Australian Banking Association

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Director
Policy and Rules
AUSTRAC
By email: Guidance_Consultation@austrac.gov.au.

# Providing financial services to customers that financial institutions assess to be higher risk

The Australian Banking Association (**ABA**) welcomes the opportunity to comment on the Australian Transaction Reports and Analysis Centre's (**AUSTRAC**) consultation on proposed guidance for providing financial services to customers that financial institutions assess to be higher risk. The ABA has made submissions to two drafts of this guidance and this letter should be read alongside both of those submissions, dated 21 February 2022 and 19 August 2022.

The ABA supports responsible innovation across the Australian financial services sector. Regarding digital currency exchanges (**DCE**s) and virtual assets, we support the Financial Action Task Force (**FATF**) Guidance as applied to virtual asset providers, which includes a risk-based licensing framework coupled with effective monitoring and regulatory supervision.[1] Adopting this stronger regulatory approach may mitigate some of the risks inherent in virtual assets.

We support AUSTRACs intention of providing guidance to reassure reporting entities (**RE**s) and clarify expectations in relation to providing services to higher-risk sectors such as remitters and DCEs. We welcome the inclusion of additional information for these higher risk sectors to take appropriate steps to address risks associated with their business and implement appropriate systems and controls commensurate with the risk that these businesses face.

The ABA also notes the Council of Financial Regulators (**CFR**) has released its recommendations on de-banking to the government.[2] We broadly support the recommendations but note there may be implications for the draft guidance. In particular, Recommendation 2 requires REs to provide more information to customers that have been de-banked. A concern for industry that has been raised with Treasury are the implications of providing customers with reasons for not providing financial services or continuing to provide financial services without breaching the tipping off provisions.

The draft guidance similarly notes that where possible, banks should provide meaningful reasons to customers that have not been provided services, but we are unclear on how this can be operationalised in many contexts. We seek examples and additional guidance on the types of customers and proposed drafting that AUSTRAC considers as meaningful while not resulting in direct or indirect tipping off.

As such, we consider it may be useful to wait for the government response to the CFR report before finalising this guidance, so it can include further clarity for industry.

Thank you for the opportunity to provide feedback.

Yours sincerely,

Prashant Ramkumar,
Associate Policy Director
Australian Banking Association

[1] See FATF (2021), Updated Guidance for a Risk- Based Approach to Virtual Assets and Virtual Asset Service Providers, Paris, https://www.fatf-gafi.org/publications/fatfrecommendations/documents/guidance-rba-virtual-assets-2021.html

[2] https://www.cfr.gov.au/publications/policy-statements-and-other-reports/2022/potential-policy-responses-to-de-banking-in-australia/