

Explanatory Statement – Anti-Money Laundering and Counter-Terrorism Financing Rules for ongoing customer due diligence

1. Purpose and operation of Anti-Money Laundering and Counter-Terrorism Financing Rules (AML/CTF Rules) for ongoing customer due diligence

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

Division 6 of Part 2 of the AML/CTF Act deals with ongoing customer due diligence. Subsection 36(1) provides that a reporting entity must monitor its customers in accordance with the AML/CTF Rules, in relation to its provision of designated services. Monitoring involves identifying, mitigating and managing the risk the reporting entity may reasonably face that providing a designated service might involve or facilitate money laundering or the financing of terrorism.

Under paragraph 36(1)(b) of the AML/CTF Act, the AML/CTF Rules specify the main elements of ongoing customer due diligence. These include:

- a reporting entity must put in place appropriate risk-based systems and controls to determine whether any further ‘know your customer’ (KYC) information should be collected, updated or verified in respect of a customer
- a reporting entity must include a transaction monitoring program in Part A of its AML/CTF program
- a reporting entity must include an enhanced customer due diligence program in Part A of its AML/CTF program.

These AML/CTF Rules and Division 6 of Part 2 of the AML/CTF Act commence on 12 December 2008.

2. Legislative instruments

The 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 reporting entities which are subject to ongoing customer due diligence obligations.

In terms of any likely costs to consumers, there is no direct cost.

4. Assessment of benefits

Division 6 of Part 2 of the AML/CTF Act provides that a reporting entity must put in place appropriate ongoing customer due diligence measures. This implements the

requirements of the Financial Action Task Force's Recommendation 11, which provides that financial institutions should pay special attention to 'all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose.'

Information relating to or arising from ongoing customer due diligence will assist in preventing 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.

5. Consultation

AUSTRAC has consulted with the Office of 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 comment.

6. Ongoing consultation

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