



Section 92 & Enhanced Customer Due Diligence Guidance

Guidelines for obtaining additional information from patrons about income or source of funds to meet AML/CTF obligations.



Clubs sometimes need to ask patrons for additional information on income or source of funds in order to ensure that obligations under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (the Act)¹ are satisfied, especially if patrons profile as high risk.

This guidance note is designed to help ClubsNSW members to:

- identify situations when additional information may be required
- understand how to ask for additional information from patrons using Section 92 where normal process indicates a patron may be higher risk
- understand how to implement a simple process for information collection and retention
- draft letters to patrons
- handle responses including reporting.

¹ The current version of the Act can be found at this link: <<https://www.legislation.gov.au/Details/C2020C00362>>.

Background

This guidance note sets out suggested approaches which ClubsNSW have deemed appropriate for member organisations. It is not a prescriptive standard and should not be treated as such—club management is encouraged to tailor approaches to the risk profile of their business and operations.

Your Anti-Money Laundering (AML) program has clear requirements around identifying patrons and transactions, including the risk rating of patrons.

From time to time, your club may identify a need for additional information from a patron, or group of patrons, to complete enhanced due diligence, especially if you have determined them to be higher risk. While this will often be a simple and direct process in person, Section 92 of the Act also provides a specific process by which clubs can ask questions of patrons and prospective patrons in a way which protects your club and assists in fulfilling regulatory requirements cleanly.

Guidance

1 Identifying when patrons may be required to produce additional information in writing

The majority of your patrons will not have any difficulty in providing proof of identification and other requested material in line with your club's policy. However, from time to time, a new or existing patron may be unable to provide standard

documentation, or may otherwise come to the attention of management due to behaviour which may suggest a higher risk relationship.

Part A of your AML program must set out situations where enhanced due diligence may be necessary in order to provide, or continue to provide, a service.

Example

Sarah is a retired teacher and a long-term patron of her local sailing club, and has been using the gaming machines occasionally for the length of her membership. In mid-2020 she starts to visit the club more frequently, and is observed depositing sums in excess of 2,500 AUD a night. The staff notice this change in behaviour and escalate to management. Sarah is determined to be a higher risk patron in line with the club's AML program, which has specific reference to change in behaviour as an indicator of increased risk.

The management determines that there are not as yet grounds for suspicion—the situation is unusual, not suspicious, based on the experience of the club management. However, the club decides to make a written request to Sarah to fulfil its Part A program enhanced due diligence standards to gather information in an organised way.

2 Documenting requests to patrons

It is important that a club documents each time an s92 request is made to a patron, details of the request, and information received in return, as well as any resulting decisions made by the club in respect of the patron. This may be by means of a simple spreadsheet or by accurate written records, but copies of communications with patrons should be kept on file.

Example

The sailing club has a standard template letter to provide to patrons. The manager keeps a spreadsheet detailing the membership number, patron name, letter provided, and date, along with columns for date of reply expected and response received. The spreadsheet is securely protected from non-authorized staff as it may contain personal information.

The manager prints a letter, tailored to the situation, and plans to provide a copy to Sarah on her next visit. If she does not visit within five business days, the manager will instead mail to the address on file. The manager then updates the spreadsheet.

3 Example approaches to patrons

The Section 92 of the Act allows regulated entities to request additional information from patrons in a manner which provides protection from criminal or civil suits as long as the officer of the club has acted in good faith.

An example letter is provided at the end of this guidance—clubs are at liberty to use their own communication format but it is recommended that as a minimum the following items are included:

- i. clear information on who the letter is to
- ii. the reason for the letter
- iii. the information being requested
- iv. clear indication that in the absence of provision of the required information, the club may need to restrict or refuse service
- v. the timeline under which information is to be provided
- vi. the potential that the club may have follow up questions.

It is important to remember that the vast majority of patrons are not involved in criminal activity and any letter should be written with this in mind, avoiding the risk of suggesting criminality or money laundering.

It is also important to remember that the Act includes an offence of tipping off—patrons should not be informed that a report has been, or may be, made to the authorities.

The reaction of the patron may impact on your view of whether or not suspicion may exist which creates an obligation to report. For example, a patron who becomes hostile or evasive, or who seeks to avoid providing information would normally increase grounds for suspicion.

Example

Sarah returns to the club two nights later. The manager asks her for a private discussion in his office with his assistant present, explains the need to obtain additional information under Australian regulations, and provides her with the letter. The manager stresses that this is a normal inquiry for patrons who have changed gaming behaviour, and if Sarah can provide a response to the letter by the end of next week, that would be much appreciated.

4 Follow up actions

Once a request is issued to a patron, the club should monitor the agreed timeline for a response. If a response is not received by the due date, a chaser email or letter should be sent and recorded in the records of the club.

If a response is received, the club management should review whether:

- the information provided covers all the issues requested
- the information is in an appropriate format
- whether any additional information is required (for example, a patron claims to have a large income from investments and trading but this does not match club knowledge of the patron's understanding of financial markets)
- whether any suspicion arises from the information provided, and how to ensure that tipping off risks are minimised
- whether the patron's risk profile has changed based on the information provided (higher or lower)
- whether the patron should remain a member of the club, or if a new patron should be made a member of the club.

If the patron has provided all requested information, and is no longer judged to be higher risk, the patron should be informed and the club records updated.

Example

Sarah has responded in writing that her aunt in Athens died recently and left her an inheritance. She provides a copy of the solicitor's letter from Greece as evidence. She had indeed been gaming more as a result, but had not realised how much she was gaming and thanked the club for the inquiry. She looks forward to continue being an active member of the club but will be more aware of her performance in future.

Club management agrees that based on the information provided, there are no grounds for suspicion. Sarah is to be treated as a standard risk on an ongoing basis.

A patron's response may not indicate they are a higher risk for money laundering but may indicate a responsible gambling concern. Staff should be aware of behavioural indicators of increased or excessive gambling leading to some level of distress.

If any staff have concerns that this may be a problem gambling issue, rather than money laundering, please call ClubSAFE on 1800 99 77 66 or by emailing clubsafe@clubsnsw.com.au.

5 Suspicious matter reporting

Sometimes the information received from a patron will not result in a clear low risk decision. Where information

is conflicting from other information in the club's possession, missing critical details, not fulfilling the request from the club, or indicates potential criminality, management may be in the position of forming a suspicion that required a report to AUSTRAC.

Example

After unusual spending patterns, Johan has been sent an information request by his local club, asking for information relating to his employment and income. Johan responds with information that he works for a government agency, but that as a side job he also undertakes building work for cash in hand jobs, which he then uses on his nights out with mates. He has no invoices or pay slips for this income but is happy to provide a contact of one of his recent clients to confirm the source of the money.

In this case, Johan has indicated probable tax evasion and possible unlicensed building or other work. The club should consider the most appropriate way of disclosing to AUSTRAC, being mindful of the timelines for reporting, and must decide on whether or not Johan can continue to receive a service.

Club management should ensure that staff are reminded of the risk of 'tipping off' – whereby a patron or other unauthorised individuals are provided with information that a report has been or will be made to the authorities. Such 'tipping off' carries the risk of prosecution and staff should be aware of the strict need for confidentiality around the process.

Conclusion

Use of a written request for information under S92 of the Act is a formal step which clubs can use to standardise information collection. It can be especially useful for new patrons where an initial question mark over source of funds or identity may have arisen and a longer-term relationship does not yet exist. It can also assist in the creation of records demonstrating that club management have been diligent in documenting and recording information relevant to customer risk.

However, it is also possible to obtain information from patrons informally where appropriate. Club management should consider the most effective way to seek information which can assist in the fulfilment of regulatory obligations, bearing in mind that the vast majority of patrons will be innocent.

For more information, email clubsafe@clubsnsw.com.au.

