

**DEPARTMENT OF HOME AFFAIRS AND AUSTRALIAN TRANSACTION
REPORTS AND ANALYSIS CENTRE**

PARLIAMENTARY INQUIRY WRITTEN QUESTION ON NOTICE

Select Committee on Australia as a Technology and Financial Centre

QoN Number: 04

Subject: De-banking - clarification of position for Home Affairs and AUSTRAC

Asked by: Andrew Bragg

Question:

1. Following the hearing on 27 August 2021, the committee would appreciate further information on the issue of de-banking which further clarifies the position of the Department of Home Affairs and AUSTRAC in relation to this issue. In addition to any general comments you wish to place on the record for the committee, can AUSTRAC please confirm how its monitoring and surveillance activities in relation to potential AML/CTF risks are affected when a business is de-banked by an Australian ADI?

Answer:

The Department of Home Affairs and AUSTRAC do not support a whole-of-sector approach to refusing banking services on the basis of general money laundering and terrorism financing (ML/TF) risk, which may or may not be presented by the services of a particular business.

The challenges of de-banking

Over the past decade, the range of businesses impacted by the withdrawal of banking services has expanded. Remittance providers, digital currency exchange (DCE) providers, non-profit organisations (NPOs) and fintech businesses are disproportionately facing bank account closures.

As noted in AUSTRAC's submission to the Committee dated 30 June 2021, the withdrawal of banking services from a particular customer is a commercial decision of the financial institution. The causes of de-banking are complex and go beyond Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regulation.

The factors driving de-banking include:

- the profitability to banks in providing services to these customers, as well as a lack of understanding of risks and the business models of remitters, DCE providers, NPOs and fintechs

- the reputational risks associated with dealing with higher risk customers
- the current lower risk appetites of the banking sector following the financial services Royal Commission and enforcement action by regulators in Australia and overseas
- increased competition for like services
- changed expectations of international correspondent banks
- other regulatory requirements in the financial sector, such as international sanctions regimes.

Neither the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) nor any other Act requires or compels a business to provide services to particular individual or business customers.

Implications of de-banking

The loss or limitation of access to banking services can have a devastating impact on individuals and their businesses.

As Australia's financial intelligence unit, AUSTRAC is particularly concerned that the closure of bank accounts across entire industry sectors can result in de-banked businesses being less open about the nature of their business relationships with banks. This leads to a loss of transparency, making it more difficult to distinguish lawful activity from unlawful activity.

It also requires de-banked businesses to change financial institutions frequently, which leads to banks having a less sophisticated understanding of expected transaction types and volume, due to limited historic data.

Contrary to mitigating and managing ML/TF risks, these activities can lead to businesses seeking alternative methods to conduct their transactions, such as increased reliance on cash or virtual assets, thereby increasing their exposure to criminal exploitation.

For AUSTRAC, the de-banking of businesses can lead to underground activities, resulting in a loss of financial reporting. This can impact AUSTRAC's intelligence efforts and limit intelligence able to be shared with law enforcement and intelligence partners. This subsequently impacts law enforcement and intelligence visibility, operations and intervention. For AUSTRAC's regulatory operations, challenges arise in attempting to re-engage and re-affirm that a business may be providing services. AUSTRAC has undertaken multiple campaigns to identify unregistered remittance businesses and similarly, identify newer business entrants that may be providing DCE services while unregistered.

The responsibilities of reporting entities

The AML/CTF Act requires reporting entities, including banks, remitters, DCE providers and fintechs providing designated services under the legislation, to apply a risk-based approach to the provision of those services, and assess the risk of customers on a case-by-case basis.

The risk-based approach is central to the implementation of obligations under the AML/CTF regime, and the international standards for combating ML/TF. The AML/CTF Act recognises that reporting entities are best placed to identify, understand, assess and manage the risks posed by their customers and the products and services they offer. They are required to develop systems and controls tailored to the nature, size and complexity of their business and proportionate to the level of ML/TF risks they may reasonably face. Under the risk-based approach, a reporting entity is required to apply enhanced measures to mitigate and manage higher risk scenarios.

AUSTRAC has and will continue to emphasise that banks must consider those risks as related to the individual business or entity, as opposed to any general cohort of businesses.

At the same time, AUSTRAC expects businesses operating in the remittance, DCE and fintech sectors to understand and meet their AML/CTF obligations. These sectors are being exploited by criminals, and that is why the AML/CTF Act extends to these types of businesses. The nature of these businesses may provide opportunities to put in place appropriate compliance frameworks and technology quickly and easily, compared with more complex and larger entities. Efforts to strengthen and protect their own businesses demonstrates a strong willingness and culture of compliance, and should build trust with the banking sector.

AUSTRAC responses to de-banking

AUSTRAC takes its role as Australia's AML/CTF regulator seriously and has a strong, ongoing focus on building capability, professionalism and levels of compliance across its regulated population. It does this in a variety of ways including through ongoing education, outreach and engagement, and provision of guidance to assist reporting entities to identify, mitigate and manage their ML/TF risks.

AUSTRAC continues to produce sectoral ML/TF risk assessments that are informed through engagement with law enforcement agencies and industry experts. The risk assessments enable reporting entities to better understand the risks they face and implement appropriate systems and controls to mitigate and manage these risks.

AUSTRAC recently completed a three-month registration pilot trialling enhanced application forms and vetting processes for remittance and DCE providers. The aim is to ensure more rigour around the assessment of an applicant's probity, suitability and capacity. AUSTRAC is considering the outcomes of the pilot and future steps to strengthen the registration process.

The Department of Home Affairs and AUSTRAC continue to work in partnership with key Australian and global stakeholders (such as Treasury and Department of Foreign Affairs and Trade), in supporting and contributing to solutions that address de-banking and financial inclusion.