

**Explanatory Statement – Anti-Money Laundering and Counter-Terrorism Financing Rules in Respect of the Definition of Designated Business Group, Correspondent Banking Due Diligence, Customer Identification Procedures, AML/CTF Programs and Gambling Sector**

**1. Purpose and operation of Anti-Money Laundering and Counter-Terrorism Financing Rules (AML/CTF Rules) in respect of the ‘designated business group’ definition, correspondent banking due diligence, customer identification procedures, AML/CTF programs and the gambling sector**

Section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) provides that the AUSTRAC Chief Executive Officer (CEO) may, by writing, make AML/CTF Rules prescribing matters required or permitted by any other provision of the Act to be prescribed by the AML/CTF Rules.

This explanatory statement is about AML/CTF Rules required or permitted to be made by sections 5, 29, 31, 33, 35, 38, 39, 84, 85, 86, 97, 98, 99 and 118 of the AML/CTF Act. These Rules relate to the ‘designated business group’ definition, correspondent banking due diligence, customer identification procedures, AML/CTF programs and the gambling sector.

The AML/CTF Rules are in the form of ten numbered chapters.

*Key terms and concepts – Chapter 1*

The AML/CTF Rules in Chapter 1 provide key terms and concepts relevant to Chapters 3 to 10.

*Definition of ‘designated business group’ – Chapter 2*

These AML/CTF Rules, in respect of the definition of ‘designated business group’ (DBG) in section 5 of the AML/CTF Act, provide details of the process relating to eligibility, election, appointment of a nominated contact officer and notification of a change of circumstances, relating to a DBG. They are made pursuant to paragraphs (b) and (d) of the definition, which permit AML/CTF Rules to be made about requirements for an election to be a member of a DBG and conditions which members of a DBG must satisfy.

*Correspondent banking due diligence – Chapter 3*

Part 8 of the AML/CTF Act deals with correspondent banking. Sections 97, 98 and 99 of the AML/CTF Act require that a financial institution carry out a due diligence assessment before entering into a correspondent banking relationship with another financial institution, as well as carry out regular due diligence assessments.

Chapter 3 specifies the matters to be assessed for both preliminary and regular due diligence assessments, where and to the extent warranted by the risk that the relationship might involve or facilitate money laundering or financing of terrorism. Chapter 3 also specifies the due diligence assessment as something to which a senior

officer of a financial institution must have regard under section 99 when approving the entering into of a correspondent banking relationship.

The requirement to carry out an initial due diligence assessment (prior to entering into correspondent banking relationships), as well as ongoing due diligence assessments, will result in improved compliance by this industry sector with its obligations under the AML/CTF Act.

#### *Customer identification procedures – Chapters 4, 6 and 7*

Part 2 of the AML/CTF Act requires a reporting entity to carry out a procedure to identify a new customer before providing a designated service to the customer. A customer conducting a transaction in circumstances determined to be a low risk will generally only have to provide minimum verification information which may involve as little as producing a drivers licence. In many cases the new identification regime will be less of a burden than the current “100 point check” required by regulations under the *Financial Transaction Reports Act 1988*.

Part 7 of the AML/CTF Act requires a reporting entity to have and comply with an AML/CTF program. Programs are divided into Part A (general) and Part B (customer identification). The sole or primary purpose of Part B of a program is to set out the applicable customer identification procedures for the purposes of the application of the AML/CTF Act to customers of the reporting entity. Part B must also comply with such requirements as are specified in the AML/CTF Rules.

The AML/CTF Rules in Chapter 4 specify requirements for Part B programs. These requirements relate to customer identification procedures where a customer is an individual or a non-natural person. These AML/CTF Rules also set out requirements relating to:

- (a) verification by means of electronic data and documentation;
- (b) document- or electronic-based safe harbour procedures where money laundering/terrorism financing risk is medium or lower;
- (c) customer identification procedures applying to agents of customers; and
- (d) a customer’s verifying officer.

The AML/CTF Rules in Chapter 6 set out the circumstances in which the identity of a customer who was already a customer at the time the AML/CTF Act commenced, or a customer who has previously been identified and verified under the AML/CTF Act, is required to be (re)verified.

The AML/CTF Rules in Chapter 7 set out the circumstances in which a reporting entity (second reporting entity) may rely on the customer identification procedures carried out by another reporting entity (first reporting entity). In these circumstances, the customer identification procedures are deemed to have been carried out by the second reporting entity.

## *AML/CTF programs – Chapters 5, 8 and 9*

Chapters 5, 8 and 9 set out requirements for special AML/CTF programs and for Part A of standard and joint AML/CTF programs under Part 7 of the AML/CTF Act.

The AML/CTF Rules in Chapter 5 in respect of special AML/CTF programs apply to a reporting entity that holds an Australian financial services licence and makes arrangements for a person to receive a designated service (item 54 of Table 1 in section 6 of the AML/CTF Act). These AML/CTF Rules set out requirements with which such a reporting entity must comply in developing this type of AML/CTF program.

The AML/CTF Rules in Chapter 8, in respect of Part A of a standard AML/CTF program, set out requirements a reporting entity must comply with in developing this kind of AML/CTF program, including:

- (a) systems to identify and mitigate money laundering and terrorism financing risks;
- (b) a customer due diligence program; and
- (c) an employee due diligence program.

The AML/CTF Rules in chapter 9 in respect of Part A of a joint AML/CTF program apply to each reporting entity that belongs to a designated business group. These AML/CTF Rules set out requirements with which such a reporting entity must comply in developing this kind of AML/CTF program.

## *Gambling sector – Chapter 10*

These AML/CTF Rules apply to casinos, on-course bookmakers and totalisator agency boards, gaming machines and accounts for online gambling services. They set out special requirements relating to Part B of AML/CTF programs and record-keeping procedures for gambling services. These Rules are needed because of the way business practices in the gambling industry differ from those of the financial sector.

These AML/CTF Rules modify the customer identification and record-keeping requirements for the gambling industry (including providers of casinos, on-course bookmakers and totalisator agency boards and providers of accounts in respect of “online gambling services”). These AML/CTF Rules provide that customers of providers of casino services will not need to be identified unless they:

- (a) purchase or redeem gaming chips of an amount of \$10,000 or more;
- (b) make a bet of \$10,000 or more or receive winnings of \$10,000 or more;
- (c) are paid out winnings of \$10,000 or more in respect of a game played on a gaming machine;
- (d) open an account with the casino;

- (e) exchange currency at the casino; or
- (f) receive from casinos a designated service that is covered in Table 1 of section 6.

These AML/CTF Rules also provide that customers of on-course bookmakers and totalisator agency boards (TAB) will not need to be identified unless they are paid out winnings of \$10,000 or more or if they open an account with the bookmaker or TAB. Similarly, persons who gamble on gaming machines will not need to be identified unless they are paid winnings of \$10,000 or more.

Persons who offer an account in respect of online gambling service have 90 days after the account was opened within which to identify the customer of the account.

Customers may also need to be identified in other circumstances, such as where a suspicious matter arises or where it becomes necessary for other customer due diligence purposes.

The AML/CTF Rules also give providers of casino services, on-course bookmakers and totalisator agency boards exemptions from keeping certain transaction records in certain circumstances.

## **2. Legislative instruments**

These AML/CTF Rules are legislative instruments as defined in section 5 of the *Legislative Instruments Act 2003*.

## **3. Likely impact**

These AML/CTF Rules will have an impact on all financial institutions and gambling service providers to which relevant obligations relating to customer identification procedures, correspondent banking and AML/CTF programs apply.

There are likely costs to reporting entities associated with compliance with the relevant obligations.

A regulatory impact statement in respect of the AML/CTF Act (to which these AML/CTF Rules relate in part) was prepared prior to the passage of that Act.

## **4. Assessment of benefits**

The requirements set out in these AML/CTF Rules will result in improved compliance by these industry sectors with their obligations under AML/CTF legislation. For example, these AML/CTF Rules provide clarification and set relevant obligations. This in turn will result in improved financial intelligence which will help Australian law enforcement agencies to combat money laundering and the financing of terrorism. Increased financial intelligence will also help the Australian Taxation Office to detect tax evasion and Centrelink to detect welfare fraud.

Generally, these AML/CTF Rules provide a system that implements the requirements of the Financial Action Task Force's Recommendations relating to the following matters:

- (a) undertaking comprehensive customer due diligence (including customer identification) and record-keeping (Recommendation 5, 6, 7, 8 to 11);
- (b) scrutinising foreign counterparts before entering correspondent banking relationships (Recommendation 7); and
- (c) developing programs to counter money laundering and terrorism financing (Recommendation 15).

## **5. Consultation**

AUSTRAC has consulted with the Privacy Commissioner, the Australian Customs Service, the Australian Federal Police, the Australian Taxation Office and the Australian Crime Commission in relation to these AML/CTF Rules.

AUSTRAC also published a draft of these AML/CTF Rules on its website for public comments. Industry was consulted extensively in the development of these AML/CTF Rules and AUSTRAC has considered industry's comments.

## **6. Ongoing consultation**

AUSTRAC will conduct ongoing consultation with stakeholders on the operation of these AML/CTF Rules.