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Treasury
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Australia

By email: Edward.Elliott@treasury.gov.au, Ly.Reeve@treasury.gov.au, Haydn.Richardson@treasury.gov.au

Dear Edward Elliot,

Thank you for the opportunity to respond to Potential Policy Responses to De-banking in Australia.

De-banking is a major issue for members of our association, their staff, customers and suppliers. This issue has impacted businesses operating in the digital asset industry since at least 2014[1]. Our response follows The Senate Select Committee on Australia as a Technology and Financial Centre's Final report[2] which addressed debanking in Chapter 4 and 'covered the affected sectors, examples, effects, reasons provided to businesses, the regulatory landscape, the response from the banks and suggestions made to the committee to address the issue.'[3]

It is extremely disappointing that after such an extended period with numerous regulatory and government reviews that there has been no material change requiring banks to provide services to Digital Currency Exchanges (**DCEs**) and digital asset investors. As recently as this month one of our members had their accounts summarily de-banked.

Access to the core banking service in a geography is critical to the development, and ongoing running of the digital asset ecosystem. Without certainty of banking services, systemic risk increases in the sector and remains an inhibitor to the development of a robust and secure industry in Australia. Of particular concern is the compromise to the robust AML/CTF processes in the FIAT banking system that are circumvented if participants in the industry are forced to operate outside the existing banking system.

To provide evidence of the impact and continued effects of debanking on the digital asset industry and to speak to the immediate concerns of industry, Blockchain Australia conducted a survey. The survey ran for

[1] https://www.aph.gov.au/DocumentStore.ashx?id=1c7adf49-e0b2-4520-ade3-cf0d63375930&subId=710789
[2] https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024747/toc_pdf/Finalreport.pdf;fileType=application%2Fpdf
[3] https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Financial_Technology_and_Regulatory_Technology/AusTechFinCentre/Final_report/section?id=committees%2freportsen%2f024747%2f77284

ten days and was conducted online. Results will be detailed in a report to be delivered before the end of year.

The following are the key metrics from the survey.

Question	Yes	No	Total
Have you or your company been de-banked	55	18	73
- De-banked - personal	9		9
- De-banked - business	18		18
- De-banked - not specified	28		28
Was a reason provided for de-banking	8	44	52
Were you offered the ability to dispute	4	50	54
Businesses with customers impacted	30	15	45

Key findings of the survey included:

- The majority of members have been de-banked. The issue is widespread and has not improved.
- A key concern for our members is the impact this has on people, particularly small businesses and individuals who represent the majority of the industry. When an individual or organisation is de-banked the following groups are affected:
    - Business owners
    - Staff
    - Clients
    - Suppliers
- The impact to clients of exchanges includes, but is not limited to, having organisation and client accounts frozen, being de-banked and inability to complete transactions.
- There is the potential for contagion where a DCE is de-banked and is unable to complete transactions with a counterparty DCE.
- Covid has exacerbated the consequences of being de-banked with many organisations now only accepting electronic payments.
- Notice periods of account closures vary, and only two were greater than 30 days, providing little time to canvas alternatives, modify existing business processes and controls.
- In an effort to resolve the issue of de-banking, a number of respondents are willing to be named and provide details to yourselves.
- The majority of respondents were not provided with a reason for being de-banked.
- The majority of respondents were not offered an opportunity to dispute or access a recourse pathway.
- The consequences of debanking to a business include but are not limited to:
    - Reputational damage to business
    - Loss of revenue

- Increased costs
- Inability to conduct services or launch a business
- Reduced efficiency. Workarounds are time consuming and costly
- Forced to move offshore
- Forced to dissolve business
- The tying up of liquidity while significant funds are held by banks for several months

About Blockchain Australia

Blockchain Australia is the peak industry body representing Australian businesses and business professionals participating in the digital economy through blockchain technology. Blockchain Australia encourages the responsible adoption of blockchain technology by the government and industry sectors across Australia as a means to drive innovation and create jobs in Australia.

The Blockchain Australia membership base consists of 120+ leading cryptocurrency and Blockchain-centric businesses and 100+ individuals across multiple verticals, including:

- Accounting and Taxation
- Artificial Intelligence
- Art
- Banking
- Building & Construction
- Cyber Security
- Development
- Digital ID
- Education
- Energy and Resources
- Entertainment
- Gaming
- Health and Wellbeing
- Insurance
- Investment
- Legal
- Professional Services
- Recruitment
- Real Estate
- Risk and Compliance
- Supply Chain
- Venture Capital

The sector contributes AU$2.1 billion, employs approximately 11,600 people (Source) and with support from government and natural market growth, these figures could increase to AU$68.4 billion and over 206,000 people employed in the sector. To ensure Australia realises these opportunities, we seek a fit for purpose, technology-neutral, regulatory framework with clear guideposts for consumers and a focus on driving innovation and Investment.

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Detailed Response

Recommendation one: That voluntary data collection on de-banking be undertaken by the four major banks, following which, consideration will be given to a formal phase of data collection, subject to appropriate resourcing for relevant agencies.

We believe that data collection should apply to all APRA regulated banks as most affected businesses have some sort of banking relationship with T2 and T3 banks. Reasons for de-banking need to be clear and specific, and tailored to that particular applicant's circumstances, and not to their industry profile.

We are very concerned that a voluntary approach to this will result in a less than optimal outcome. We recommend that the requirement be mandatory.

We strongly recommend that reporting on debanking be extended to include self identified individuals, DCEs and other digital asset businesses so that a more accurate analysis of the problem can be completed.

To ensure it is clear that de-banking includes refusing to provide services and the freezing of accounts, we recommend that the definition for de-banking cover rejection of new account holders, ceasing to provide banking services to an existing customer and freezing an existing customer's account.

As pointed out by the CFR, most affected entities have already been de-banked. Once this data collection regime commences, businesses should be notified and told to re-apply, so as to capture that data.

To ensure that previously de-banked organisations are given a fair opportunity to have banking services made available to them, we recommend that the banks be required to conduct a fresh review of those organisations previously de-banked (without prejudice to previous decisions) should they re-apply.

Recommendation two: That all banks implement five related measures to improve transparency and fairness in relation to de-banking. These measures would apply to all instances of de-banking.

1. That banks document reasons for de-banking a customer;
2. That banks provide a customer with reasons for being de-banked
3. That banks ensure a de-banked customer who is an individual or small business has access to their Internal Dispute Resolution procedures
4. That banks provide a minimum of 30 days' notice before closing existing core banking services of a customer. This account closure notice should also inform the customer that they may access the bank's Internal Dispute Resolution procedures; and
5. That banks self-certify adherence to measures 1-4.

We are supportive of these measures but believe they need to be strengthened through the following.

1. Banking services cannot be unreasonably withheld, and the reasons for being de-banked must be clearly articulated and provide valid commercial reasons for not being willing to provide the service. We recommend that the obligations around transparency and fairness are mandatory and enforceable.
2. Unless prohibited under law, reasons for de-banking need to be provided.
3. Unless prohibited under law, 30 days' notice must be provided for individuals and 90 days for businesses.
4. We further believe clarity is needed on why AFCA believes that an EDRS would be outside its jurisdiction, given its primary responsibility is to deal with financial complaints. We believe a strong recourse mechanism to deal with potentially unreasonable debanking decisions is vital to the robustness and integrity of the overall regime, noting that while it may be difficult to intervene in the commercial decisions of a bank, this is the very purpose of an EDRS, and additional resourcing and training will help to alleviate any such issues.
5. Current arbitration channels (eg. AFCA) appear to be available, however the individuals in those organisations typically do not have sufficient subject matter expertise to adjudicate banking services for digital asset businesses. As such we recommend that the training program in Recommendation 4 be extended to dedicated individuals in the AFCA and the Ombudsman offices. We also believe personnel involved in the escalation and IDR process receive similar training.
6. Each ADI should be required by law to have a named escalation person(s) for reviewing de-banked customers. These named individuals shouldundergo training as per Recommendation 4.
7. Self certification should be confirmed as part of their annual external audit or other external assurance program.

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Recommendation three: That the four major banks be advised of the Government's expectations that they publish guidance applicable to the DCE, FinTech and remittance sectors concerning their risk tolerance and their requirements to bank these sectors.

1. We recommend that an enhanced due diligence process be developed and agreed to by the banks for digital asset businesses and if the requirements of the process are met, banking services cannot be unreasonably withheld. The standard should be similar to that of other complex high risk sectors such as gambling and construction. Included in the assessment should be a recognition of the types of services the bank will provide.

2. An example of an enhanced due diligence process is Blockchain Australia's Australian Digital Currency Industry Code of Conduct, (Link) (**Code of Conduct**) which was developed in consultation with BA Members, and three of Australia's largest 5 banks.

3. Banks should make available to the industry the minimum standards they expect, which could include a list of approved independent auditors, and their views on Codes of Conduct (like the Blockchain Australia Code of Conduct)

   The Bank's guidance should be clear and actionable, and compliance with that guidance by an applicant should guarantee an initial meeting with the Bank to discuss transactional banking services, and the opening of an account which cannot be unreasonably refused. The Bank representatives accessing each case against the guidance should have sufficient experience and flexibility to cater for the differing business models operated by digital asset businesses.

4. This obligation on the banks should be mandatory and enforceable. Non-enforceable guidance in the past has proven to be ineffective.

Recommendation four: That consideration be given by Government to funding targeted education, outreach and guidance to the FinTech, DCE and remittance sectors. If the Government is interested in pursuing capability uplift, the Participating Agencies can advise on implementation options.

We support the recommendation to provide training and believe it should be made available to the following personas in the value chain:

- AFCA and Ombudsman personnel involved in the adjudication process
- Banking personnel involved in the account opening and AML/KYC processes
- AUSTRAC
- Industry associations Blockchain Australia, FinTech and RegTech

Given the evolving nature of the industry it is important that the training be focused on basic principles, operating models and participants in the digital asset ecosystem so that all parties have a basic understanding when assessing risk. There are a number of actors in the environment that have different risk profiles, eg: investors, exchanges, product issuers, custodians, etc.

Our international digital asset business members have staff with extensive experience in working with regulators and banks both locally and internationally and would be happy to assist in the development of a training program.

We are aware that resourcing in AFCA is limited and additional funding would be required to have dedicated and appropriate resources available to perform the expected function. Given the number of people affected we would recommend an additional dedicated person be allocated to this role.

We would welcome the opportunity to meet with the Council of Financial Regulators to discuss the matters in our submission further.

Please direct any questions you may have to:

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