

AUSTRALIAN BITCOIN INDUSTRY BODY

Introduction

Further to hearings before the Select Committee on Australia as a Technology and Financial Centre (“Committee”) on 8 September 2021 where debanking of cryptocurrency-related businesses was discussed, the Australian Bitcoin Industry Body (“ABIB”) wishes to provide input and its recommendations to the Committee insofar as it relates to its members which comprise of Bitcoin-only services and exchanges.

Issues at Stake

For the sake of clarity, ABIB wishes to draw the Committee’s attention to the following issues relevant to our submission:

- Digital currency exchanges (**DCEs**) and their customers are presently at risk of being debanked and having their banking services terminated and banned for life by a single written notice.
- Authorised Deposit-taking Institutions (**ADIs**) typically provide anywhere between 24 hours and 28 days’ notice of such termination.
- When such terminations do occur, it is typically done without providing any reasoning, nor is there a mechanism to appeal or review the decision.

ABIB’s Broad View

ABIB is of the view that ADIs are free to enter into commercial relationships with whom they choose and it is certainly not our contention that legislative mandates ought to be imposed on ADIs requiring them to provide services to Bitcoin-related businesses such as DCEs.

With that being said however, our contention is that the current circumstances are untenable and unduly prejudicial to both DCEs and their customers. The ability for ADIs to unilaterally terminate a banking relationship, often on short notice, has material negative consequences that include, but are not limited to:

- stifling innovation by punishing innovators;
- forcing businesses offshore;
- causing reputational damage amongst peers and consumers;
- causing financial harm as operations are disrupted; and
- creating an uncertain regulatory and operating environment making ongoing capital investment more difficult to justify.

As Australia becomes an increasingly cashless society, the denial of banking services will necessarily be an area that requires greater regulatory clarity and transparency. In summary, our view is that there appears to be a lack of accountability imposed on ADIs for unilaterally terminating banking relationships without offering any reasonable justification for doing so, nor offering an opportunity to appeal or review the decision. That is what we are suggesting changes.

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ABIB Recommendations

Our understanding is that ADIs are mostly concerned with fraud and money laundering, not with DCEs' capital requirements or the imposition of any additional regulatory burdens upon Bitcoin businesses. Capital requirements and further regulatory impositions will only hinder the growth of our industry, constitute an unreasonable burden upon small businesses, inhibit fair competition and erect a higher barrier to entry for new participants. There are ample alternative mechanisms that provide sufficient consumer protection and banking transparency and our recommendations below seek to address these and other issues in a more productive manner.

We recognise that these are not panaceas in as much as they are suggestions for a path forward towards creating and maintaining mutually beneficial relationships between DCEs and the ADIs that service them.

1. Objectively speaking, Bitcoin has an entirely different risk profile to the other 11,000 cryptocurrencies. This has been recognised by the sovereign nation of El Salvador recently making Bitcoin legal tender, and by multiple respected private and public institutions purchasing well over 4 billion dollars' worth of bitcoin. Bitcoin exchanges' customers are not exposed to the same risks as crypto exchanges' customers and it is therefore inappropriate for ADIs to equate Bitcoin exchanges (akin to money changers) to crypto exchanges (akin to casinos). Our view is that **Bitcoin exchanges ought to be assessed differently** from a risk perspective.
2. We call for an objective, transparent and unambiguous framework for managing the relationship between ADIs and DCEs. This entails accountability and transparency on the part of ADIs who have the capacity to unilaterally terminate banking relationships, to the detriment of businesses and its consumers. Such **decisions ought to be based on reason, backed by data**. By failing to do so, the inference is that other motivations (such as competition) drive such behaviour. In forming this policy, we ask that that we are consulted as ABIB have divergent views from those operating in the "crypto" space.
3. We agree that **appropriate regulation is required**. However, it ought to be tailored specifically for digital assets. One should not take an existing system and retrofit it as modern challenges require modern solutions. To that extent, we recommend that ADIs require DCEs to have an AUSTRAC registration and review their existing AML/KYC policy. Importantly, AUSTRAC's licencing and/or regulation ought to be tailored specifically for DCEs.
4. We recommend that **ADIs be allowed to abandon the "no tipping off" policy**. This will allow an open and honest conversation/enquiry should the bank suspect any wrongdoing.

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5. Money laundering and fraud are issues that require ongoing vigilance by all parties. Our recommendation is that **ADIs implement KPI systems** whereby they have a known fraud detection threshold (i.e., a percentage of transactions or volume) that triggers a warning, issued to the DCE. Should a DCE subsequently trigger a higher threshold, notice of termination may justifiably be given. This not only gives those who innocently trigger the alert an opportunity to rectify, it also provides transparency in relation to how a decision is ultimately reached.
6. To the extent that there is an adverse finding made by an ADI whereby the banking relationship is terminated, we recommend that the directors of such companies are **not prejudiced in their personal capacity** from holding a bank account nor should they (or their family members) be “banned” from banking services should they be directors of some other unrelated company. This ought to specifically exclude circumstances where there are repeated violations by the same person(s) via multiple entities.
7. Currently, the debanked have no recourse available. We recommend that **complaints with regards to terminated banking relationships be handled by AFCA**.
8. Some ADIs claim that a lack of regulation is one of the key drivers behind decisions to debank Bitcoin-related businesses. **We call upon such institutions to provide specific examples of where such regulation is lacking**, given that Australian DCEs that are required by legislation to perform AML/KYC checks are performing said checks, usually via automated systems.

We would welcome an opportunity to engage further with the Committee and thank the Committee for the opportunity to present our recommendations.

Sincerely,

Ethan Timor

Chief Executive Officer

Australian Bitcoin Industry Body