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Division Head
Financial System Division
The Treasury
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Online submission: ICO@treasury.gov.au

Dear Sir / Madam

Initial Coin Offerings – Issues Paper (January 2019)

I am pleased to make this submission on Treasury's Initial Coin Offerings Issues Paper (January 2019).

I have over 30 years of experience in accounting technical support functions in large accounting and auditing firms and the public sector where I have provided accounting and financial reporting advice to staff and clients. Clients across the business and government environments have included listed companies and disclosing entities. My advice often related to accounting and reporting requirements related to the annual and interim financial reports produced by those clients for their shareholders.

Shitcoins

There are convincing reasons why Initial Coin Offerings (ICOs) are referred to as Shitcoins. One of the main reasons is that a lot of people have lost a lot of money. Real people. Real money. The Issues Paper seems to brush these real losses and financial trauma off as "investor exuberance and speculation".

Examples of websites detailing these disasters include:

- https://deadcoins.com/
  - 934 as at date of this submission
- https://magoo.github.io/Blockchain-Graveyard/
  - more on the breaches and other things that go wrong

Another main problem is that ICO's have no intrinsic rights. They have no rights to future cash flows. They are premised on the next sucker paying more than you did. They have no more intrinsic rights than the latest Coles Little Shop figures.

The Issues Paper (page 7) notes a failure rate exceeding 90%, and that "the majority of financial gains accruing to private parties who invested prior to the public ICO taking place". Many of the failures relate to fraud, scams and market manipulation.

Is promoting something with this failure rate what the government really wants for unsophisticated investors?

Do we need ICOs?

There is a very strong case that we do not need ICOs. I refer you to an article by Alexsander Svetski and Rory Highside titled "ICO Submission to the Australian Treasury – Why ICO should stand for 'Illegal Coin Offering'.

https://hackernoon.com/illegal-coin-offering-submission-to-australian-treasury-e687454e9fda

Mr Svetski, the co-founder and CEO of start-up Amber, gives a very interesting presentation on "Why we didn't ICO" (as part of establishing Amber):

https://youtu.be/hJ_PB3IpPig

Essentially Mr Svetski chose integrity over being expedient.

Failure to implement the current regulatory framework

We have a very comprehensive framework in Australia for securities and investment (if you can call it that given the little intrinsic value of ICOs) by the public.

The framework includes

- providing sufficient information for "investors" to make an informed decision – including are "investors" making an investment or making a gift / donation
- transparency over how the funds raised will be used
- regular reporting of performance and financial position
- accountability for the funds spent
- prohibition on market manipulation
- legal recourse for director and responsible entity obligations.

There seems to be an almost complete lack of enforcement of that framework in relation to ICOs and the losses incurred by the public – whether it be by ASIC enforcing securities laws, or ASIC (given the referral from the ACCC) of consumer laws. Despite the questions raised by the Issues Paper as to which category (security or consumer protection) ICOs fall into, the existing framework does not appear to have been tested. The managed investment scheme rules are particularly comprehensive, and are designed to encompass "securities" that are not shares in companies.

A consumer warning issued by ASIC in 2017 (Issues Paper page 7, footnote 8) is hardly enforcement or sufficient. While regulatory guides issued by ASIC (Issues Paper page 15) are helpful, they are not enforcement.

Should ICOs be permitted?

As I noted above, there is a strong case that ICOs are not needed to raise capital. I think that the Australian laws are comprehensive enough to deal with ICOs, and that ICOs should be subject to that framework. As I noted above, we do not know if there are any gaps, because of the lack of enforcement.

The Issues Paper (page 13) refers to the Isle of Man as being an exemplar for the light touch regulation of ICOs. This reference is potentially misleading given the Isle of Man's reputation as a tax haven.

Making Australia an "ICO-friendly" jurisdiction by removing the application of our existing securities framework would appear to be irresponsible (given the risks to "investors" or donors), and high risk to Australia's reputation.

When the government introduced laws relating to crowd-sourced funding and reduced the disclosure and reporting requirements, it included safeguards for unsophisticated investors

- it only permitted ordinary shares to be issued (therefore having real intrinsic value, and voting power)
- it required a health / risk warning
- it put a limit on how much could be invested each year

There is a problem with how early stage start-ups are funded. Let us concentrate on that issue and how those businesses can raise funds, preferably progressively as they need the money, and based on performance and delivery of promises.

Yours faithfully

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