



Australian Government

**Australian Transaction Reports
and Analysis Centre**

AUSTRAC GUIDANCE NOTE

Opening an account



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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 AML/CTF 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 and 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 information about when an account has been 'opened' for the purposes of the AML/CTF Act and AML/CTF Rules.

2. Definitions in the AML/CTF Act

- 2.1 Section 5 of the AML/CTF Act defines 'account' as including:
 - (a) a credit card account
 - (b) a loan account (other than a credit card account)
 - (c) money held in the form of units in a cash management trust or a trust as prescribed in the AML/CTF Rules (note: such AML/CTF Rules have not been made at the date of this guidance note).
- 2.2 The AML/CTF Act defines 'opening' in relation to an account as 'creating the account.' This is regardless of whether the account holder has been given an account number or they (or any other signatory) can conduct transactions on the account.
- 2.3 For details of the 'special circumstances' treatment of accounts relating to online gambling services, for paragraph 33(b) of the AML/CTF Act, please see Part 10.4 of the AML/CTF Rules in *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*.

3. Extended definition of 'opening an account'

- 3.1 Part 2 of the AML/CTF Act provides that a reporting entity must not commence to provide a designated service to a customer except where it involves a pre-commencement customer, a low-risk service prescribed in the AML/CTF Rules (which have not been made at the date of this guidance note), or is exempted by AML/CTF Rules, if the entity has not carried out the customer identification procedure in accordance with chapter 4 of the AML/CTF Rules.
- 3.2 The process of assessing a customer's application for an account usually involves a number of steps which may not result in a clearly identifiable particular moment in time when it is clear the account has been 'created'.
- 3.3 There is no power in the AML/CTF Act for AUSTRAC to legislatively define further, for the purpose of the AML/CTF Act definition of 'opening' in relation to an account (as described in item 1 of table 1 in section 6 of the AML/CTF Act), when an account is opened. Until the customer has been identified in accordance with the reporting entity's applicable customer identification procedure, the account may be considered to be 'created' or 'opened' but not operational (that is, a transaction is not yet able to be carried out in relation to the account). To provide guidance about when an account is opened, AUSTRAC considers the following to be relevant:
- (a) a deposit product (as defined in chapter 7 of the *Corporations Act 2001*) – to occur when the customer is able to withdraw or transfer funds from the account
 - (b) a credit or debit card account – to occur when the customer is able to withdraw or transfer funds, or conduct transactions, from the account
 - (c) a loan account – to occur when the customer is able to withdraw or transfer funds from the account.
- 3.4 In relation to item 3 in table 1 of section 6 of the AML/CTF Act, a transaction in relation to an account may not be allowed to be conducted until the account is operational.

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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