



Australian Government

Australian Transaction Reports  
and Analysis Centre

## Public Legal Interpretation series

# Public Legal Interpretation No. 9 – customer identification requirements under the AML/CTF Act

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### Currency

The views on the subject matter set out in this Public Legal Interpretation are the views of AUSTRAC at 10 March 2009.

You should ensure that this Public Legal Interpretation has not been superseded or withdrawn.

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## Objective

1 The purpose of this Public Legal Interpretation is to set out AUSTRAC's views on the identification procedures set out in Part 2, Divisions 1-5 and 7 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act).

2 This Public Legal Interpretation does not cover ongoing customer due diligence as defined in Part 2, Division 6 of the AML/CTF Act.

3 This Public Legal Interpretation deals with:

Section one:

- The nature and content of risk-based 'applicable customer identification procedures' under Part 7 of the AML/CTF Act and the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* (AML/CTF Rules 2007)

Section two:

- When and in what circumstances 'applicable customer identification procedures' are to be carried out as set out in Part 2 of the AML/CTF Act

Section three:

- Relevance of the '100 point check' prescribed in the *Financial Transaction Reports Regulations 1990* for identification procedures under the AML/CTF Act.

## Introduction

4 The objects of the AML/CTF Act include fulfilling Australia's international obligations and addressing matters of international concern in combating money laundering and the financing of terrorism. To fulfil these obligations and address matters of international concern, the AML/CTF Act places obligations on reporting entities under the Act when providing designated services.

5 Part 2, Divisions 1-5 and Division 7 of the AML/CTF Act came into force on 12 December 2007. When providing designated services, reporting entities must comply with the applicable customer identification procedures as set out in Part 2 of the AML/CTF Act and in Chapters 4, 5, 6 and 10 of the AML/CTF Rules 2007.

6 A reporting entity provides a designated service if it provides any of the services in tables 1, 2, 3 and 4 of section 6 of the AML/CTF Act. Public Legal Interpretation No. 4 dealt generally with designated services. A reporting entity is defined in section 5 as a person who provides a designated service. Public Legal Interpretation No. 4 deals with what constitutes a reporting entity.

## Interpretation

### Section one – content of applicable customer identification procedures

7 Section 5 of the AML/CTF Act defines ‘applicable customer identification procedure’ as follows:

***applicable customer identification procedure***: for the purposes of the application of this Act to customers of a reporting entity, ***applicable customer identification procedure*** has the meaning ascertained in accordance with:

- (a) if all of the designated services provided by the reporting entity are covered by item 54 of table 1 in section 6, and there is no joint anti-money laundering and counter-terrorism financing program that applies to, and has been adopted by, the reporting entity:
  - (i) a special anti-money laundering and counter-terrorism financing program that applies to, and has been adopted by, the reporting entity; or
  - (ii) if the program has been varied on one or more occasions—the program as varied; or
- (b) in any other case:
  - (i) Part B of an anti-money laundering and counter-terrorism financing program that applies to, and has been adopted by, the reporting entity; or
  - (ii) if the program has been varied on one or more occasions—Part B of the program as varied.

Note: Item 54 of table 1 in section 6 covers a holder of an Australian financial services licence who arranges for a person to receive a designated service.

8 The content of the applicable customer identification procedures is therefore set out in the AML/CTF programs applying to and adopted by reporting entities, as varied.

#### Standard, joint and special anti-money laundering and counter-terrorism financing programs

9 Part 7 of the AML/CTF Act<sup>1</sup> requires reporting entities to have<sup>2</sup> and comply with<sup>3</sup> an anti-money laundering and counter-terrorism financing program.

10 Part 7 sets out three types of AML/CTF programs: standard,<sup>4</sup> joint<sup>5</sup> and special.<sup>6</sup> Paragraphs 84(3)(a) and 85(3)(a) of the AML/CTF Act state that Part B of the standard and joint AML/CTF programs are parts ‘the sole or primary purpose of which is to set out the applicable customer identification procedures’ applying to customers of that reporting entity (or entities for joint AML/CTF programs).

11 A standard AML/CTF program applies to a reporting entity. A joint AML/CTF program is a program adopted by reporting entities in a designated business group.

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<sup>1</sup> Part 7 of the AML/CTF Act came into force on 12 December 2007.

<sup>2</sup> Section 81 of the AML/CTF Act.

<sup>3</sup> Section 82 of the AML/CTF Act states that a reporting entity must comply with Part A of its AML/CTF program.

<sup>4</sup> Subsection 84(3) prescribes Part B of the standard AML/CTF program.

<sup>5</sup> Subsection 85(3) prescribes Part B of the joint AML/CTF program.

<sup>6</sup> Subsection 86(1) prescribes the applicable customer identification procedures for providers of designated services under item 54, table 1 in subsection 6(2) of the AML/CTF Act.

- 12 Section 86 of the AML/CTF Act provides that a special anti-money laundering and counter-terrorism financing program applies to a particular reporting entity where all of the designated services provided by the reporting entity are covered by item 54 in table 1 of section 6 of the AML/CTF Act, and:

the sole or primary purpose of which is to set out the applicable customer identification procedures...<sup>7</sup>

applying to customers of that reporting entity.

- 13 Part B of AML/CTF programs and special AML/CTF programs must also comply with requirements set out in the AML/CTF Rules: paragraphs 84(3)(b), 85(3)(b) and 86(1)(c) of the AML/CTF Act.
- 14 Section 91 of the AML/CTF Act provides that AML/CTF Rules made for the purposes of paragraphs 84(3)(b), 85(3)(b) and 86(1)(c) may require Part B of standard and joint or special AML/CTF programs to provide that one or more elements of the applicable customer identification procedure for the customer must involve the reporting entity obtaining a certificate, to be known as a disclosure certificate, from the customer; or a person who is associated with the customer. Draft AML/CTF Rules proposed for this purpose are referred to in 'Related information' below.
- 15 A special AML/CTF program or Part B of a standard or joint AML/CTF program will therefore apply depending on the designated service provided by a reporting entity and on whether a reporting entity is part of a designated business group.
- 16 Accordingly, the AML/CTF programs adopted, maintained and complied with by reporting entities are the key element in determining what applicable procedures must be followed to identify customers of a reporting entity. The AML/CTF Rules prescribe applicable customer identification procedures for collection and verification of information about customers.

### AML/CTF Rules

- 17 The AML/CTF Rules 2007 set out the minimum requirements that must be included in Part B of standard and joint and in special AML/CTF programs.
- 18 In addition to minimum collection and verification requirements, the AML/CTF Rules 2007 prescribe the factors that a reporting entity must consider in identifying its money laundering and terrorism financing (ML/TF) risk to the extent that it complies with the Rules by 'putting in place appropriate risk-based systems and controls'.
- 19 Part 1.2 of the AML/CTF Rules 2007 sets out 'key terms and concepts' relevant to applicable customer identification procedures including 'KYC information'. 'KYC information' means 'know your customer information' and may include the matters referred to in Part 1.2 for the types of customers described in that Part.
- 20 Chapter 4 of the AML/CTF Rules 2007 specifies 'the requirements with which Part B of a reporting entity's standard AML/CTF program or Part B of a reporting entity's joint AML/CTF program must comply'.<sup>8</sup> Paragraph 4.1.1 states that 'the sole or primary purpose of Part B is to set out the reporting entity's applicable customer identification procedures'.
- 21 Chapter 5 of the AML/CTF Rules 2007 applies to special programs in a similar manner as Chapter 4. Chapter 5 of the AML/CTF Rules 2007 specifies 'the requirements with which a special AML/CTF program must comply'. Part 5.2 of the AML/CTF Rules 2007 states that the requirements with which a special AML/CTF program must comply:

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<sup>7</sup> Paragraph 86(1)(b) of the AML/CTF Act.

<sup>8</sup> AML/CTF Rules 2007 paragraph 4.1.1.

are the requirements that are specified in the Rules in Chapter 4 with respect to Part B of a standard AML/CTF program and Part B of a joint AML/CTF program.

For the avoidance of doubt, the requirements specified in the Rules in Chapter 4 apply with respect to a special AML/CTF program as if any reference in those paragraphs to 'Part B' includes a reference to 'a special AML/CTF program'.

- 22 Chapter 4 and Chapter 5 of the AML/CTF Rules 2007 do not apply to pre-commencement customers of a reporting entity.<sup>9</sup>
- 23 Paragraph 4.1.2 of the AML/CTF Rules states that some of the requirements specified in Chapter 4 may be complied with 'by a reporting entity putting in place appropriate risk-based systems and controls'. If a reporting entity chooses to put in place risk-based systems and controls, the reporting entity must have regard to the nature, size and complexity of its business 'and the type of ML/TF risk that it might reasonably face'.
- 24 Paragraph 4.1.3 states that in identifying its ML/TF risk a reporting entity must consider the risk posed by its customer types, the types of services it provides, the methods by which it delivers such services, and the foreign jurisdictions with which it deals.
- 25 As this risk assessment is required to satisfy paragraphs 4.1.2 and 4.1.3, reporting entities that do not have a Part A in their AML/CTF program (such as those that only provide item 54 designated services), must still perform this risk assessment in adopting, maintaining and complying with a special AML/CTF program as required by section 86 of the AML/CTF Act and Chapter 5 of the AML/CTF Rules 2007.

#### *Minimum standards prescribed in the Rules*

- 26 Chapter 4 of the AML/CTF Rules 2007 sets out applicable customer identification procedures for collection and verification of information about certain types of customers. Both collection and verification are required as part of the applicable customer identification procedures specified for Part B of standard and joint and special programs.
- 27 Paragraph 4.1.4 states that the Rules specify different requirements with which Part B must comply in relation to different types of customers. Different customer identification procedures (for both collection and verification of KYC information) apply depending on the customer type as set out in:
  - Part 4.2 for individuals or natural persons
  - Part 4.3 for companies
  - Part 4.4 for customers who act in the capacity of trustee of a trust
  - Part 4.5 for customers who act in the capacity of a member of a partnership
  - Part 4.6 for incorporated or unincorporated associations
  - Part 4.7 for registered co-operatives
  - Part 4.8 for government bodies
  - Part 4.11 for agents of customers.
- 28 The relevant Part applicable to a type of customer prescribes a minimum standard or 'safe harbour' for collection and verification of identification information.

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<sup>9</sup> AML/CTF Rules 2007 paragraphs 4.1.1 and 5.1.2.

- 29 For example, paragraph 4.2.3 requires as a minimum that a reporting entity collect the following KYC information from a customer who is an individual (other than a customer who notifies the reporting entity that he or she is a customer in his or her capacity as a sole trader):
- the customer's full name
  - the customer's date of birth
  - the customer's residential address.
- 30 Paragraph 4.2.6 states that Part B (and therefore by extension special programs) must include, as a minimum, a procedure to verify the following KYC information about an individual customer:
- the customer's full name; and
  - either the customer's date of birth or residential address.
- 31 The minimum prescribed standards for each type of customer are set out in the AML/CTF Rules 2007 at paragraphs:
- 4.2.3 (collection of information about an individual)
  - 4.2.4 (collection of information about an individual who notifies the reporting entity that he or she is a customer in the capacity of a sole trader)
  - 4.2.6 (verification of information about an individual)
  - 4.3.3 (collection of information about a company)
  - 4.3.5 (verification of information about a company)
  - 4.4.3 (collection of information about a trust)
  - 4.4.5 (verification of information about a trust)
  - 4.4.9 (collection of information about trustees and beneficiaries of a trust)<sup>10</sup>
  - 4.5.3 (collection of information about a partner in a partnership)
  - 4.5.5 (verification of information about a partner in a partnership)
  - 4.6.3 (collection of information about an incorporated or unincorporated association)
  - 4.6.5 (verification of information about an incorporated or unincorporated association)
  - 4.7.3 (collection of information about a registered co-operative)
  - 4.7.5 (verification of information about a registered co-operative)
  - 4.8.3 (collection of information about a government body)

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<sup>10</sup> Paragraph 4.4.13 provides that Part B of an AML/CTF program need not comply with paragraphs 4.4.9 – 4.4.12 in relation to a government superannuation scheme established by legislation, or to a managed investment scheme registered by ASIC or to an unregistered managed investment scheme that has only wholesale clients and that does not make small scale offerings. Paragraph 4.4.14 provides that Part B need not comply with paragraph 4.4.9 in relation to a registered trust that is subject to the regulatory oversight of a Commonwealth statutory regulator in relation to its activities as a trust.

- 4.8.5 (verification of information about a government body)
- 4.11.6 (collection of information from an agent of a customer where the agent is an individual)
- 4.11.12 (verification of information about an agent of a customer who is an individual).

*Risk-based systems and controls*

- 32 In addition to the minimum standards for collection and verification of KYC information about customers, the AML/CTF Rules 2007 provide that reporting entities must have appropriate risk-based systems and controls to determine whether additional KYC information should be collected and verified. These are prescribed at paragraphs 4.2.5, 4.3.4, 4.4.4, 4.4.10, 4.5.4, 4.6.4, 4.7.4 and 4.8.4<sup>11</sup> and in paragraphs 4.2.8, 4.3.6, 4.4.6, 4.4.11, 4.5.6, 4.6.6, 4.7.6, 4.8.6, 4.11.3 and 4.11.7.<sup>12</sup>
- 33 This means that a reporting entity is to determine the scope of Part B of its AML/CTF program or special program in accordance with its assessment of its ML/TF risk and its determination of appropriate risk-based systems and controls to mitigate and manage that risk.
- 34 In determining its ML/TF risk a reporting entity must consider the factors set out in paragraph 4.1.3 (discussed above at paragraph 24). In putting in place appropriate risk-based systems and controls, a reporting entity must have regard to the factors particular to risks faced by its own business as set out in paragraph 4.1.2 (discussed above at paragraph 23).
- 35 Having assessed its ML/TF risk and considered the factors relevant to its business, a reporting entity, if it considers appropriate, may adopt as its Part B or special program a procedure which is, for example, consistent with the 100 point check. This is consistent with the requirements of the AML/CTF Rules 2007: see section three below.

**Section two – carrying out applicable customer identification procedures under Part 2 of the AML/CTF Act**

- 36 Part 2 of the AML/CTF Act defines when and in what circumstances the applicable customer identification procedures are to be carried out by reporting entities. Part 2 of the AML/CTF Act covers the following:
- pre commencement customers under section 28
  - low risk services under section 30
  - generally applicable position (unless exempted by a specific provision in Part 2) under section 32: a reporting entity ‘must not commence to provide a designated service’ unless the applicable customer identification procedures have been carried out
  - special circumstances that justify carrying out applicable customer identification procedures after the commencement of the provision of a designated service under section 33, and prescription of the period in which the applicable customer identification procedures must be carried out after commencement of the service: paragraph 34(1)(d)
  - verification of the identity of a customer as set out in section 35 where an event or circumstance prescribed in the AML/CTF Rules happens or comes into existence, where verification must occur within the period prescribed in the Rules
  - exceptions under section 39 to the requirement to carry out applicable customer identification procedures.

<sup>11</sup> This group of paragraphs applies to collection of additional KYC information.

<sup>12</sup> This group of paragraphs applies to verification of additional KYC information that is collected.

### Pre-commencement customers under sections 28 and 29 of the AML/CTF Act

- 37 Section 28 of the AML/CTF Act creates an exception to the requirements provided for in sections 32 and 34 of the AML/CTF Act where a reporting entity provides a post-commencement designated service to a customer where they had provided a designated service to the customer before the commencement of section 28; that is, 12 December 2007. Such a customer is known as a pre-commencement customer.
- 38 Section 29 prescribes that a reporting entity must take steps as specified in the AML/CTF Rules within the time limit allowed in the Rules to verify the identity of a pre-commencement customer where a suspicious matter reporting obligation arises in relation to this customer. Public Legal Interpretation No. 6 deals with suspicious matter reporting obligations.
- 39 Part 6.3 of the AML/CTF Rules 2007 prescribes the steps to be taken to verify the identity of pre-commencement customers within 14 days after the day on which a suspicious matter reporting obligation arises.

### Low-risk services under section 30 of the AML/CTF Act

- 40 Section 30 of the AML/CTF Act applies to the provision by a reporting entity of a designated service to a customer, 'if, under the AML/CTF Rules, the service is taken to be a low-risk designated service'. AUSTRAC may specify that a designated service is low risk by making Rules to this effect. To date, there have been no AML/CTF Rules made for the purpose of section 30.
- 41 Subsection 30(2) provides that sections 32 and 34 do not apply to the provision by the reporting entity of such a service.
- 42 The AML/CTF Rules 2007 focus on the nature of the risk faced by a reporting entity and its relationship with different types of customers. The AML/CTF Rules 2007 permit reporting entities to adopt appropriate risk-based systems and controls to identify, mitigate and manage such risks (see for example paragraphs 4.2.11 and 4.2.13).<sup>13</sup> The Rules do not provide that a reporting entity may specify that a particular designated service is a low-risk designated service as set out in section 30 of the AML/CTF Act.

### Verification of the identity of a customer – Chapter 6 of the AML/CTF Rules 2007

- 43 Chapter 6 of the Rules is not part of the 'applicable customer identification procedures' specified in Chapter 4 of the Rules. Chapter 6 of the AML/CTF Rules prescribes verification requirements for some types of services including:
- verification of the identify of customers for the purposes of section 35
  - verification of the identity of pre-commencement customers
  - verification of the identity of low-risk customers.
- 44 Section 35 of the AML/CTF Act applies if a reporting entity has carried out or purported to carry out the applicable customer identification procedures, and a matter prescribed in the AML/CTF Rules has occurred. If applicable, the reporting entity must carry out the action within the time as specified in the AML/CTF Rules.
- 45 Part 6.2 of the AML/CTF Rules 2007 specifies that section 35 applies to a reporting entity in circumstances where a 'reporting entity suspects on reasonable grounds that the customer is not the person that he or she claims to be'. Part 6.2 states that 'one or more of the actions' must be taken by the reporting entity within 14 days of a reporting entity suspecting on reasonable grounds that a customer is not the person he or she claims to be.

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<sup>13</sup> Paragraphs 4.2.11 and 4.2.13 provide that where a reporting entity determines that its relationship with a customer is of 'medium or lower risk' it may comply with the less onerous minimum requirements for collection and verification of KYC information specified there.

- 46 Paragraph 6.2.3 requires the reporting entity to collect ‘any KYC information’, or to verify certain KYC information that has been collected from a reliable and independent source:
- for the purpose of enabling the reporting entity to be reasonably satisfied that the customer is the person that he or she claims to be.
- 47 Part 6.2 does not require (but may allow) the reporting entity to carry out the applicable customer identification procedures again. Ultimately under Part 6.2 the reporting entity is responsible for ensuring that the KYC information that is collected or verified, meets the purpose of providing satisfaction about the customer’s identity.
- 48 Part 6.2 of the AML/CTF Rules 2007 can be contrasted with Parts 6.3 and 6.4 of the AML/CTF Rules 2007 which apply to pre-commencement customers and customers of services prescribed as ‘low risk’ under paragraph 31(1)(b) of the AML/CTF Act.
- 49 As stated above (see paragraph 39), Part 6.3 of the AML/CTF Rules 2007 prescribes the steps to be taken to verify the identity of pre-commencement customers within 14 days after the day on which a suspicious matter reporting obligation arose. Paragraph 6.3.2 prescribes that a reporting entity must:
- carry out the applicable customer identification procedure unless the reporting entity has previously carried out or has been deemed to have carried out that procedure or a comparable procedure; or
  - collect any KYC information in respect of that customer; or
  - verify certain KYC information that has been obtained in respect of that customer.
- 50 Part 6.4 of the AML/CTF Rules 2007 prescribes the steps to be taken to verify the identity of customers of low-risk designated services within 14 days after the day on which a suspicious matter reporting obligation arises. Paragraph 6.4.2 prescribes that a reporting entity must carry out the applicable customer identification procedure (unless this has already been done or been deemed to be done), or must collect or verify KYC information about that customer.

General position under section 32 of the AML/CTF Act

- 51 Section 32 of the AML/CTF Act states that a reporting entity must not ‘commence to provide’ a designated service if:
- there are no ‘special circumstances’ as described in section 33 to justify the carrying out of the applicable customer identification procedures after commencing to provide the designated service;
  - the reporting entity has not previously carried out applicable customer identification procedures in respect of the customer; and
  - neither section 28 nor section 30 applies.
- 52 Section 5 of the AML/CTF Act defines ‘commence to provide a designated service’ as follows:
- commence to provide a designated service** means:
- (a) if the designated service is provided at an instant of time—provide the service; or
  - (b) if the designated service is provided over a period of time—begin to provide the service.
- 53 Section 32 of the AML/CTF Act therefore requires that a reporting entity ‘must not commence to provide a designated service to a customer’ unless it has first carried out an applicable customer identification procedure applying to that customer.

- 54 AUSTRAC therefore considers that section 32, absent any of the factors which exclude its operation, imposes an obligation to carry out applicable customer identification requirements at or before the time that a reporting entity commences to provide a designated service to a customer. AUSTRAC considers that 'commences' has its ordinary meaning and may, depending on particular facts, occur after a reporting entity makes an 'offer' to provide a designated service.
- 55 Section 34 allows an applicable customer identification procedure to be carried out after commencing to provide a designated service where special circumstances exist that justify the carrying out of the applicable customer identification procedure after the provision of the designated service.
- 56 Section 33 of the AML/CTF Act provides that special circumstances can be specified in the AML/CTF Rules. Currently, only Part 10.4 of the AML/CTF Rules 2007 has been made for the purpose of paragraph 33(b) of the AML/CTF Act. Part 10.4 applies to accounts for online gambling services. Part 10.4 of the AML/CTF Rules 2007 specifies the special circumstances (importantly including that withdrawal of funds from the account prior to carrying out the applicable customer identification procedure is not permitted) in which the carrying out of the applicable customer identification procedure can be postponed for up to 90 days commencing on the day that the reporting entity opens an online account in the name of the customer.

#### Exceptions under section 39

- 57 Section 39 of the AML/CTF Act sets out exceptions to the above requirements in Part 2. Section 39 provides for AML/CTF Rules to be made:
- specifying designated services of a particular kind to which Part 2 does not apply
  - specifying a particular provision of Part 2 that does not apply to a designated service of a kind specified in the AML/CTF Rules
  - specifying that Part 2 does not apply to provision of a designated service provided in the circumstances specified
  - specifying a particular provision of Part 2 that does not apply to a designated service provided in circumstances specified in the AML/CTF Rules.
- 58 Parts 10.1–10.3<sup>14</sup> in Chapter 10 of the AML/CTF Rules 2007 contain exemptions from collection and verification of customer identification information and record-keeping requirements for casinos, on-course bookmakers and totalisator agency boards, and gaming machines. Of particular relevance is that these Rules state that Division 4 of Part 2 of the Act does not apply in respect of the specified designated services provided in the prescribed circumstances and allow for longer time periods in which to carry out verification as required by Chapter 6 of the Rules.
- 59 Section 39 also states in subsections 39(6) and (7) that:
- Part 2 (other than Division 6 of Part 2 which relates to ongoing customer due diligence) does not apply to a designated service covered by items 40, 42, or 44 of table 1 in subsection 6(2)
  - Part 2 does not apply to a designated service covered by item 54 of table 1 in subsection 6(2) if the service relates to arrangements for a person to receive a designated service covered by item 40, 42 or 44 of that table.
- 60 AUSTRAC concludes that customers of designated services covered by items 40, 42 and 44 of table 1 in subsection 6(2) need not be identified prior to the reporting entity commencing to provide the designated service, but the designated service must be provided consistently with ongoing customer due diligence requirements.

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<sup>14</sup> These Parts are made under subsection 39(4) of the AML/CTF Act.

- 61 A designated service provided under item 54 of table 1 in subsection 6(2) is exempt from the application of Part 2 of the AML/CTF Act if the service is only to arrange for designated services under items 40, 42 or 44 of table 1 in section 6 of the AML/CTF Act.
- 62 Public Legal Interpretation No. 2 refers to designated services provided under item 54 of table 1 in subsection 6(2) of the AML/CTF Act.
- 63 Items 40 and 42 relate to superannuation products and item 44 relates to RSA (retirement savings account) providers who accept a rollover or transfer to an RSA.

**Section three – the ‘100 point check’ prescribed in the *Financial Transaction Reports Regulations 1990***

- 64 Under the *Financial Transaction Reports Act 1988* (FTR Act), cash dealers are required to verify the identity of signatories to accounts (in particular under subsections 18(1), (1A) and (1B) of the FTR Act).
- 65 Cash dealers who are ‘identifying cash dealers’<sup>15</sup> are required to use the 100 point check system or an alternative procedure<sup>16</sup> when verifying the identity of signatories to accounts as prescribed by regulation 3 of the *Financial Transaction Reports Regulations 1990* (FTR Regulations) and section 20A of the FTR Act. The value assigned to each type of document used to verify identity is prescribed by regulation 4 of the FTR Regulations.
- 66 As set out in section one of this Public Legal Interpretation, the reporting entity’s AML/CTF program is a risk-based program and will specify when and how an applicable customer identification procedure needs to be carried out, consistently with the entity’s risk-based systems and controls and the minimum prescribed standards in the AML/CTF Rules 2007.
- 67 It is AUSTRAC’s view that the customer identification procedures to be adopted by the reporting entity would be determined consistently with the AML/CTF Rules 2007 and would vary with the customer type, such as individual, sole trader, corporation, etc. It is anticipated that there would therefore not be a blanket application of one applicable customer identification procedure (for example the 100 point check) for all types of customers.
- 68 The identification procedures ultimately utilised by reporting entities may be more or less onerous than the 100 point check prescribed under the FTR Regulations.
- 69 For example, the minimum standard or ‘safe harbour’ for collection and verification of identification information set out in the AML/CTF Rules 2007 at paragraphs 4.2.3, 4.2.4, 4.2.6, 4.3.3, 4.3.5, 4.4.3, 4.4.5, 4.4.9, 4.5.3, 4.5.5, 4.6.3, 4.6.5, 4.7.3, 4.7.5, 4.8.3, 4.11.12 and 4.11.6, is less onerous than the 100 point check prescribed under the FTR Regulations, but does not legally prevent the reporting entity from setting a higher standard.
- 70 Reporting entities may therefore choose to still specify the 100 point check system, or a modified version, for their customers in their AML/CTF program. In the case of low-risk customers, this should be checked for consistency with other applicable laws, including the *Privacy Act 1988* (Cth). That is, reporting entities should carefully consider procedures that apply to customers that a reporting entity has determined are of medium or lower risk under paragraph 4.2.11 or 4.2.13 of the AML/CTF Rules (see paragraph 42 above).
- 71 Reporting entities are to ensure that their identification procedures are appropriate to the risk each customer poses and that they are consistent with requirements of other laws.

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<sup>15</sup> The meaning of identifying cash dealer is provided in section 3 of the FTR Act.

<sup>16</sup> Examples of alternative procedures prescribed in the *Financial Transaction Reports Regulations 1990* are at regulations 5-10A.

## Related Information

### Legislative instruments

The *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* (AML/CTF Rules 2007) can be found at:

[www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200730563?OpenDocument](http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200730563?OpenDocument).

AUSTRAC has made and registered the following AML/CTF Rules under subsection 39(4) of the AML/CTF Act:

Chapter 10 of the AML/CTF Rules sets out modified customer identification procedures required to be complied with by the gambling sector.

Chapter 14 of the AML/CTF Rules provides that customer identification procedures do not apply to certain designated services.

### Draft AML/CTF Rules

The following draft AML/CTF Rules proposed under subsection 39(4) of the AML/CTF Act have been released for public comment:

- AUSTRAC released draft AML/CTF Rules relating to customer identification procedures in certain circumstances relating to reporting entities involved in the assignment, conveyance, sale or transfer of businesses. The draft Rules were issued for public consultation in early 2008. As a result of that consultation, the draft Rules were amended and reissued for a further period of consultation between 19 December 2008 and 30 January 2009.
- AUSTRAC released AML/CTF Rules relating to vostro accounts. The draft Rules will exempt financial institutions from the requirement to carry out the applicable customer identification procedures for signatories to the account in certain circumstances. A public consultation period was open from 11 December 2008 to 9 January 2009.
- AUSTRAC released draft AML/CTF Rules exempting 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 \$2,000 (Australian or foreign equivalent). A public consultation period was open from 12 November 2008 to 26 November 2008.

The following draft AML/CTF Rules proposed under section 33 and paragraph 34(1)(d) of the AML/CTF Act have been released for public comment:

- AUSTRAC released draft AML/CTF Rules that provide that in specified circumstances a reporting entity may carry out the applicable customer identification procedure after commencing to provide certain designated services to a customer. The draft Rules were issued for public consultation in early 2008. As a result of that consultation, the draft Rules were amended and reissued for a further period of consultation between 19 December 2008 and 30 January 2009.

The following draft AML/CTF Rules proposed under section 32 of the AML/CTF Act have been released for public comment:

- AUSTRAC released draft AML/CTF Rules exempting reporting entities that provide insurance premium funding for general insurance, from performing the applicable customer identification procedure under section 32 of the AML/CTF Act, except when the loan is cashed out or redeemed before the expiration of the term of the loan. A public consultation period was open from 19 December 2008 to 30 January 2009.

The following draft AML/CTF Rules proposed under subparagraphs 91(1)(d)(ii), 91(2)(d)(ii) and 91(3)(d)(ii) of the AML/CTF Act have been released for public comment:

- AUSTRAC released draft AML/CTF Rules relating to disclosure certificates relevant to applicable customer identification procedures. The draft Rules provide that disclosure certificates may be provided for verification of certain customer information. The draft Rules were issued for public consultation between May 2008 and June 2008. As a result of that consultation, the draft Rules were revised and were reissued for further public consultation between 29 September 2008 and 10 October 2008.

These draft AML/CTF Rules are available on the AUSTRAC website:  
[www.austrac.gov.au/aml\\_ctf\\_rules.html](http://www.austrac.gov.au/aml_ctf_rules.html).

### **AUSTRAC publications**

The *AUSTRAC Regulatory Guide* contains guidance on obligations under the AML/CTF Act. Chapter 4 contains information regarding customer identification procedures. It is available on the AUSTRAC website at: [www.austrac.gov.au/regulatory\\_guide.html](http://www.austrac.gov.au/regulatory_guide.html).

The AUSTRAC guidance note *Gambling services*<sup>17</sup> provides information regarding the modified customer identification procedures required to be complied with by the gambling sector under Chapter 10 of the AML/CTF Rules and certain related obligations under the AML/CTF Act.

The AUSTRAC guidance note *Risk management and AML/CTF programs* provides information regarding the requirements of Part B of an AML/CTF program.

The guidance notes can be accessed at: [www.austrac.gov.au/guidance\\_notes.html](http://www.austrac.gov.au/guidance_notes.html).

The article 'Customer identification: item 54 reporting entities and product providers' has been published regarding customer identification and verification for entities that provide item 54 designated services. This article appeared in *Anti-Money Laundering* magazine, November 2008 and can also be found at: [www.austrac.gov.au/item54.html](http://www.austrac.gov.au/item54.html).

AUSTRAC has released sample customer identification procedure forms which can be found at: [www.austrac.gov.au/cust\\_id\\_forms.html](http://www.austrac.gov.au/cust_id_forms.html).

AUSTRAC has released a ready reckoner which provides a summary of minimum identification and verification requirements for low or medium risk customers under the AML/CTF Rules. It can be found at: [www.austrac.gov.au/files/ready\\_reckoner.pdf](http://www.austrac.gov.au/files/ready_reckoner.pdf).

## **Legislation attachment**

The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* is available in consolidated form at:  
[www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200627290?OpenDocument](http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200627290?OpenDocument).

## **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](mailto:help_desk@austrac.gov.au)
- telephone 02 9950 0827 or 1300 021 037 (a local call within Australia).

10 March 2009

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<sup>17</sup> August 2008, original issue (v1).