



Australian Government

**Australian Transaction Reports
and Analysis Centre**

**Explanatory Statement – Anti-Money Laundering and Counter-Terrorism
Financing Rules adding Chapters 29 to 34 of the AML/CTF Rules**

1. Purpose and operation of Anti-Money Laundering and Counter-Terrorism Financing Rules (AML/CTF Rules) adding Chapters 29, 30, 31, 32, 33 and 34 of the AML/CTF Rules

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.

Chapter 29 ‘Record-keeping obligations under section 107’

Section 107 of the AML/CTF Act states that if reporting entities make a record of information relating to the provision of a designated service to a customer, that record of information must be retained for seven years after the making of the record. Section 107 also allows certain records to be declared exempt from this requirement by AML/CTF Rules.

These AML/CTF Rules declare certain records to be exempt from the record-keeping requirement in section 107. The result of this exemption is that they do not need to be retained by reporting entities for a period of seven years under the AML/CTF Act.

Chapter 30 ‘Disclosure certificates obtained by reporting entities in the course of conducting applicable customer identification procedures’

As an element of Part B of a standard or joint AML/CTF program, or of a special AML/CTF program, reporting entities must make provision for a ‘disclosure certificate’ in the circumstances set out in section 91 of the AML/CTF Act. Reporting entities can obtain a disclosure certificate from the customer or a person who is associated with a customer, for the purposes of the applicable customer identification procedure.

A disclosure certificate may only be obtained to verify know your customer (KYC) information with respect to companies, trusts, partnerships, incorporated and unincorporated associations and registered co-operatives, where this information is not otherwise reasonably able to be verified from the sources specified in Chapter 4 of

the AML/CTF Rules taking into account the reporting entity's risk-based systems and controls.

These AML/CTF Rules specify the content of a disclosure certificate relevant to the above customers.

Chapter 31 'Exemption of certain types of transactions relating to currency exchange transactions'

Section 247 allows general exemptions from the AML/CTF Act. Subsection 247(3) provides that the AML/CTF Act does not apply to a designated service that is provided in circumstances specified in the AML/CTF Rules.

Exchanging currency in the course of carrying on a currency exchange business is a designated service under item 50 of table 1 in subsection 6(2) of the AML/CTF Act.

These AML/CTF Rules exempt 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 \$1000 per room account per day.

Chapter 32 'Exemption of certain types of transactions relating to safe deposit boxes or similar facilities'

Section 247 allows general exemptions from the AML/CTF Act. Subsection 247(3) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) provides that the AML/CTF Act does not apply to a designated service that is provided in circumstances specified in the AML/CTF Rules.

Providing a safe deposit box or similar facility, where the service is provided in the course of carrying on a business of providing safe deposit boxes or similar facilities, is a designated service under item 47 of table 1 in subsection 6(2) of the AML/CTF Act.

These AML/CTF Rules exempt providers of traveller accommodation that provide in-room safes and safe deposit facilities to registered guests from all provisions of the AML/CTF Act. These AML/CTF Rules take into account that these facilities may be used by a guest prior to check-in and after check-out, so the time period to which they apply extends beyond a guest's period of registration.

Chapter 33 'Applicable customer identification procedure for purchases and sales of bullion valued at less than \$5000'

Items 1 and 2 of table 2 in subsection 6(3) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) provide that buying and selling bullion are designated services under that Act. Part 2 of the Act requires reporting entities to conduct applicable customer identification procedures on all purchases or sales of bullion, regardless of the value of the bullion. Section 39 allows exemption from those requirements.

These AML/CTF Rules exempt reporting entities from carrying out the applicable customer identification procedures for purchases or sales of bullion when the retail value of the transaction is less than \$5,000.

The exemption will not apply where a reporting entity determines for ongoing customer due diligence (OCDD) purposes, that it should obtain, update or verify any 'know your customer' information about a customer. For instance, where a suspicious matter has arisen for the purposes of section 41, a reporting entity may verify customer identification information under its risk-based systems and controls.

These AML/CTF Rules should be read in conjunction with the AUSTRAC guidance note 09/01, 'Definition of 'bullion' under the AML/CTF Act'.

Chapter 34 'Affixing of notices about cross-border movement reporting obligations'

Section 61 of the AML/CTF Act specifies that a customs officer may affix one or more written notices in respect of the reporting obligations of travellers to any part of an aircraft or ship or any other place specified in the AML/CTF Rules.

These AML/CTF Rules specify that a notice:

- (a) may be affixed at any port, airport, wharf or boarding station appointed under section 15 of the *Customs Act 1901*, which authorises Customs officers to assert Customs control of goods passing through the relevant areas, or under section 234AA of the *Customs Act 1901*, which allows a place to be designated as being under Customs control for the purposes of the Customs Act, and
- (b) may be free-standing, digital or electronic (such as a television screen or monitor) or in any other form, and
- (c) must contain the text that is specified in the Rules.

Although section 61 specifies that the notice must be 'written', section 25 of the *Acts Interpretation Act 1901* states that '**writing** includes any mode of representing or reproducing words, figures, drawings or symbols in a visible form' and therefore allows the Rules to include means of representation such as banners and screen-based monitors.

2. Notes on sections

Section 1

This section sets out the name of the instrument, i.e. the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2009 (No.2)*.

Section 2

This section specifies that the Instrument commences on the day after it is registered.

Section 3

This section contains a schedule which amends the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No.1)* as follows:

Schedule 1

This schedule adds Chapters 29, 30, 31, 32, 33 and 34 of the AML/CTF Rules.

3. Notes on paragraphs

CHAPTER 29 ‘Record-keeping obligations under section 107’

Paragraph 29.1

This paragraph specifies that these AML/CTF Rules have been made under section 229 of the AML/CTF Act.

Paragraph 29.2

This paragraph lists the records which are exempt from the record-keeping requirement in section 107 and therefore do not need to be retained by reporting entities for a period of seven years under the AML/CTF Act. These records are not considered to be essential for the reconstruction of individual transactions for the purposes of the possible prosecution of criminal activity.

Chapter 30 ‘Disclosure certificates obtained by reporting entities in the course of conducting applicable customer identification procedures’

Paragraph 30.1

This paragraph specifies that these AML/CTF Rules have been made under section 229 of the AML/CTF Act.

Paragraph 30.2

This paragraph specifies that where a reporting entity has concluded that information specified in paragraphs 30.3 to 30.9 of these Rules cannot otherwise be reasonably verified, a disclosure certificate may be obtained by a reporting entity to verify that information.

Paragraph 30.3

This paragraph specifies that a disclosure certificate for an Australian company must contain the name and address of every beneficial owner of the company. It also specifies who may sign or otherwise authenticate the certificate.

Paragraph 30.4

This paragraph is about disclosure certificates for foreign companies which are registered in Australia. It specifies that a certificate must contain details of whether the foreign company is registered overseas, and whether it is public or private or some other type of company. It also specifies who may sign or otherwise authenticate the certificate.

Paragraph 30.5

This paragraph specifies that a certificate for a foreign company which is not registered in Australia must contain the full name of the company, as well as details of whether the company is registered overseas. If it is registered overseas, the certificate must include its registration number if it has one, whether it is public or private or some other type of company and the jurisdiction in which the company is located. It also specifies who may sign or otherwise authenticate the certificate.

Paragraph 30.6

This paragraph is about disclosure certificates for trusts. It specifies that the certificate must verify Know Your Customer (KYC) information relating to trusts. It also specifies who may sign or otherwise authenticate the certificate. KYC information in relation to a customer who is a trustee of a trust is defined in Chapter 1 of the AML/CTF Rules.

Paragraph 30.7

This paragraph is about disclosure certificates for partnerships. It specifies that the certificate must verify KYC information relating to partnerships. It also specifies who may sign or otherwise authenticate the certificate. KYC information in relation to a customer who is a partner of a partnership is defined in Chapter 1 of the AML/CTF Rules.

Paragraph 30.8

This paragraph is about disclosure certificates for incorporated or unincorporated associations. It specifies that the certificate must verify KYC information relating to associations. It also specifies who may sign or otherwise authenticate the certificate. KYC information in relation to a customer who is an association is defined in Chapter 1 of the AML/CTF Rules.

Paragraph 30.9

This paragraph is about disclosure certificates for registered co-operatives. It specifies that the certificate must verify KYC information relating to registered co-operatives. It also specifies who may sign or otherwise authenticate the certificate. KYC information in relation to a customer who is a registered co-operative is defined in Chapter 1 of the AML/CTF Rules.

Chapter 31 ‘Exemption of certain types of transactions relating to currency exchange transactions’

Paragraph 31.1

This paragraph specifies that these AML/CTF Rules have been made under section 229 of the AML/CTF Act.

Paragraph 31.2

This paragraph specifies that the AML/CTF Act does not apply to reporting entities providing the designated service of exchanging one currency for another (item 50 of table 1 in subsection 6(2)), provided the conditions in paragraph 31.3 are met.

Paragraph 31.3

This paragraph specifies that the exemption in paragraph 31.2 only applies if the designated service is provided by a business providing traveller accommodation to a registered guest. The exemption also only applies if the currency exchanged does not exceed \$500 per day per registered guest, and \$1000 per room account per day. Any charge must be levied to the room account of the guest.

Traveller accommodation means backpacker accommodation, bed and breakfast accommodation, hotels, motels, resorts and serviced apartments.

In order to be exempt the business must not provide any other services covered by the AML/CTF Act except the provision a safe deposit box or similar facility which is also exempt because it falls within Chapter 32 of the AML/CTF Rules (see below).

Paragraph 31.4

This paragraph provides definitions of ‘registered guest’, and ‘traveller accommodation.’ The definition of ‘registered guest’ differs in Chapters 31 and 32. Chapter 32 takes into account that safe deposit facilities may be used by a guest prior to check-in and after check-out, so the time period to which the exemption applies extends beyond a guest’s period of registration.

Chapter 32 ‘Exemption of certain types of transactions relating to safe deposit boxes or similar facilities’

Paragraph 32.1

This paragraph specifies that these AML/CTF Rules have been made under section 229 of the AML/CTF Act.

Paragraph 32.2

This paragraph specifies that the AML/CTF Act does not apply to reporting entities providing the designated service of providing a safe deposit box or similar facility

(item 47 of table 1 in subsection 6(2)), provided the conditions in paragraph 32.3 are met.

Paragraph 32.3

This paragraph specifies that the exemption in paragraph 32.2 only applies if the designated service is provided by a business providing traveller accommodation to a registered guest at that accommodation. The safe deposit box or similar facility must be located either in the room of the guest or outside the room of the registered guest, but within the traveller accommodation (such as provided by the front desk of the accommodation).

Traveller accommodation has the same meaning as in Chapter 31 of the Rules (see above).

Paragraph 32.4

This paragraph provides definitions of ‘registered guest’ and ‘traveller accommodation’. The definition of ‘registered guest’ differs in Chapters 31 and 32. Chapter 32 takes into account that safe deposit facilities may be used by a guest prior to check-in and after check-out (such as provided by the front desk of the accommodation), so the time period to which the exemption applies extends beyond the guest’s period of registration.

Chapter 33 ‘Applicable customer identification procedure for purchases and sales of bullion valued at less than \$5000’

Paragraph 33.1

This paragraph specifies that these AML/CTF Rules have been made under section 229 of the AML/CTF Act.

Paragraph 33.2

This paragraph specifies that the applicable customer identification procedure does not apply to the buying and selling of bullion, where the retail value of the bullion is less than \$5000 (Australian or foreign equivalent).

The word ‘retail’ has been included in the Rule in order avoid the situation where the retail staff of a reporting entity may need to calculate the market price for bullion they sell by reference to industry benchmark prices, in order to determine whether the item being purchased by the customer is under or over the exemption threshold.

Paragraph 33.3

This paragraph specifies that the exemption does not apply where a reporting entity decides to obtain, update or verify any KYC information about a particular customer for ongoing customer due diligence purposes. Ongoing customer due diligence is dealt with in Chapter 15 of the AML/CTF Rules. The decision to obtain and verify

this information will result from the reporting entity's judgement that there is a potential money-laundering/terrorism-financing risk in respect to that customer.

Paragraph 33.4

This paragraph provides a definition of 'KYC information' by cross referencing it to Chapter 1 of the AML/CTF Rules.

Chapter 34 'Affixing of notices about cross-border movement reporting obligations'

Paragraph 34.1

This paragraph specifies that these AML/CTF Rules have been made under section 229 of the AML/CTF Act.

Paragraph 34.2

This paragraph specifies the form of the notice. The written notice must be a self-standing sign, a digital/electronic sign or a sign in any other form.

Paragraph 34.3

This paragraph specifies the content which must be included in the written notice. That content explains the reporting requirements for persons carrying cash or bearer negotiable instruments into or out of Australia.

Paragraph 34.4

This paragraph specifies the places in which the notice may be affixed. Notices may be affixed at any port, airport, wharf or boarding station or any other place designated under the *Customs Act 1901*.

Paragraph 34.5

This paragraph provides definitions of 'self-standing sign', 'digital/electronic sign' and 'writing'.

4. Legislative instruments

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

5. Likely impact

Chapters 29 to 34

These AML/CTF Rules will have no negative impact, upon reporting entities as they do not impose any regulatory burden.

6. Assessment of benefits

Chapter 29

These AML/CTF Rules clarify which records do not need to be kept by reporting entities in the provision of a designated service, and as a result will reduce compliance costs, as business will not be required to retain unnecessary records.

Chapter 30

These AML/CTF Rules will provide additional flexibility to reporting entities in fulfilling their customer identification obligations under the AML/CTF Act, by allowing them to rely upon a disclosure certificate when customer identification information cannot otherwise be reasonably verified.

Chapters 31 to 33

These AML/CTF Rules will exempt businesses in certain circumstances, from the regulatory costs of complying with the AML/CTF Act.

Chapter 34

These AML/CTF Rules will be beneficial to travellers as they ensure that travellers are clearly informed about the obligations they have in respect of physical currency, travellers' cheques, cheques, money orders and any other bearer negotiable instrument under the AML/CTF Act.

7. 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.

8. Ongoing consultation

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