

3 June 2022

Director, Crypto Policy Unit  
Financial System Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

*via email:* [crypto@treasury.gov.au](mailto:crypto@treasury.gov.au)

Dear Sir/Madam

### **Crypto asset secondary service providers: Licensing and custody requirements**

We welcome the opportunity to comment on the Consultation Paper: *Crypto asset secondary service providers: Licencing and custody requirements*.

The 'right sized', proportionate and minimum effective intervention regulation of Crypto asset secondary service providers (CASSPrs) is fundamental to encourage innovation, competition, and consumer confidence. However, we cannot assume that regulation alone will protect CASSPrs 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. A separate CASSPr licensing framework to the financial services regime.**  
Adoption of a CASSPr specific licencing framework would streamline regulatory requirements whilst incorporating Anti-Money Laundering and Counter-Terrorism Financing Act (AML/CTF) obligations regarding customer identification, due diligence, record keeping and reporting. This is preferable to defining all crypto assets as financial products under section 764A of the Corporations Act as that approach would increase regulatory burden with updates every time a new crypto asset type comes to market.
- 2. An appropriate entity should be empowered to, where appropriate, seek clarity from financial institutions provide clarity around the robustness of their decision to withdraw or deny a financial service to a legally operating business.<sup>1</sup>**  
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.
- 3. 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

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<sup>1</sup> 26 June 2020. ASBFE0 Final Submission: Select Committee on Australia as a Technology and Financial Centre .

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.

**4. 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.

Yours sincerely



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