

via economiccrime@ag.gov.au

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To whom it may concern,

Modernising Australia's AML/CTF regime

The Eros Association is Australia's industry association for adults-only retail, wholesale, media and entertainment. We write in relation to the consultation on modernising Australia's anti-money laundering and counter-terrorism (AML/CTF) regime.

We are concerned at financial service providers using the regime to justify de-banking of customers, including those operating in the adult industry. We endorse the comments of the Australian Small Business and Family Enterprise Ombudsman in its initial submission that "it is essential that this regime does not unintentionally incentivise tranche-two entities to deservice small businesses of a particular industry sector or risk profile." This issue has also been highlighted in a Canadian report on AML/CTF regimes.¹

That report highlighted that "'right to banking' legislation may be warranted in some jurisdictions."² In Australia, anti-discrimination law prevents discrimination in the provision of goods and services, including financial services, on the basis of certain attributes. In our experience, this has had some success in addressing de-banking of adult industry businesses. However, financial services providers will often argue they have statutory authority, in the form of the AML/CTF Act, to discriminate in the provision of services, which provides an exemption to anti-discrimination laws.

We also note that AUSTRAC has issued guidance on financial services for customers that financial institutions assess to be higher risk, which includes "the sex work industry." We support this guidance, which takes a nuanced approach to risk assessment, as well as the proposal in Paper 5 that AUSTRAC "be empowered to make rules providing for specific risk factors to be considered as part of the customer risk rating."³

¹ Parliament of Canada, *Confront Money Laundering and Terrorism Financing: Moving Canada Forward* (2018).

² Parliament of Canada, *Confront Money Laundering and Terrorism Financing: Moving Canada Forward* (2018) 42.

³ Attorney-General's Department, *Reforming Australia's Anti-Money Laundering and Counter-Terrorism Financing Regime Paper 5: Broader Reforms to Simplify, Clarify and Modernise the Regime* (2024) 17.

We are, however, concerned by the statement, in Paper 5, that “reporting entities would be required to consider risks related to customer type.”⁴ We believe assessments based on “customer type” should be limited to the factors in the sub-sections of rule 4.1.3(1) of the AML/CTF Rules, and not broad assessments based on customer type that could be used to target adult industry businesses.

The Eros Association thanks you for your consideration of our submission and welcomes the opportunity to discuss with you further our views on these issues.

Graeme Dunne
General Manager
Eros Association

E: manager@eros.org.au | www.eros.org.au

⁴ Attorney-General’s Department, *Reforming Australia’s Anti-Money Laundering and Counter-Terrorism Financing Regime Paper 5: Broader Reforms to Simplify, Clarify and Modernise the Regime* (2024) 7.