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Consultation on 'A Strategic Plan for the Payments System'
Director – Payments Strategy and Policy Unit Financial System Division
The Treasury
By email: paymentsconsultation@treasury.gov.au

6 February 2023

Dear Director,

Re: A Strategic Plan for the Payments System – a sex industry perspective

Sex Work Law Reform Victoria Inc. (SWLRV) is a not-for-profit organisation led by sex workers, lobbying for the legal rights of sex workers in Victoria. We strive to create a policy environment in which sex workers and others have fair and equitable access to basic financial services, whether for personal or business purposes. We encourage Treasury to remind merchant providers of their legal obligations under state/territory anti-discrimination laws to help address de-banking of occupations deemed high risk, including occupations within the sex industry.

We welcome Treasury working to develop a new Strategic Plan to ensure Australians can transact in a safe, secure, and efficient payments environment. However, any such plan must acknowledge that entire occupation/industry types face blanket exclusion from merchant providers.

The Cause of De-banking

Since 2020, Sex Work Law Reform Victoria has been closely monitoring de-banking against the sex industry. As part of our 2020 investigation, we contacted dozens of merchant providers. Most merchant providers openly state on their websites that they de-bank all lawfully operating sex workers and lawfully operating sex industry businesses, such as brothels.¹

¹ See Sex Work Law Reform Victoria's webpage, 'Financial Institutions – Which Ones Discriminate?'

<https://sexworklawreformvictoria.org.au/financial-institutions-which-ones-discriminate/>

As a member of the Council of Financial Regulators, Treasury has already contributed advice to the Australian Government about potential policy responses to de-banking.² However, such advice provided in August 2022 failed to identify the sex industry as the most de-banked industry in Australia.

De-banking Based on Occupation

Financial institutions classify some industries as ‘high risk’ and this can result in certain types of business customers being de-banked based on their occupation. Such de-banking may be unlawful in the ACT and Victoria, where ‘profession, trade, occupation or calling’ is a protected attribute in anti-discrimination legislation in both of those jurisdictions.³ Indirect discrimination can occur where merchant services are provided to sex industry businesses at a much higher cost than to other industries in the absence of actuarial data to justify such price differentiation.

The impact of routine de-banking of sex workers is clear when we look at Australian Taxation Office statistics. Our consultation with sex workers suggests that most lodge tax returns under occupation codes other than ‘sex worker’, to avoid de-banking. Despite five of Australia’s jurisdictions having legalised or decriminalised sex work⁴, only 106 people⁵ lodged a tax return in 2019/2020 using the occupation code ‘sex worker’. This is a tiny proportion of the over 20,000 sex workers in Australia.⁶ Our consultation with sex workers suggests tax avoidance alone cannot explain these figures, as many sex workers reported declaring income under an occupation other than ‘sex worker’ as a deliberate strategy to avoid de-banking.⁷

Our submission addresses some but not all of the consultation questions.

Consultation Question 1: What are your views on the proposed key principles? Are there other principles that should be included? Please provide an explanation.

Response: There are four proposed principles. We propose inserting the underlined text in the ‘accessibility’ principle:

An accessible payments system is one that is simple, inclusive, where payment services are readily available at low cost and provides consumers and businesses with choices. Further, it avoids unnecessary restrictions on access to payment networks for service providers. Removing barriers to entry and ending de-banking, encourages payments service providers to innovate, thereby empowering consumers and businesses with greater choice of payment products and services.

We propose inserting the underlined text in the ‘trustworthiness’ principle:

² See Potential Policy Responses to De-banking in Australia Developed for the Australian Government by the Council of Financial Regulators, AUSTRAC, ACCC and the Attorney-General’s Department (August 2022) <https://www.cfr.gov.au/publications/policy-statements-and-other-reports/2022/potential-policy-responses-to-de-banking-in-australia/pdf/potential-policy-responses-to-de-banking-in-australia.pdf>

³ See s6(1a) of the *Equal Opportunity Act 2010* (Vic) and s7(q) of the *Discrimination Act 1991* (ACT).

⁴ ACT and QLD legalise sex work; NSW, NT and VIC decriminalise sex work.

⁵ Australian Tax Office, Taxation statistics 2019–20 Individuals: Average and median taxable income, salary or wages, and total income, by occupation and sex, 2019–20 income year (Table No 15A), cell D2016.

⁶ Antonia Quandara, ‘Sex Workers and Sexual Assault in Australia: Prevalence, Risk and Safety’ (2008) 8 Australian Centre for the Study of Sexual Assault 1, 3.

⁷ See SWLRV submission to the 2021 *Banking Code Review*, section 6.8. <https://bankingcodereview.com.au/wp-content/uploads/2021/08/Submission-Sex-Work-Law-Reform-Victoria.pdf>

A trustworthy payments system is one that is safe, secure, reliable, and resilient. At a user level, it ensures transactions are processed to intended parties as expected and provides robust protections against fraudulent transactions and scams. A trustworthy payments system is also made available to users from all sectors. At the system-wide level, it supports stability and operational resilience in the broader system.

Consultation Question 2: What are your views on the proposed key priorities? Do they provide enough certainty on what the key priorities are for the Government? Are there other matters that should be included? Please provide an explanation.

Response: The first key priority, 'Promoting a safe and resilient payments system' implies those wanting access to payments systems will have access to these systems. A user can only have a positive outcome if they are able to obtain payment services to begin with. This is not the case for tens of thousands of adult industry and sex industry businesses including sole traders. Paypal provides an excellent example: PayPal's Acceptable Use Policy, clause 2(i) states:

'Prohibited Activities. You may not use the PayPal service for activities that relate to transactions involving certain sexually oriented materials or services'⁸

We suggest amending the key priority 'Promoting a safe and resilient payments system' by inserting the underlined words as follows:

A key priority is promoting a safe and resilient payments system that ensures positive outcomes for all users of the system. To ensure safe and secure operation of the system, there is a clear need to minimise instances of scams, de-banking and fraud and provide robust protections to consumers. It is also important to strengthen existing regulation to appropriately manage risks to payments infrastructure such as technological outages and cyber-attacks.

A 2021 Senate Committee Final Report on the fintech sector identified concerns about de-banking of cryptocurrency exchanges, hampering competition.⁹ We therefore suggest amending the key priority 'Ensuring the regulatory framework is fit-for-purpose and promotes competition' by inserting the underlined words as follows:

With the expansion of the payments system to new technologies and business models, there is a need to ensure the regulatory architecture of the payments ecosystem remains fit-for-purpose and regulates participants consistently based on the functions they provide. Further, it should promote competition by making it easier for payment service providers to get access to payments infrastructure. Competition is promoted by regulating participants to end de-banking of entire sectors. The Plan can outline key initiatives and milestones for these objectives including

⁸ See clause 2(i) of PayPal's Acceptable Use Policy

https://www.paypal.com/au/webapps/mpp/ua/acceptableuse-full?locale.x=en_AU

⁹ Paragraphs 4.85-4.94 of the Australian Senate's Final Report of the Select Committee on Australia as a Technology and Financial Centre.
https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024747/toc_pdf/Finalreport.pdf;fileType=application%2Fpdf

changes to the PSRA and the introduction of a new, tiered payments licensing framework for payment service providers.

Consultation Question 3: What are your views on the proposed key supporting initiatives? Are there other initiatives that could be included in the Plan? Please provide an explanation.

Response: We are concerned none of the supporting initiatives seek to promote competition by ending de-banking. De-banking reduces competition and must be addressed in the initiatives under the key priority 'Ensure regulatory framework is fit-for-purpose and promotes competition'. We suggest inserting a new initiative worded as follows:

Promote competition by adequately regulating payment service providers in a way that ends de-banking of entire sectors of users.

Consultation Question 6: What are your views on the proposed review process and engagement arrangements? Please provide an explanation.

Response: Not only sex industry businesses experience de-banking. Other types of small businesses also experience de-banking, resulting in the Australian Small Business and Family Enterprise Ombudsman publicly calling for an end to de-banking. We suggest explicitly including small business in the list of participants in the development of the Plan. We recommend inserting the underlined words in Part 2 of the Plan:

The Government will engage with, and coordinate action between, private, small business representatives and public sector participants through regular updating of the Plan.

Sincerely,



Lisa Dallimore

President, Sex Work Law Reform Victoria Inc.