

EXPLANATORY STATEMENT

Issued by authority of the AUSTRAC CEO

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2022 (No. 1)

AUTHORITY

Section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act)* provides that the AUSTRAC CEO may, by legislative instrument, make Anti-Money Laundering and Counter-Terrorism Financing Rules (**AML/CTF Rules**). The AML/CTF Rules are set out in the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.

PURPOSE AND OPERATION OF THE INSTRUMENT

The *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2021 (No. 3)* (the **Amendment Instrument**) is a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the Amendment Instrument are set out in Attachment A.

A Statement of Compatibility with Human Rights (the **Statement**) is at Attachment B. The Statement was completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Amendment Instrument is compatible with them.

Background

Amendment to Chapter 10 implementing changes to the National Consumer Protection Framework for Online Wagering (the National Framework)

1. The Commonwealth, State and Territory governments are responsible for implementing the National Framework. Amongst other matters, the National Framework addresses the timeframe in which online wagering providers are required to verify their customers' identity.
2. In February 2019, the period within which reporting entities are required to carry out the applicable identification procedure in relation to online gambling accounts was reduced from 90 days to 14 days through an amendment to Part 10.4 of the AML/CTF Rules. This change was made with a view to further reducing the period to 72 hours, following a 12-month review.
3. The 12-month review was undertaken, including consultation with the online wagering industry, academia, the community sector, the financial sector, consumers, and the broader community. Commonwealth, State

and Territory ministers responsible for gambling have now agreed to further reduce the customer verification period from 14 days to 72 hours.

4. Part 10.4 of the AML/CTF Rules sets out the special circumstances that justify carrying out the applicable customer identification procedure after commencement of the provision of online gambling services.
5. Where the special circumstances apply, paragraph 10.4.4 sets out the period in which the reporting entity is required to carry out the applicable customer identification procedure, in relation to online gambling services.
6. This Instrument reduces the period within which a reporting entity is required to carry out the applicable customer identification procedure in relation to online gambling accounts from 14 days to 72 hours as part of the implementation of the National Framework.
7. The amendment to Chapter 10 takes effect on 2 May 2022. Reporting entities that commence to provide online gambling services to a customer on or after that date will be required to carry out the applicable customer identification procedure within 72 hours of opening the account in the name of the customer. Where a reporting entity commenced to provide online gambling services to a customer before that date, the specified period remains 14 days.

Addition of Chapter 81 exempting financial institutions from registration obligations when offering digital currency exchange services

8. In December 2017, the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2017 (Phase 1 reforms)* was passed by Parliament. The Act introduced a range of changes to the AML/CTF Act and expanded the scope of the AML/CTF regime to include regulation of digital currency exchange (**DCE**) service providers.
9. As regulated entities, DCE service providers must enrol as reporting entities on the Reporting Entities Roll (**RER**) and register on the DCE register under subsection 76A(1) of the AML/CTF Act. The registration requirement for DCE providers is modelled on the prohibition imposed by subsections 74(1), (1A) and (1B) of the AML/CTF Act that persons not registered on the Remittance Sector Register must not provide remittance services.
10. The Revised Explanatory Memorandum (**EM**) for the Phase 1 reforms expressly provides, at paragraph 36 under Part 2, “Financial institutions providing a digital currency exchange service under item 50A will ... not be required to register on the Digital Currency Exchange Register ... however financial institutions will be subject to the other relevant obligations of the AML/CTF Act when providing this designated service.”

11. Under s 247(4) of the AML/CTF Act, the AML/CTF Rules may provide that a specified provision of the AML/CTF Act does not apply to a designated service that is provided in circumstances specified in the AML/CTF Rules.
12. This Instrument will implement the undertaking set out in the EM by removing the requirement for financial institutions to register on the Digital Currency Exchange Register. Chapter 81 will not exempt financial institutions from any other provision or obligation of the AML/CTF Act including reporting obligations and the requirement to be enrolled on the Reporting Entities Roll.

CONSULTATION

13. Draft AML/CTF Rules were released on 11 March 2022 for a four-week period of public consultation. Ongoing consultation with industry was undertaken following the public consultation period.

SUNSETTING

14. Under item 6 of Regulation 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* this Instrument is not subject to sunseting.

REGULATION IMPACT STATEMENT

15. The Office of Best Practice and Regulation has advised that a Regulatory Impact Statement is not required as the amendments to the AML/CTF Rules are unlikely to have a more than minor regulatory impact.

ATTACHMENT A

Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2022 (No. 1)

Section 1—Name

This section provides that the name of the Instrument is the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2022 (No. 1)*.

Section 2—Commencement

This section provides for the commencement of each provision in the Instrument, as set out in the table in subsection 2(1).

The amendments in Schedule 1 commence on 2 May 2022. The amendments in Schedule 2 commence on the day after registration.

Section 3—Authority

This section provides that the Instrument is made under section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

Section 4—Schedules

This section provides that the instrument specified in Schedule 1 is amended as set out in the applicable items in that Schedule.

Schedule 1—Amendments

Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)

Notes on items

Item 1—Chapter 10

This item substitutes a new paragraph 10.4.4 in the AML/CTF Rules.

Paragraph 10.4.4 provides that the period in which the customer is to be verified by the reporting entity is 72 hours commencing from when the account is opened.

Schedule 2—Amendments

Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)

Notes on items

Item 1—Chapter 81

This item inserts a new chapter, Chapter 81 of the AML/CTF Rules.

Paragraph 81.1 provides that Chapter 81 is made for the purposes of subsection 247(4) of the AML/CTF Act.

Paragraph 81.2 specifies that Part 6A of the AML/CTF Act does not apply if a financial institution that is already enrolled on the reporting entity roll provides a designated service that is of the kind described in item 50A of Table 1 in subsection 6(2) of the Act.

Paragraph 81.3 defines the terms ‘financial institution’, ‘Reporting Entity’ and ‘Reporting Entity Roll’ for the purposes of Chapter 81.

ATTACHMENT B

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Australian Human Rights Commission Regulations 2019

This Disallowable Legislative Instrument (the **Instrument**) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Instrument

Part 10.4 of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (AML/CTF Rules)* sets out the special circumstances that allow an online gambling services provider to carry out the applicable customer identification procedure after commencement of the provision of online gambling services.

Paragraph 10.4.4 of the AML/CTF Rules currently requires reporting entities to carry out the applicable customer identification procedure in relation to online gambling services within 14 days of when an account is opened in the name of the customer. The Instrument reduces this period to 72 hours.

The Instrument also adds Chapter 81 to implement the undertaking set out in the Revised Explanatory Memorandum to the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2017* by removing the requirement for financial institutions to register on the Digital Currency Exchange Register.

Human rights implications

The *Human Rights (Parliamentary Scrutiny) Act 2011* requires that Statements of Compatibility must be made by the rule-maker with regard to disallowable legislative instruments, and must contain an assessment of whether the legislative instrument is compatible with the rights and freedoms recognised in the seven core international human rights treaties that Australia has ratified.

This Instrument does not engage any of the applicable rights or freedoms, including the right to privacy articulated in Article 17 of the *International Covenant on Civil and Political Rights*.

While reporting entities are required to collect personal information about certain customers when carrying out applicable customer identification procedures under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)* (**AML/CTF Act**) and the AML/CTF Rules, this proposed amendment does not amend the existing requirements in relation to the types of information collected about customers. The Instrument merely reduces the period for carrying out customer verification in relation to online gambling accounts to implement one of the consumer protection measures from the National Consumer Protection Framework for Online Wagering.

Reporting entities collect personal information for customer verification purposes to comply with the requirement of the AML/CTF Act to mitigate and manage the risk of money laundering and financing of terrorism when providing designated services. The collection of personal information is therefore not an arbitrary or unlawful interference with privacy. Furthermore, the collection is necessary, reasonable, and proportionate to achieving the legitimate object of the AML/CTF Act.

[signed]
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