

6 June 2022

The Treasury
Council of Financial Regulators
Agency contact details
CANBERRA ACT 2600

via email: De-Banking@treasury.gov.au

Dear Sir/Madam

De-banking

We support the previous Government's request of the Council of Financial Regulators (CFR) to provide advice on policy options that address the issue of de-banking.

It should not be assumed that regulation alone will protect financial technology firms, digital currency exchanges, and remittance providers from experiencing de-banking or having difficulty accessing essential services such as insurance and banking products, because other highly regulated industries are also affected by this behaviour. As such, we recommend the following:

- 1. An appropriate entity should be empowered to, where appropriate, seek clarity from financial institutions around the robustness of their decision to withdraw or deny a financial service to a legally operating business.¹**

There is no entity empowered to monitor cases of de-banking, and so it is difficult for government to understand financial institution decision-making processes used to de-bank customers. A better understanding of these decisions would enable government to work with industry to improve risk mitigation and protect the integrity of national financial and security systems.

- 2. The role of AUSTRAC and financial institutions in detecting, deterring, and disrupting money laundering and terrorism financing activities should be reviewed.**

It is the responsibility of financial institutions to assess the risks of a customer breaching the AML/CTF Act, with 'no tipping off' provisions precluding the need to justify why a customer has been de-banked. This allows unfair debanking for reasons other than compliance with the AML/CTF legislation without explanation, such as the customer's Environmental, Social and Governance (ESG) performance.

AUSTRAC could engage additional resources to monitor registered entity activity and report suspect businesses to the relevant financial institutions, while financial institutions could report suspect entity activity to AUSTRAC. In both circumstances, AUSTRAC could provide advice to the financial service as to whether to retain the business as a client or de-bank them. Financial institutions should remain able to refuse service outside of their risk weighting, however they should provide a valid and specific reason for service denial.

¹ 3 June 2022. ASBFE0 Submission: Crypto asset secondary service providers: Licensing and custody requirements

- 3. Government should work with the Banking Code Compliance Committee and the Australian Banking Association to review the Banking Code of Practice and associated Guidance Notes, to ensure thorough effort is made with AUSTRAC to substantiate a customer's risk before withdrawing or denying access to a financial service.**

The banking code of conduct only refers to banks closing accounts under their terms and conditions. Revision of the Code could ensure de-banked businesses are provided greater clarity as to why their services have been withdrawn or denied.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Sarah Blyton on 02 5114 6128 or at Sarah.Blyton@asbfeo.gov.au.



The Hon. Bruce Billson
Australian Small Business and Family Enterprise Ombudsman