



Australian Government

**Australian Transaction Reports
and Analysis Centre**

Explanatory Statement – Amendment of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*

1. Purpose and operation of Anti-Money Laundering and Counter-Terrorism Financing Rules (AML/CTF Rules) adding Chapters 46, 47, and 48 of the AML/CTF Rules

Section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) provides that the AUSTRAC Chief Executive Officer may, by writing, make AML/CTF Rules prescribing matters required or permitted by any other provision of the AML/CTF Act.

Chapter 46 ‘Special circumstances for the applicable customer identification procedure’

Section 32 of the AML/CTF Act requires that a customer must be identified before a reporting entity provides a designated service to that customer. Section 33 of the AML/CTF Act allows for ‘special circumstances’ where customer identification can be carried out after the provision of a designated service to a customer. Section 34 allows for the relevant period to be specified by AML/CTF Rules, or if the AML/CTF Rules do not specify the period, a default period of five business days applies, commencing the day after the day on which the reporting entity commenced to provide the designated service.

In providing the item 33 designated service (acquiring and disposing of a security, derivative or foreign exchange contract), reporting entities (usually stockbrokers) may need to perform the transaction rapidly due to financial market conditions. As a result, reporting entities may not be able to carry out customer identification before the commencement of the designated service and accordingly will be in breach of their customer identification obligations under the AML/CTF Act. In addition there may be financial detriment to the customer of the reporting entity if the transaction is not carried out quickly due to the operation of financial markets.

Chapter 46 allows relevant reporting entities up to five business days in which to carry out the identification of the customer, after the commencement of the designated service to the customer, subject to the conditions listed at paragraph 46.2. These conditions are intended to limit any money-laundering/terrorism-financing risk within the securities and derivatives sector.

Chapter 47 ‘Risk-only life policy interests in a superannuation fund’

These AML/CTF Rules exempt from the AML/CTF Act, reporting entities that provide the item 42(a) (accepting a contribution, roll-over or transfer) or item 43(a) (cashing the whole or part of an interest) designated services, which relate solely to risk-only life policy interests in a superannuation fund.

‘Risk-only life policies’ are insurance policies which are triggered by specified events such as the death or permanent incapacity of the policy holder. When provided by general insurers these policies are not caught by the AML/CTF Act. However, superannuation funds may offer them and therefore they are caught by the AML/CTF Act, with consequent obligations for the reporting entities that provide these products.

These AML/CTF Rules resolve the inadvertent capture of risk-only life policies as provided by superannuation funds, by exempting reporting entities which provide them from the AML/CTF Act, subject to certain conditions.

Chapter 48 ‘Exemption of salary packaging administration services from the AML/CTF Act’

These AML/CTF Rules exempt from the AML/CTF Act, reporting entities that provide salary packaging administrative services for an employer client, in regard to the item 6 (making a loan), 7 (allowing a transaction in regard to a loan), item 31 (accepting an instruction), item 32 (making money or property available) and item 48 (guaranteeing a loan) designated services.

Salary packaging services relate to an arrangement between an employer and an employee, whereby the employee agrees to forgo part of their future entitlement to salary or wages in return for the employer providing them with benefits of a similar cost. It is noted that salary packagers provide the service to employers, rather than the employees.

The item 31 and item 32 designated services which relate to remittance services, have been included in the exemption, subject to the provision that the relevant reporting entity does not undertake transactions which involve the receipt or payment of physical currency. This condition recognizes the money-laundering/terrorism-financing risk which exists in the remittance sector.

2. Notes on sections

Section 1

This section sets out the name of the instrument, i.e. the *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2010 (No.2)*.

Section 2

This section specifies that the Instrument commences on the day after it is registered.

Section 3

This section contains the Schedule which amends the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No.1)* as follows:

Schedule 1

This schedule adds Chapters 46, 47, and 48.

3. Notes on paragraphs

Chapter 46 ‘Special circumstances for the applicable customer identification procedure’

Paragraph 46.1

This paragraph specifies that these AML/CTF Rules have been made under section 229 of the AML/CTF Act for the purposes of paragraphs 33(a), 33(b) and subparagraph 34(1)(d)(i) of that Act.

Paragraph 46.2

This paragraph specifies the conditions which must be met before a reporting entity may carry out the applicable customer identification procedure (ACIP) after commencing to provide the item 33 designated service (in the capacity of an agent, acquiring or disposing of a security, derivative or foreign exchange contract). These conditions include the requirement that the reporting entity does not accept physical currency to fund the designated service and that the transaction to which the special circumstances relate, must be performed rapidly due to financial market conditions.

Paragraph 46.3

This paragraph specifies the period in which the ACIP must take place after the commencement of the item 33 designated service to the customer. This is a maximum of 5 business days commencing the day after the day on which the designated service was provided.

Paragraph 46.4

This paragraph defines ‘derivative’, ‘security’ and ‘prescribed financial market’.

Chapter 47 ‘Risk-only life policy interests in a superannuation fund’

Paragraph 47.1

This paragraph specifies that these AML/CTF Rules have been made under section 229 of the AML/CTF Act for the purposes of subsection 247(3) of that Act.

Paragraph 47.2

This paragraph specifies that the AML/CTF Act does not apply to reporting entities that provide the item 42(a) or 43(a) designated services, in the circumstances specified in paragraph 47.3.

Paragraph 47.3

This paragraph specifies the conditions which must be met by a reporting entity before they are exempt from the AML/CTF Act when providing the item 42(a) or 43(a) designated services. The exemption only applies to the interest which relates solely to an actual or potential interest or entitlement under a risk-only life policy provided by a superannuation fund, regardless of whether the member has any other interests, benefits, entitlements, balances or accounts in that fund.

Paragraph 47.4

This paragraph defines ‘member’ and ‘Risk-only life policy’.

Chapter 48 ‘Exemption of salary packaging administration services from the AML/CTF Act’

Paragraph 48.1

This paragraph specifies that these AML/CTF Rules have been made under section 229 of the AML/CTF Act for the purposes of subsection 247(3) of that Act.

Paragraph 48.2

This paragraph specifies that the AML/CTF Act does not apply to reporting entities that provide the item 6, 7, 31, 32 and 48 designated services, in the circumstances specified in paragraph 48.3.

Paragraph 48.3

This paragraph specifies the conditions which apply to relevant reporting entities. The requirement that reporting entities should not undertake transactions that involve physical currency, recognizes the money-laundering/terrorism-financing risk which exists in the remittance sector.

Paragraph 48.4

This paragraph defines ‘salary packaging’.

4. Legislative instruments

These AML/CTF Rules are legislative instruments as defined in section 5 of the *Legislative Instruments Act 2003*.

5. Likely impact

Chapter 46 ‘Special circumstances for the applicable customer identification procedure’

These AML/CTF Rules will have a beneficial impact on those reporting entities which provide the item 33 designated service, as they will be able to comply with their customer identification obligations under the AML/CTF Act, even after commencing to provide the designated service.

Chapter 47 ‘Risk-only life policy interests in a superannuation fund’

These AML/CTF Rules will have a beneficial impact upon those reporting entities which provide the item 42(a) or 43(a) designated services, where they relate solely to risk-only life policy interests in a superannuation fund, as they will, subject to specified conditions, be exempt from the AML/CTF Act.

Chapter 48 ‘Exemption of salary packaging administration services from the AML/CTF Act’

These AML/CTF Rules will have a beneficial impact upon those reporting entities which provide the item 6, 7, 31, 32 and 48 designated services, in the course of providing salary packaging administration services, as they will, subject to specified conditions, be exempt from the AML/CTF Act.

6. Assessment of benefits

Chapter 46 ‘Special circumstances for the applicable customer identification procedure’

These AML/CTF Rules will allow industry flexibility in carrying out their customer identification obligations under the AML/CTF Act. They allow transactions to take place where customer identification cannot reasonably be undertaken before the provision of the designated service, and therefore avoid potential financial detriment to the customer of the reporting entity if the transaction is not carried out quickly due to the operation of financial markets. The AML/CTF Rules will also ease the regulatory burden on reporting entities, as they may otherwise be in breach of the AML/CTF Act if they have not carried out customer identification before the provision of a designated service.

Chapter 47 ‘Risk-only life policy interests in a superannuation fund’

These AML/CTF Rules will exempt from the AML/CTF Act those reporting entities which provide risk-only life policies in a superannuation fund. The regulatory burden of the AML/CTF Act is eliminated for those reporting entities which only provide the relevant designated services, and reduced in the case of those reporting entities which provide designated services other than those specified in these AML/CTF Rules.

Chapter 48 ‘Exemption of salary packaging administration services from the AML/CTF Act’

These AML/CTF Rules exempt from the AML/CTF Act those reporting entities which provide salary packaging administration services. The regulatory burden of the AML/CTF Act is eliminated for those reporting entities which only provide the relevant designated services, and reduced in the case of those reporting entities which provide designated services other than those specified in these AML/CTF Rules.

7. Consultation

AUSTRAC has consulted with the Office of the Privacy Commissioner, the Australian Customs and Border Protection Service, the Australian Federal Police, the Australian Taxation Office and the Australian Crime Commission, in relation to these AML/CTF Rules.

AUSTRAC also published a draft of each of these AML/CTF Rules on its website for public comment.

8. Ongoing consultation

AUSTRAC will conduct ongoing consultation with stakeholders on the operation of these AML/CTF Rules.