which were largely small businesses.

## **Adjusting the impact of the regime on business**

21. The AML/CTF Act, with its combination of rule-making, exemption and modification powers provides an effective and efficient set of regulatory tools which enable the AUSTRAC CEO to provide regulatory relief to low risk reporting entities (including small business) while maintaining the integrity of the AML/CTF Act. These tools are described below.

### **A. Risk-based regime**

22. The AML/CTF Act is principles-based legislation which promotes a risk-based approach to AML/CTF compliance. As required by FATF, the AML/CTF Act sets out the principal obligations for reporting entities which are required to develop risk-based systems and controls tailored to the nature, size and complexity of its business and proportionate to the level of ML/TF risk it faces. It is the responsibility of the reporting entity to determine how it can meet these obligations. This approach recognises that the reporting entity is in the best position to assess the risks its business faces in relation to customers, products and services, and provides the flexibility for reporting entities to allocate appropriate resources to counter those risks.
23. Generally speaking, larger entities that provide a significant number of services, to a large number of diverse customers, and with large numbers of staff, are faced with higher levels of ML/TF risk, than smaller entities. They are therefore required to invest significantly more resources to comply with their obligations than smaller entities.

### **B. Exemptions by AML/CTF Rules**

24. Under section 229 of the AML/CTF Act, the AUSTRAC CEO may, in writing, make AML/CTF Rules. Under section 247 the AUSTRAC CEO may make Rules exempting a reporting entity from provisions under the AML/CTF Act. AUSTRAC publishes draft Rules on its website and invites reporting entities and other interested stakeholders to make submissions or comments before they are finalised.
25. AML/CTF Rules (which are binding legislative instruments) set out specific requirements under the AML/CTF Act. AUSTRAC develops the AML/CTF Rules in consultation with the Attorney-General's Department, relevant government agencies, industry and other stakeholders.
26. The AML/CTF Rules are also used to exempt reporting entities from obligations, either in full or part where, for example, an assessment of the level of ML/TF risk posed by small business reporting entities justifies a full or partial exemption from obligations under the AML/CTF Act.

27. By way of example, the AML/CTF Rules provide a full or partial exemption to reporting entities as follows:

- *Chapter 31 - Exemption of certain types of transactions relating to currency exchange transactions:* This Rule exempts businesses which provide currency exchange services in conjunction with providing traveller accommodation from all provisions of the AML/CTF Act where the value of the currency exchanged does not exceed \$500 per guest per day or \$1,000 per room account per day.
- *Chapter 32 - Exemption of certain types of transactions relating to safe deposit boxes or similar facilities:* This Rule exempts providers of traveller accommodation which provide in-room safes and safe deposit facilities to registered guests from all provisions of the AML/CTF Act.
- *Chapter 33 - Applicable customer identification procedure for purchases and sales of bullion valued at less than \$5,000:* This Rule exempts reporting entities from carrying out the applicable customer identification procedures for purchases or sale of bullion when the retail value of the transaction is less than \$5,000.
- *Chapter 52 - Gaming machines:* The Rules exempts persons who operate less than 15 gaming machines from most obligations under the AML/CTF Act.

28. Entities that have been granted an exemption from the requirement to have a Part A AML/CTF Program (such as entities that operate less than 15 gaming machines as noted above) have also been made exempt from the obligation to pay the AUSTRAC supervisory levy. This is a further reduction of the impact of the AML/CTF regime on these entities, which are typically small pubs and clubs. Other entities that are also exempt from the obligation to pay the AUSTRAC supervisory levy include micro businesses (entities who employ 5 people or less), which number around 2,800 entities, and remitters that are “affiliates” of remittance network providers, which tend to also be smaller businesses, and number around 4,500 entities.

29. A summary of the exemptions under the AML/CTF Rules is available on the [AUSTRAC website](#).

### **C. Exemptions and modifications by Instruments**

30. The AML/CTF Act also includes a framework that enables the AUSTRAC CEO to provide regulatory relief to entities by Instrument. Under section 248 of the AML/CTF Act, the AUSTRAC CEO may exempt a reporting entity from one or more provisions of the Act or modify the operation of provisions of the Act in relation to reporting entities. A modification made by the AUSTRAC CEO is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* and can be disallowed by the Australian Parliament.

31. AUSTRAC has developed an [Exemption Policy](#) which sets out its approach to granting exemptions. Reporting entities may make written applications seeking an exemption or modification. AUSTRAC considers a case for an exemption where the regulatory burden imposed on the business is likely to be greater than is warranted by the level of any potential or existing money laundering or terrorism financing risk. AUSTRAC also takes into account a range of other factors when assessing such

applications, including the integrity of the financial system, the intent and purpose of the AML/CTF Act, crime reduction, competitive neutrality and regulatory consistency.

32. A significant number of exemptions and modifications (approximately 120) have been granted since the introduction of the AML/CTF Act in 2006. All exemptions and modifications granted to reporting entities are published on the AUSTRAC [website](#). By way of an example, the AUSTRAC CEO has granted the following exemptions:

- *Acorn Prudential Limited, a friendly society with 6,300 members and employs 8 staff.* Two of its closed funds products have been exempted from all AML/CTF obligations.
- *Third Link Investment Managers Pty Ltd, which holds an Australian Financial Services Licence.* This entity was granted an exemption from all AML/CTF obligations because it operates for charitable purposes and only has one customer.

## Guidance and Education

33. AUSTRAC is committed to providing tailored guidance and education to industry sectors, particularly smaller, less resourced businesses. AUSTRAC has published a [Service Charter](#) which outlines the service standards reporting entities and the community can expect from AUSTRAC.

34. AUSTRAC assists businesses to meet their obligations by providing:

- Website and hard copy publications including Guidance Notes, FAQs, industry guides, policies
- [AUSTRAC Online](#) – an interactive portal that enables businesses to manage their AML/CTF requirements such as transaction reporting and compliance reporting
- [AUSTRAC e-news](#) – a monthly electronic newsletter providing reporting entities and other interested stakeholders updates on a range of AUSTRAC activities and AML/CTF obligations
- industry workshops aimed at assisting reporting entities to strengthen their awareness and understanding of their AML/CTF obligations
- mail-out campaigns to remind reporting entities of their obligations and alert them to any changes in the regulatory framework
- [forums](#) to engage with the financial and gambling industries.

35. The AUSTRAC Help Desk provides assistance and customer service to external stakeholders such as reporting entities, associated professional services, industry bodies and the public.

36. In addition, AUSTRAC is undertaking a comprehensive review of the *AUSTRAC Regulatory Guide* and supporting guidance. The review will update, consolidate and



streamline existing guidance material on the AUSTRAC website. The new *AUSTRAC Compliance Guide* is anticipated to be completed by mid-2013.

37. AUSTRAC also provides an online AML/CTF e-learning course specifically designed for small business operators that do not have the resources to fully develop their own staff training programs.
38. In recognition of the specific needs of particular industry sectors comprising predominantly of small businesses, AUSTRAC has published AML/CTF compliance guides. This includes guides for on-course bookmakers and independent remitters. A guide for pubs and clubs is currently being finalised.
39. AUSTRAC produces annual [typologies and case studies reports](#) to assist reporting entities to better understand their AML/CTF obligations. Each report contains real-life case studies detailing the various methods criminals use to conceal, launder or move illicit funds, both in Australia and overseas through legitimate services offered by Australian businesses.
40. AUSTRAC surveys entities within specific industry sectors to better understand their compliance behaviours and attitudes to compliance with AML/CTF Act obligations. The results are published in [reports](#) available on the AUSTRAC website. The survey reports focus on particular areas of interest to AUSTRAC and reporting entities, and aim to help reporting entities understand and comply with their obligations. During 2011-12 AUSTRAC published two reports on the key findings of the survey of superannuation fund trustees and financial services intermediaries, many of whom are small business operators.

## **AUSTRAC's Regulatory Approach**

41. AUSTRAC recognises the diversity of its regulated population, ranging from large, sophisticated financial entities accustomed to regulation, to smaller businesses in the financial planning, money remittance, gambling and bullion sectors.
42. As a regulator, AUSTRAC considers that its primary role is to educate, monitor and work with reporting entities to improve their compliance with the requirements of the AML/CTF Act and FTR Act. In some circumstances AUSTRAC seeks to enforce compliance with these Acts with more formal mechanisms. AUSTRAC's regulatory approach is outlined in its [Supervision Strategy 2012-2014](#) which is published on the AUSTRAC website.
43. These regulatory activities have two goals:
  - to assist reporting entities to strengthen their AML/CTF programs so their services are not misused by criminals for ML/TF purposes
  - to improve the quantity and quality of transaction reports received by AUSTRAC to assist the FIU and, through it, AUSTRAC's partner agencies.
44. AUSTRAC is committed to using a tailored approach to supervision. It is not a 'one size fits all' approach. This enables the agency to be flexible in its regulation of small businesses.

45. The compliance activities AUSTRAC undertakes will depend on:
- AML/CTF risk associated with a reporting entity and the designated services it offers
  - nature and scale of the issue identified
  - impact of the issue on the accuracy of AUSTRAC's intelligence data holdings
  - resources available
  - the compliance history of the reporting entity and willingness to cooperate
  - nature of the industry, including its competitiveness, maturity, compliance attitudes and level of support available through industry associations.
46. AUSTRAC uses the [Compliance Risk Exposure Scoring Tool](#) (CREST) to assess ML/TF risk across the different sectors of its regulated population, and to inform its risk-based supervision strategies for each sector. AUSTRAC also uses a risk assessment framework and methodologies to assist in ranking reporting entities and groups of entities according to their exposure to ML/TF risk. The models in CREST are reviewed annually to ensure they maintain their relevance.
47. AUSTRAC categorises its supervisory activities into three levels of intensity:
- **Low intensity or ‘engagement’ activities**, to help reporting entities comply with their obligations. These include providing information and tools such as the website, print publications, AUSTRAC Online and the AUSTRAC Help Desk.
  - AUSTRAC tends to use low intensity activities with small businesses that have low exposure to money laundering and terrorism financing.
  - **Moderate intensity or ‘heightened’ activities** such as behavioural assessments, desk reviews, themed reviews and transaction monitoring directed at specific behaviours or groups of reporting entities.
  - **High intensity or ‘escalated’ activities** such as on-site assessments. These activities are tailored to individual reporting entities to directly improve compliance outcomes.

## AUSTRAC’s Enforcement Approach

48. AUSTRAC has a range of enforcement tools at its disposal including persuasive remediation and formal powers. AUSTRAC’s enforcement approach is outlined in AUSTRAC’s [Enforcement Strategy for 2012-14](#).
49. AUSTRAC uses evidence-based decision making to determine appropriate cases for enforcement activity using evidence gathered through AUSTRAC’s FIU and regulatory activities. The following factors are considered in determining whether to initiate enforcement action:

- the nature of non-compliance
- the ML/TF risk associated with the reporting entity
- the reporting entity's willingness and effort to comply
- the likely result of the enforcement action
- the likely deterrent effect of the enforcement action (both general and specific).

50. As demonstrated by the 'Regulatory pyramid' diagram below, AUSTRAC generally chooses to use a supervisory approach to secure reporting entity compliance before proceeding to more formal enforcement activities.

**Diagram 1: Regulatory pyramid**



51. While AUSTRAC often works with reporting entities to remedy identified weaknesses, sometimes this remediation does not take place without significant persuasion by AUSTRAC. AUSTRAC's persuasive remediation refers to circumstances where a reporting entity works to achieve rectification of its non-compliance and this remediation is underpinned by a formal remediation plan agreed to by AUSTRAC.
52. Where persuasive remediation does not achieve the desired outcomes, or where AUSTRAC believes there are reasons why persuasive remediation is not an appropriate course, the use of AUSTRAC's formal enforcement powers may be appropriate. The range of formal enforcement powers available to AUSTRAC under the AML/CTF Act are outlined in the table below.

**Table 1: Enforcement powers under the AML/CTF Act**

Enforcement powers under the AML/CTF Act
<ul style="list-style-type: none"><li>▪ issuing notices requiring the provision of information or documents to AUSTRAC</li><li>▪ executing monitoring warrants to access reporting entities' premises</li><li>▪ giving notices requiring a reporting entity to provide AUSTRAC with an ML/TF risk assessment</li><li>▪ giving notices requiring the appointment of an external auditor to assess a reporting entity's risk management and compliance and to report back to the AUSTRAC CEO</li><li>▪ accepting enforceable undertakings from reporting entities</li><li>▪ issuing remedial directions which require a reporting entity to take specific action to ensure compliance</li><li>▪ seeking injunctions to require a person to do something or refrain from doing something in relation to the breach of a civil penalty provision of the AML/CTF Act</li><li>▪ issuing infringement notices requiring the payment of a pecuniary penalty</li><li>▪ pursuing civil penalty orders through the Federal Court</li><li>▪ refusing, suspending, cancelling or imposing conditions on a person's registration on the Remittance Sector Register</li><li>▪ referring criminal matters to the Australian Federal Police or the CDPP.</li></ul>

### **No-action letters**

53. AUSTRAC may consider issuing a 'no-action letter' to a reporting entity where the reporting entity has breached or anticipates a future breach of the AML/CTF Act, and the entity requests that AUSTRAC does not take enforcement action or other regulatory action in respect of that breach. AUSTRAC has issued a [guidance note](#) on no-action letters which is available on the AUSTRAC website.
54. AUSTRAC assesses each matter on a case-by-case basis to determine what action (if any) should be taken regarding individual breaches of the AML/CTF Act. After considering whether to take any action in relation to a breach of the AML/CTF Act, AUSTRAC may consider, having regard to all the circumstances, the provision to a reporting entity of a no-action letter relevant to the identified breach or anticipated breach. Generally, AUSTRAC is prepared to consider issuing a no-action letter where there is doubt as to whether a particular act or conduct would be lawful and AUSTRAC is of the view that enforcement action in relation to that act or conduct would not advance the policy of the AML/CTF Act. There may be other circumstances where AUSTRAC would be prepared to consider issuing a no-action letter.

55. A no-action letter from AUSTRAC is a statement to a reporting entity that it will not take regulatory or enforcement action over a particular act or omission by that reporting entity. A no-action letter is not an expression of legal views on the particular matter that resulted in AUSTRAC issuing the no-action letter. However, AUSTRAC reserves the right to take any action it considers appropriate, particularly if there has been incomplete disclosure from the reporting entity requesting the no-action letter at the time the request was submitted.

## **Conclusion**

56. AUSTRAC's purpose is to protect the integrity of Australia's financial system and contribute to the administration of justice through its expertise in countering money laundering and the financing of terrorism.

57. In its regulatory role, AUSTRAC oversees compliance with the requirements of the AML/CTF Act, the AML/CTF Rules, and the FTR Act by a wide range of reporting entities. Approximately 70 per cent of AUSTRAC's reporting entities are classified as small businesses according to the ABS definition (a business which employs 19 or less full time equivalent staff).

58. The AML/CTF Act, with its combination of rule-making, exemption and modification powers provides an effective and efficient set of regulatory tools to provide relief from the impact of Australia's AML/CTF regime for certain low risk reporting entities (such as small business) whilst still maintaining the integrity of the AML/CTF Act.

59. AUSTRAC is committed to assisting small, less resourced businesses to comply with the AML/CTF Act and Rules in the most efficient manner and it does this by undertaking a broad range of activities. This includes guidance, support and education through to more intense regulatory activities such as inspections and enforcement action.

# **Attachment A: Extract from AML/CTF Act – Exemptions and Modifications**

## **247 General exemptions**

(1) This Act does not apply to a designated service that is of a kind specified in the AML/CTF Rules.

(2) The AML/CTF Rules may provide that a specified provision of this Act does not apply to a designated service that is of a kind specified in the AML/CTF Rules.

(3) This Act does not apply to a designated service that is provided in circumstances specified in the AML/CTF Rules.

(4) The AML/CTF Rules may provide that a specified provision of this Act does not apply to a designated service that is provided in circumstances specified in the AML/CTF Rules.

## **248 Exemptions and modifications by the AUSTRAC CEO**

(1) The AUSTRAC CEO may, by written instrument:

(a) exempt a specified person from one or more specified provisions of this Act; or

(b) declare that this Act applies in relation to a specified person as if one or more specified provisions of this Act were modified as specified in the declaration.

(2) An exemption may apply:

(a) unconditionally; or

(b) subject to specified conditions.

(3) A person to whom a condition specified in an exemption applies must comply with the condition.

(4) Subsection (3) is a civil penalty provision.

(5) A copy of an exemption or declaration must be made available on AUSTRAC's website.

(6) If conduct engaged in by a person would not have constituted:

(a) an offence; or

(b) a contravention of a civil penalty provision:

if a particular declaration under paragraph (1)(b) had not been made, that conduct does not constitute an offence or a contravention of a civil penalty provision unless, before the conduct occurred:

(c) a copy of the declaration was made available on AUSTRAC's website; or

(d) the AUSTRAC CEO gave the person a copy of the declaration.

In a prosecution for an offence to which this subsection applies, the prosecution must prove that paragraph (c) or (d) was complied with before the conduct occurred.

(7) An instrument under subsection (1) is not a legislative instrument.