



Australian Government

AUSTRAC

Explanatory note for consultation – proposed amendments to Chapter 46

Simplification of provisions

The 2016 *Report on the Statutory Review of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 and Associated Rules and Regulations* recommended that the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (AML/CTF Rules)* should be simplified, rationalised and presented in a user-friendly format to improve accessibility and understanding of obligations.

Accordingly, the proposed amendments revise Chapter 46 (which sets out the special circumstances that allow for the applicable customer identification procedure (ACIP) to be conducted after commencing to provide a designated service) to create a simpler, less prescriptive chapter rather than simply adding a new Part to Chapter 46.

General conditions for carrying out the applicable customer identification procedure after commencing to provide a designated service

Section 33 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act)* allows a reporting entity to carry out ACIP 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.

The proposed amendments to Chapter 46 include the insertion of two new general conditions that must be satisfied before a reporting entity can rely on section 33. These conditions require a reporting entity to:

- a. make a determination that carrying out the ACIP in respect of a customer after commencing to provide a designated service is essential to avoid interrupting the ordinary course of business; and
- b. implement appropriate risk management procedures and controls to effectively manage the ML/TF risks associated with providing designated services to a customer that has not completed the ACIP.

The determination that providing a designated service is essential to avoid interrupting the ordinary course of business must be made on reasonable grounds. This is an objective test, meaning the reporting entity must be able to point to objectively ascertainable facts to support the determination.

The provisions do not prescribe particular risk management procedures and controls, as these must be determined by each reporting entity having regard to the money laundering and terrorism financing risks posed by each individual customer.

Specified services and conditions—opening and allowing an initial transaction to be conducted on an account

This proposed amendment adds an additional special circumstance that allows a reporting entity to carry out the ACIP in respect of a customer (including any person purporting to act on behalf of the customer and any beneficial owner of the customer) after opening an account, provided no transactions—other than an initial deposit—are conducted in relation to the account.

The prohibition on conducting a transaction other than an initial deposit is made under section 34 of the AML/CTF Act. That section allows the AML/CTF Rules to specify a period within which a reporting entity must carry out the ACIP. If the ACIP is not completed within that period, then the reporting entity must not commence or continue to provide any designated services until such time as the ACIP is completed.

In accordance with paragraph 34(4)(a) of the AML/CTF Act, the period commences at the time when the reporting entity commences to provide the designated service (i.e. providing a designated service of the kind described in item 1 of table 1 in section 6 of the AML/CTF Act—opening an account).

In accordance with paragraph 34(4)(b) of the AML/CTF Act, the period ends on the occurrence of a specified event (i.e. allowing an initial deposit to be made into the account).

The effect of this is that a reporting entity will be prohibited from providing any further designated services to a customer following receipt of the initial deposit, until the ACIP is completed.

Neither the closure of a customer account (e.g. in circumstances where ACIP cannot be completed) nor the remittance of funds (either to the customer or to the Commonwealth as unclaimed monies under section 69 of the *Banking Act 1959*) are considered to be designated services, and the prohibition in section 34 does not apply. However, reporting entities should consider whether the closure of an account in these circumstances would give rise to a suspicious matter reporting obligation under section 41 of the AML/CTF Act.

Specified services and conditions—securities transactions on a domestic stock exchange

This proposed amendment simplifies the existing provisions that apply to securities, derivatives or foreign exchange transactions that occur on a prescribed financial market, by removing overly prescriptive risk-factors and redundant definitions clauses. The proposed changes are not intended to alter the nature or scope of the current provisions.

Human Rights (Parliamentary Scrutiny) Act 2011 requirements

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 the proposed amendments do 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*.

CHAPTER 46 Applicable customer identification procedure— special circumstances

46.1 These Anti-Money Laundering and Counter-Terrorism Financing Rules are made under section 229 for the purposes of paragraphs 33(a) and 33(b) and subparagraph 34(1)(d)(i) of the *Anti-Money Laundering and Counter Terrorism Financing Act 2006*.

General conditions for carrying out the applicable customer identification procedure after commencing to provide a designated service

- 46.2 A reporting entity may carry out the applicable customer identification procedure after commencing to provide a designated service in the circumstances outlined in this Chapter, if:
- (1) the reporting entity has determined on reasonable grounds that doing so is essential to avoid interrupting the ordinary course of business; and
 - (2) the reporting entity has implemented appropriate risk-based systems and controls to effectively manage the associated ML/TF risks.

Opening and allowing an initial transaction to be conducted on an account

- 46.3 An ADI may carry out the applicable customer identification procedure in respect of a customer (including any beneficial owner of the customer or any person purporting to act on behalf of the customer) after opening an account, provided that no transactions—other than an initial deposit—are allowed to be conducted in relation to the account until the applicable customer identification procedures is completed.
- 46.4 For the purposes of subparagraph 34(1)(d)(i) of the Act, the relevant period ends immediately after the reporting entity allows the initial deposit to be made into the account.

Securities transactions on a domestic stock exchange

- 46.5 A reporting entity that provides the designated service described in item 33 of table 1 in subsection 6(2) of the Act, may undertake applicable customer identification procedure in relation to the customer of the designated service after performing the transaction that constitutes the designated service if:
- (1) the transaction occurs on a domestic stock exchange; and
 - (2) the reporting entity has determined on reasonable grounds that:
 - (a) the transaction must be performed rapidly due to financial market conditions relevant to the transaction; and
 - (b) it cannot reasonably undertake the applicable customer identification procedure before performing the transaction.
- 46.6 For the purposes of subparagraph 34(1)(d)(i) of the Act, the relevant period ends 5 business days after the day on which the transaction was performed.