



Record-keeping requirements

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

1 Introduction

- 1.1 The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) is designed to assist in combating money laundering and the financing of terrorism. To achieve these aims, the AML/CTF Act places certain obligations on 'reporting entities' (defined in section 5 of the Act).
- 1.2 Under section 229 of the AML/CTF Act, the Chief Executive Officer (CEO) of the Australian Transaction Reports and Analysis Centre (AUSTRAC) may, in writing, make Anti-Money Laundering/Counter-Terrorism Financing Rules (AML/CTF Rules). The AML/CTF Rules are legislative instruments and are therefore binding.
- 1.3 The purpose of this guidance note is to provide assistance to reporting entities regarding their record-keeping obligations under the AML/CTF Act and certain chapters of the AML/CTF Rules in *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.

2 AML/CTF Act obligations

- 2.1 Part 10 of the AML/CTF Act sets out the record-keeping requirements which reporting entities must observe. These obligations commenced on the following dates:

Record type	Obligation commenced
Transaction records	13 December 2006
Electronic funds transfer instructions	13 December 2006
Due diligence assessments of correspondent banking relationships	12 June 2007
Identification procedures	12 December 2007
AML/CTF programs	12 December 2007

3 AML/CTF Rules obligations

- 3.1 Chapters 4, 5, 6, 7, 8, 9, 10 and 15 of the AML/CTF Rules set out the obligations of reporting entities regarding applicable customer identification procedures. These AML/CTF Rules specify different requirements in relation to the following types of customers:

- (a) individuals
- (b) companies
- (c) trustees
- (d) partners
- (e) incorporated or unincorporated associations
- (f) registered co-operatives
- (g) government bodies.

3.2 The following definitions from Chapter 1 of the AML/CTF Rules, which are relevant to record-keeping obligations, should be considered by reporting entities:

- (a) certified copy
- (b) certified extract
- (c) know your customer (KYC) information
- (d) primary non-photographic identification document
- (e) primary photographic identification document
- (f) reliable and independent documentation
- (g) secondary identification document.

4 Privacy Act 1988

4.1 Part 10 of the AML/CTF Act is not intended to override the credit reporting provisions in Part IIIA of the *Privacy Act 1988* (Privacy Act). This means that records retained in compliance with the AML/CTF Act for longer than the maximum period permitted under the Privacy Act should only be used by reporting entities for the purposes associated with fulfilling the record-keeping requirements of Part 10 of the AML/CTF Act and for no other purpose.

4.2 Reporting entities should also note that in relation to activities they undertake to comply with the AML/CTF Act (including record keeping), they have obligations under the Privacy Act including the requirement to comply with the National Privacy Principles, even if they would otherwise be exempt from the Privacy Act.

5 Record-keeping terms and definitions

5.1 The AML/CTF Act uses different terms relating to record-keeping requirements. The key terms are:

- (a) record of information
- (b) record
- (c) transaction record
- (d) copy of record
- (e) extract of record

- (f) document
 - (g) record of adoption
 - (h) AML/CTF program
 - (i) written record.
- 5.2 The term 'document' is relevant to the definitions in Chapter 1 of the AML/CTF Rules as listed above in paragraph 3.2.
- 5.3 The *Acts Interpretation Act 1901*, which applies to all Commonwealth legislation, provides the following definitions which are applicable to the relevant record-keeping terms in the AML/CTF Act:

document includes:

- (a) any paper or other material on which there is writing;
- (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (c) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device.

record includes information stored or recorded by means of a computer.

writing includes any mode of representing or reproducing words, figures, drawings or symbols in a visible form.

- 5.4 Where a reporting entity must 'keep copies of a record', that obligation can be met by keeping electronic copies as set out in the *Electronic Transactions Act 1999* (the ET Act). The following terms are not defined in the AML/CTF Act, but the definitions provided in the ET Act may be useful to reporting entities in their consideration of what 'information' and 'data' may entail:

information means information in the form of data, text, images or speech.

data includes the whole or part of a computer program within the meaning of the *Copyright Act 1968*.

- 5.5 What constitutes a 'transaction record' is considered below at paragraph 7.3, while the form of an AML/CTF program is considered at paragraph 13.4.

6 Retention periods for records

- 6.1 Part 10 of the AML/CTF Act specifies that records, copies of records, or extracts from records showing prescribed information, must be kept for a period of seven years.
- 6.2 Records of designated services provided by a reporting entity to a customer must be kept for seven years after the making of the record (see section 10 below regarding transferred accounts between authorised deposit-taking institutions (ADIs)).
- 6.3 Records of customer identification procedures are kept for the life of the customer relationship and an additional seven years after the reporting entity ceases to provide any designated services to the customer. This means that if a reporting entity has provided two designated services to a customer, the seven-year retention period would not begin until both designated services had ceased to be provided (rather than commencing separately as each designated service ends).

7 Records of transactions

- 7.1 Part 10, Division 2 of the AML/CTF Act requires that if a reporting entity commences to provide, or has provided, a designated service to a customer and the reporting entity makes a record of information relating to that service, the reporting entity must retain the record of that information, or a copy or extract of the record, for a period of seven years. The same requirements apply to the situation where a customer (or an agent of the customer) provides to a reporting entity a document which relates to a provision or prospective provision of a designated service to that customer.
- 7.2 If a reporting entity does not make a record of information regarding a designated service, there is no obligation to make a transaction record. However, there are provisions in the AML/CTF Act to declare a designated service or services (or when a designated service is provided in certain circumstances), as being a service where a transaction record must be made and retained.
- 7.3 AUSTRAC considers it preferable that transaction records be sufficient to permit the reconstruction of individual transactions (including the amounts and types of currency involved, if any), so as to provide, if necessary, evidence for the potential prosecution of criminal activity.
- 7.4 In considering what a 'transaction record' comprises, it is noted that the provision of a designated service has two components:
- (a) activity carried out by the customer
 - (b) activity carried out by the reporting entity.
- 7.5 The following customer-generated information may be retained as a permanent part of the record, regardless of any changes in that information which may take place over the life of the business relationship:
- (a) change of account name
 - (b) change of address, including postal address details
 - (c) change of phone number
 - (d) change of email address
 - (e) change of occupation
 - (f) signatories to the account
 - (g) change of signatories to the account
 - (h) records of interviews or conversations with customers, such as recordings of phone conversations where instructions are received from the customer and changes are subsequently made.
- 7.6 The following information, relevant to the activity carried out by a reporting entity as part of providing a designated service to a customer, may be retained as a record over the life of the business relationship:
- (a) records of all transactions
 - (b) related accounts
 - (c) related business activity.

- 7.7 AUSTRAC considers that the following information, relevant to the activity carried out by a reporting entity as part of the provision of a designated service to a customer, need not be retained by the reporting entity over the life of the business relationship:
- (a) customer-specific documents (such as account statements), correspondence and publicly available statements, forms and documents which a reporting entity routinely provides to its customers, such as disclosure statements, financial or investment analysis or summary reports and product or service information, which replicate information retained as a record by the reporting entity
 - (b) general correspondence with customers, including but not limited to, promotional materials and general correspondence relating to fees, service charges, interest rate changes, terms and conditions, technology changes or legislative changes which are not specific to a particular customer
 - (c) overdrawn notices and accompanying correspondence
 - (d) information provided to a customer of a reporting entity on the methods by which a designated service is to be delivered
 - (e) correspondence or similar documents provided by a reporting entity to a customer which relate to, or otherwise document, product or service enquiries or comments from customers, such as customer experience records or requests for information on a product
 - (f) records of interviews or conversations with customers, such as recordings of phone conversations where instructions are received from the customer, unless the information contained in such interviews of conversations relates to a reporting obligation under the AML/CTF Act.

7.8 The examples in paragraph 7.7 above are not obligatory. A reporting entity should rely on its own judgement as to what information it wishes to retain as part of a transaction record, considered within the context of the reporting entity's risk management framework.

7.9 It is noted that a 'record' only exists in order to capture the 'information' relating to the provision of the designated service to a customer. The record of this information can be in any form, whether hard copy or electronic and may be stored in any manner by a reporting entity, whether on-site or offsite. As AUSTRAC has monitoring powers under Part 13 of the AML/CTF Act, records should be stored in a retrievable and auditable manner.

8 Gambling services

8.1 For detailed guidance on record-keeping obligations for reporting entities within the gambling sector, the AUSTRAC guidance note *Gambling services* should be consulted.

9 Designated business groups

9.1 When a reporting entity is a member of a designated business group, the record-keeping obligations can be performed on behalf of that reporting entity by any other member of the designated business group, thereby allowing entities to make joint arrangements to discharge their record-keeping obligations. For example, one entity within a designated business group may provide a storage and retrieval service for a number of other entities within that designated business group, where there is a shared client base. The record-keeping liability under the AML/CTF Act remains with the reporting entity for which the obligation arose (see also paragraphs 11.7, 11.8 and 11.9 below).

- 9.2 If a reporting entity is a member of a designated business group, then the obligations under subsection 112(2) of the AML/CTF Act may be discharged by any other member of the designated business group (under subsection 112(5)).

10 Authorised deposit-taking institutions (ADIs)

- 10.1 Under section 109 of the AML/CTF Act, when a reporting entity is an authorised deposit-taking institution (ADI) and an open account is transferred between two ADIs, the ADI transferring the account must give relevant transaction record documents to the ADI receiving the account. This must be done within 120 calendar days, beginning 30 calendar days before the transfer of the account. The ADI receiving the transaction record documents must retain the originals or copies of the documents for seven years after the documents are given, if that ADI receives the documents within 120 calendar days (beginning 30 days before the transfer of the account).
- 10.2 Under section 110 of the AML/CTF Act, when transferring a closed account between two ADIs, the ADI transferring the closed account may give the original and copies of a document ('second document') relating to the account, to the ADI receiving the account, if:
- (a) a document relating to that account has previously been transferred to the same recipient ADI when the account was open (see paragraph 10.1 above)
 - (b) the ADI receiving the second document is required to possess the document to fulfil its own record-keeping requirements obligations under the AML/CTF Act
 - (c) both ADIs agree in writing that the second document should be given within the 120 calendar days allowed for in giving the previous document.
- 10.3 Sections 107 (transaction records to be retained) and 108 (customer-provided transaction documents to be retained) of the AML/CTF Act do not apply to an ADI transferring the original or second document to another ADI, as long as the ADI transferring the document does so within the 120-day period.
- 10.4 The ADI which receives the original or copy of the second document from the ADI which transferred it within the specified 120-day period must retain the second document, or a copy of the second document, for seven years after the document was given.
- 10.5 These record-keeping requirements ensure that at least one ADI will retain copies of the account records, but avoids the situation where both ADIs will have to retain the records for seven years.

11 Records of identification procedures

- 11.1 When an applicable customer identification procedure is carried out by a reporting entity, Part 10, Division 3 of the AML/CTF Act requires the reporting entity to:
- (a) make a record of the procedure
 - (b) make a record of the information obtained in carrying out the procedure.
- 11.2 If a customer produces a document to the reporting entity carrying out the applicable customer identification procedure and a copy is made of that document, then the reporting entity is deemed to have made a record of the information contained in that document.
- 11.3 As discussed in paragraph 3.1 above, Chapter 4 of the AML/CTF Rules specifies the minimum standards for applicable customer identification procedures for different customer types. The AML/CTF Rules provide for both the collection of information (with specified minimum KYC information for each customer type) and the verification of information (which applies to the KYC information collected and specified minimum KYC information which has to be verified for each category).

- 11.4 Further to the retention periods discussed in paragraphs 6.1 and 6.2 above, the information contained in customer identification procedure records should remain unchanged for the life of the business relationship, plus seven years. This is in contrast to transaction records, which are required to be retained under Part 10, Division 2 of the AML/CTF Act once they have been made, but which may be added to over the life of the business relationship with a customer; for example, account records which will vary over time as the account balance of the customer alters.
- 11.5 If a reporting entity collects new KYC information about a customer, this does not affect the obligation to retain the records of the original applicable customer identification procedure, since the AML/CTF Act does not provide for the retention period to be altered as a result of the collection of further KYC information. This means that the original KYC information gathered by a reporting entity as part of its applicable customer identification procedure cannot be destroyed until those records have been retained for an additional seven years after the reporting entity has ceased to provide the designated service to the customer.
- 11.6 If a reporting entity clarifies or updates the KYC information of a customer as a consequence of applying its enhanced customer due diligence program (as required under the ongoing customer due diligence obligations specified in Chapter 15 of the AML/CTF Rules), or in other circumstances, but does not verify the information collected for those purposes, then such records do not need to be retained for the purposes of section 112 of the AML/CTF Act (which deals with making records of identification procedures). For example, confirming new telephone numbers or addresses, or requesting confirmation by customers of their details when a reporting entity is updating its data system without verifying that information, does not constitute an applicable customer identification procedure. This applies even though such procedures may be the standard practices of a reporting entity and may be contained within Part B of the reporting entity's AML/CTF program, because such procedures under the AML/CTF Act requires the collection of certain prescribed KYC information *and* the verification, by independent means, of that prescribed KYC information.
- 11.7 Part 10, Division 3 of the AML/CTF Act allows for obtaining copies of records of identification procedures deemed to have been carried out by a reporting entity, where:
- (a) a reporting entity carried out the applicable customer identification procedure regarding a customer to which it provided, or proposed to provide, a designated service
 - (b) the reporting entity made a record of the procedure or information obtained in carrying out the procedure
 - (c) the customer becomes a customer of another (second) reporting entity
 - (d) the second reporting entity requests (in writing) a copy of the record from the first reporting entity, to be given within five business days of the request (with which the first reporting entity must comply).
- The second reporting entity must then retain the copy of the record for seven years after ceasing to provide any designated services to the customer.
- 11.8 Chapter 7 of the AML/CTF Rules provides that the deeming provision in section 38 of the AML/CTF Act only applies to 'licensed financial advisers' within the meaning of item 54 of table 1 in section 6 of the AML/CTF Act and 'designated business groups' as defined in section 5 of the AML/CTF Act.
- 11.9 For the purposes of section 38 and Chapter 7 of the AML/CTF Rules, a reporting entity may access records kept by another reporting entity under an agreement in place for the management of identification records. This agreement may include a third party who is providing a record management service for the reporting entity. A

second reporting entity may access the records held by the third party, after an assessment has been made of any money laundering/terrorism financing (ML/TF) risk by that reporting entity, in order to determine whether it is appropriate to rely on the records which have been made.

12 Records about electronic funds transfer instructions

- 12.1 Part 10, Division 4 of the AML/CTF Act applies to reporting entities involved in an international funds transfer comprising two or more institutions, being either of:
- (a) a multiple-institution person-to-person electronic funds transfer instruction
 - (b) a multiple-institution same-person electronic funds transfer instruction.
- 12.2 This involves a funds transfer chain comprising:
- (a) the ordering institution
 - (b) any person interposed between the ordering institution and the beneficiary institution
 - (c) the beneficiary institution.
- 12.3 A record or a copy of the required transfer information (as defined in section 70 of the AML/CTF Act) must be kept by the interposed person when:
- (a) the transfer instruction was passed on by an interposed person at or through a permanent establishment of that person in Australia
 - (b) the beneficiary institution would make available the transferred money at or through that institution's permanent establishment in Australia
 - (c) some or all of the required transfer information was passed on to the interposed person by another entity in the funds transfer chain
 - (d) the transfer instruction was accepted by the ordering institution at or through that institution's permanent establishment in a foreign country
 - (e) the transfer instruction was passed on to the interposed person by a permanent establishment of the ordering institution, or of another person, in a foreign country.
- 12.4 The record, or a copy of the record, must be kept for seven years after the transfer instruction was passed on to the interposed person.

13 Records about AML/CTF programs

- 13.1 Part 10, Division 5 of the AML/CTF Act specifies that a reporting entity must retain:
- (a) a record, or a copy of a record, of the adoption of its AML/CTF program
 - (b) the program, or a copy of the program, which has been adopted.
- 13.2 A record of adoption of the program, which may specify the date on which this took place, must be kept for the period beginning when the record has been prepared and ending seven years after the day on which the adoption ceases to be in force. The program itself must be retained for the period beginning at the time the program is adopted and ending seven years after the day the adoption ceases to be in force.

- 13.3 When an AML/CTF program is varied, the reporting entity must retain the variation, or a copy of the variation, for the period beginning at the time of the variation and ending seven years after the day on which the adoption of the program ceases to be in force.
- 13.4 A reporting entity, in its discretion, may include in its AML/CTF program as much detail as it considers appropriate regarding its AML/CTF program, when considered within the context of the reporting entity's risk management framework. It does not necessarily need to contain information of operational requirements to be implemented, or of records of procedures undertaken by the reporting entity, in order to implement the program. Refer to AUSTRAC's guidance note *Risk management and AML/CTF programs* for further information about risk management frameworks.

14 Records about due diligence assessments of correspondent banking relationships

- 14.1 Part 10, Division 6 of the AML/CTF Act requires a financial institution to retain a record, or a copy of a record, of a due diligence assessment of a correspondent banking relationship.
- 14.2 Such due diligence assessments are carried out under Part 8 of the AML/CTF Act before and/or after entering into a correspondent banking relationship, where warranted by a preliminary risk assessment of the relationship's vulnerability to money laundering or terrorism financing. Refer to AUSTRAC's guidance note *Correspondent banking* for further information about risk and due diligence assessments.
- 14.3 The financial institution must retain the record, or a copy of the record, for seven years after the record has been prepared. These record-keeping obligations do not apply to preliminary risk assessments made under Part 8 of the AML/CTF Act.

15 Certain designated services

- 15.1 Under subsections 39(6) and (7) of the AML/CTF Act, the following services are exempt from Part 2 of the AML/CTF Act:
- (a) accepting payment of the purchase price for a new pension or annuity (item 40 of table 1 in section 6)
 - (b) accepting a superannuation contribution, roll-over or transfer (item 42)
 - (c) accepting a retirement savings contribution, roll-over or transfer (item 44)
 - (d) the holder of an Australian financial services licence arranging for a person to receive a designated service under items 40, 42 and 44.
- 15.2 Reporting entities are not required to carry out the applicable customer identification procedure in relation to any of the services described in 15.1(a) to (c) above, until a payment is made by the reporting entity to the customer. Once an applicable customer identification procedure is carried out as a result of a payment being made to the customer (or for any other reason), the reporting entity is required to make and retain a record of the procedure, or a copy of the record, for a period of seven years unless the reporting entity continues to provide any designated service(s) to the customer. The record is then kept for seven years after the last designated service is provided. In relation to 15.1(d) above, the holder of the Australian financial services licence is not required to carry out the applicable customer identification procedure with respect to the arranging of a designated service under items 40, 42 and 44. If the reporting entity does carry out the applicable customer identification procedure, then the reporting entity will be required to make and retain a record of it.
- 15.3 Reporting entities are also exempt from record-keeping requirements under subsection 118(5) of the AML/CTF Act – except for those relevant to transferred ADI records, or records of closed ADI accounts, electronic funds transfers, AML/CTF programs and due diligence assessments of correspondent banking relationships –

where the designated service is provided at or through a permanent establishment of the reporting entity in a foreign country.

Further information

AUSTRAC officers are able to assist reporting entities, their staff and the public in providing general information relating to the AML/CTF Act. Enquiries can be directed to the AUSTRAC Help Desk via:

- email to help_desk@austrac.gov.au
- telephone 02 9950 0827 or 1300 021 037 (a local call within Australia).

The information contained in this document is intended only to provide a summary and general overview on these matters. It is not intended to be comprehensive. It does not constitute, nor should it be treated as, legal advice or opinions. This document may contain statements of policy which reflect AUSTRAC's administration of the legislation in carrying out its statutory functions. The Commonwealth accepts no liability for any loss suffered as a result of reliance on this publication. AUSTRAC recommends that independent professional advice be sought.

The information contained herein is current as at the date of this document.

Reporting entities should note that in relation to activities they undertake to comply with the AML/CTF Act, they will have obligations under the *Privacy Act 1988*, including the requirement to comply with the National Privacy Principles, even if they would otherwise be exempt from the Privacy Act. For further information about these obligations, please go to <http://www.privacy.gov.au> or call 1300 363 992.

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