



EXPLANATORY STATEMENT

Issued by authority of the Acting AUSTRAC CEO

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

Anti-Money Laundering and Counter-Terrorism Financing Rules (Online Gambling Services) Amendment Instrument 2023

AUTHORITY

1. 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

2. The *Anti-Money Laundering and Counter-Terrorism Financing Rules (Online Gambling Services) Amendment Instrument 2023* (the **Instrument**) is a legislative instrument for the purposes of the *Legislation Act 2003*.
3. Details of the Instrument are set out in Attachment A.
4. 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

5. Section 33 of the AML/CTF Act allows a reporting entity to carry out the applicable customer identification procedure in respect of a customer after commencing to provide a designated service if the service is specified in the AML/CTF Rules, and any conditions set out in the AML/CTF Rules are satisfied.

6. 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.
7. Where the special circumstances apply, paragraph 10.4.4 of the AML/CTF Rules 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.
8. The Commonwealth, State and Territory governments are responsible for implementing the National Consumer Protection Framework for Online Wagering (the National Framework). Amongst other matters, the National Framework addresses the timeframe in which online wagering providers are required to verify their customer's identity.
9. Following agreement between Commonwealth, State and Territory ministers responsible for gambling (the **ministers**), in May 2022, the period within which reporting entities are required to carry out the applicable identification procedure in relation to online gambling services was reduced from 14 days to 72 hours through an amendment to Part 10.4 of the AML/CTF Rules.
10. The ministers have now agreed to implement pre-verification for online gambling services. The Amendment Instrument operationalises that agreement by repealing Part 10.4 of the AML/CTF Act.
11. The repeal of Part 10.4 takes effect on 29 September 2023.

Inserting Chapter 82 relating to special circumstances that justify carrying out the applicable customer identification procedure after the commencement of the provision of a designated service

12. Chapter 82 sets out the special circumstances that apply in relation to online gambling services in which a reporting entity may carry out the applicable customer identification procedure in respect of a customer, after commencing to provide a designated service described in item 11 of table 3 in subsection 6(4) of the AML/CTF Act (opening an account).
13. Reporting entities are not permitted to provide any other designated services to the customer (including allowing a deposit or accepting bets) until the applicable customer identification procedure has been completed. Furthermore, after the end of the 72 hour period, the reporting entity cannot continue to provide, and must not commence to provide, any designated service to the customer until the applicable customer identification procedure is completed in respect of the customer.
14. The reporting entity may carry out the applicable customer identification procedure on the customer after commencing to provide this designated service if it:

- a. has determined on reasonable grounds that doing so is essential to avoid interrupting the ordinary course of its business
 - b. has determined on reasonable grounds that any additional ML/TF risk arising from carrying out the applicable customer identification procedure after commencing to provide the designated service specified in paragraph 82.3 is low
 - c. has implemented appropriate risk-based systems and controls to effectively manage the associated ML/TF risks
 - d. has systems and controls in place to ensure it carries out the applicable customer identification procedure as soon as practicable
 - e. does not commence to provide to the customer another designated service. The reporting entity should have appropriate systems and controls to ensure this does not occur.
15. Chapter 82 will operate from 29 September 2023 until 29 September 2024. It is intended that this period will enable reporting entities to implement any required systems changes to ensure that the applicable customer identification procedure is carried out before commencing to provide a designated service.

CONSULTATION

16. Draft AML/CTF Rules repealing Part 10.4 of the AML/CTF Rules were released on 7 August 2023 for a four-week period of public consultation.
17. AUSTRAC received six submissions and made amendments to the draft AML/CTF Rules in response to the submissions received. The amendments proposed the addition of Chapter 82 for a period of 12 months.
18. On 15 September 2023, further targeted consultation on the Instrument was undertaken with entities who made a submission to AUSTRAC, including a consultation meeting on 21 September 2023. One written submission was received and considered by AUSTRAC.

SUNSETTING

19. Under item 6 of Regulation 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* this Instrument is not subject to sunseting.
20. The AML/CTF Rules are designed to be enduring because they:
- a. complement and provide the detail for the broader obligations set out in the AML/CTF Act, aid in meeting Australia's international obligations and matters of international concern, and support the combatting of money laundering and terrorism financing,

- b. assist industry in fulfilling their compliance with the AML/CTF Act and provide commercial and regulatory certainty for industry, and
- c. are subject to an ongoing process of development, refinement and review, involving scrutiny and feedback from a wide range of stakeholders including industry, the Financial Action Task Force, Australian Government agencies, law enforcement agencies, and other interested parties.

REGULATION IMPACT STATEMENT

- 21. The Office of Impact Assessment has advised that the Regulatory Impact Statement completed in 2018 for the National Framework can be used to meet the Impact Analysis requirements for this AML/CTF Rules amendment.
- 22. The Regulatory Impact Statement indicates that mandatory verification prior to any wagering activity is likely to have the same regulatory impact on industry as options which permit a delayed verification period of between 21 days and 72 hours.

ATTACHMENT A

Anti-Money Laundering and Counter-Terrorism Financing Rules (Online Gambling Services) Amendment Instrument 2023

Section 1—Name

This section provides that the name of the Instrument is the *Anti-Money Laundering and Counter-Terrorism Financing Rules (Part 10.4) Amendment Instrument 2023*.

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 29 September 2023.

The amendments in Schedule 2 commence on 29 September 2023.

The amendments in Schedule 3 commence on 29 September 2024.

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 each instrument specified in a Schedule is amended or repealed as set out in the applicable items in the Schedule concerned.

Schedule 1 – Amendments

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

Notes on items

Item 1—Chapter 82

This item inserts a new Chapter, Chapter 82, in the AML/CTF Rules.

Paragraph 82.1 provides that Chapter 82 is made under section 229 for the purposes of paragraphs 33(a) and 33(b) and subparagraph 34(1)(d)(i) of the AML/CTF Act.

Paragraph 82.2 provides that online gambling services are specified for the purposes of paragraph 33(2) of the Act, subject to the conditions specified in paragraph 82.3.

Paragraph 82.3 sets out the conditions that a reporting entity must meet to allow it to complete the applicable customer identification procedure in respect of the customer after commencing to provide a designated service described in item 11 if table 3 in subsection 6(4) of the AML/CTF Act.

Paragraph 82.4 sets out that for the purposes of subparagraph 34(1)(d)(i) of the AML/CTF Act, the relevant period is 72 hours after the reporting entity commences to provide the designated service to the customer. After the relevant period ends the reporting entity may no longer provide a designated service to the customer until it has completed the applicable customer identification procedure on the customer.

Schedule 2—Repeal

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

Notes on items

Item 1—Part 10.4

This item repeals Part 10.4.

Schedule 3—Repeal

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

Notes on items

Item 1—Chapter 82

This item repeals Chapter 82.

ATTACHMENT B

STATEMENT OF COMPATABILITY WITH HUMAN RIGHTS

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

Australian Human Rights Commission Regulations 2019

Amendments to the Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1) (AML/CTF Rules) amending Chapter 10

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

(i) *Repeal of Part 10.4 of the AML/CTF Rules*

The Instrument amends Chapter 10 by repealing Part 10.4. Commonwealth, State and Territory ministers responsible for gambling have agreed to implement pre-verification of customers for online gambling services. This Instrument operationalises that agreement by repealing Part 10.4 of the AML/CTF Act.

The instrument inserts Chapter 82 which sets out the special circumstances which apply in relation to online gambling services in which a reporting entity may carry out the applicable customer identification procedure in respect of a customer, after commencing to provide a designated service described in item 11 of table 3 in subsection 6(4) of the AML/CTF Act (opening an account).

Reporting entities are not permitted to provide any other designated services to the customer (including allowing a deposit or accepting bets) until the applicable customer identification procedure has been completed. Furthermore, after the end of the 72 hour period, the reporting entity cannot continue to provide, and must not commence to provide, any designated service to the customer until applicable customer identification procedure is completed in respect of the customer

The Instrument provides that this Chapter will be repealed 12 months after it commences. This Chapter provides reporting entities with 12 months to implement any required systems changes to ensure that the applicable customer identification procedure is carried out before commencing to provide a designated service.

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.

It is considered that this instrument does not engage any of the human rights and freedoms recognised or declared in the international instruments listed in the definition of ‘human rights’ in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

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