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Director – Crypto Policy Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email only: crypto@treasury.gov.au

Dear Director,

Crypto asset secondary service providers: Licensing and custody requirements

Thank you for the opportunity to provide feedback on the proposed regulation of crypto asset secondary service providers (**CASSPrs**).

Some opening and closing remarks, observations and recommendations are set out below, in addition to the following Attachments:

- **A: Suggested law reform regarding 'currency' and 'currency-equivalent' status for fully fiat collateralised stablecoins**
- **B: Contributors to this submission**
- **C: Reference materials**
- **D: Responses to Consultation Questions**

A draft of this submission was circulated for comment globally, along with a survey seeking views in relation to each of the policy positions posed in this submission. The survey results are referred to throughout this submission.

Opening remarks

Whilst the proposed licensing and custody requirements might assist with some protections to consumers from unwanted behaviours of centralised exchanges etc, that protection could be delivered with relatively minor amendments to the existing law that triggers the requirement to hold an Australian Financial Services Licence (**AFSL**).

In the same way that the existing AFSL regime would be superficial without the foundational principles of financial market infrastructure and legislation that regulates capital and financial market formation and activity, the CASSPr regime in and of itself is superficial without initial or concurrent action on the foundational policy issues.

A "safe shop front" for CASSPr crypto asset activities – which includes custody, storage, brokering, exchange and dealing services, and operating a market in crypto assets for retail consumers – won't in isolation contribute to meaningful consumer protection, financial stability and fair, orderly and transparent token markets. This proposition assumes that tokens will increasingly typically be issued by decentralised autonomous organisations (**DAOs**), or organisations that are 'DAO in name only' (**DINOs**), using blockchain technology that anyone in the world can access. Arguably existing regulation does capture DINOs as an 'issuer' or 'dealer' in a financial product (if the token or token activity is a financial product), but does not capture 'sufficiently globally decentralised' DAOs.

The fact that tokens can be bought and sold at any time around the world without a clearly identifiable human or legal counterparty and the tokens can live for as long as the blockchain lives, creates vast challenges for any one country to effectively regulate token activities and markets. Since no one country can in isolation effectively regulate DAOs, tokens issued by DAOs ('DAO tokens'), or token activities programmed by DAOs, industry and policymakers around the world should seek to reach consensus on minimum standards that warrant legal *recognition* of a DAO. Some states are attempting regulatory efforts such as Vermont and Wyoming in the US who have introduced the

'Blockchain-Based LLC' (**BBLLC**) and DAO LLC (**DAO LLC**), respectively. Malta has introduced a new type of legal entity called a 'Technology Arrangement' so as to be technology neutral and future fit. However, none of these regimes have attracted the registration of any DAO with tokens listed in the top 20 tokens on www.coingecko.com.

The word 'recognition' has been used purposefully instead of 'regulation' or 'registration' because DAOs are evolving and need freedom to innovate, albeit with minimum standards. Genuine innovation from DAOs does not and should not seek to avoid the objective of existing laws (e.g. to deter, prevent and detect money laundering and terrorism financing, to pay tax, to deter and punish misleading and deceptive and fraudulent conduct) but a clear space is needed for DAOs to experiment and test whether different processes and automation can better achieve the objectives of existing laws *whilst* for example, preserving or enhancing privacy of consumers.

Minimum standards of an 'Australian legally recognised limited liability DAO' are set out in this submission but in the least should include clear and prominent warnings to consumers that the technology is experimental and presents known and unknown risks because it is not regulated by or within the Australian financial services laws. Wyoming DAO LLC law takes this approach. In addition, the minimum standards should require blockchain analytics capability (automated and/or with human input) and evolving processes to identify, deter, block and remove suspicious or criminal activity with the token/s of a DAO. Australia can learn from the Wyoming DAO LLC experience, where the law has already been amended within a year of its introduction, and lean into this area by supporting minimum standards appropriately developed as an industry led DAO-operating standard or code of conduct.

A benefit of Australian legal recognition of a DAO is that its token or tokens could be clearly labelled 'DAO tokens' then be included within the activities that a CASSPr can provide to retail consumers. If members of the DAO have not undertaken and published their 'Australian legal recognition DAO assessment', a CASSPr could be permitted to determine whether the minimum standards are met based on the information publicly available and this would be an ongoing, not static, obligation upon the CASSPr. Non-DAO tokens would arguably be subject to existing law, including characterisation, disclosure and licensing requirements. If a token is issued by a DAO it does not matter so much whether the token is characterised as a 'payment', 'utility' or 'security' token (because often it can function as all three) but rather that the consumer knows it is a DAO-token and not regulated like domestic or traditional financial products.

The nuances of blockchain technology as open-source technology, a public ledger, global, autonomous, on all the time, and generative of evolving global governance models, pose a different set of policy problems than those that existing, domestic regulation seeks to address. These nuances are not appropriately dealt with by the existing regulations applicable to an unlisted *centralised* company raising capital, a *centralised* company listing its shares on a national stock exchange and being subject to the *national* market operating rules of that exchange, or a *centralised* company offering custody services. The nuances of blockchain technology are the source of the foundational policy issues before Australia (and the rest of the world) to solve for and are worth solving as a strategic priority if we assume the global digital economy will increasingly rely on blockchain-based infrastructure for financial market transactions and non-financial transactions (e.g. identify verification).

1. Focus on foundational policy issues before a CASSPr regime

The proposed CASSPr regime, and the harms it seeks to protect against, is one part of a bigger picture and cannot be considered in isolation – although it could continue alongside consideration of the foundational policy issues. Policy effort and resources should be directed at the economic opportunities and foundational policy gaps that will result in the maximum amount of medium- and long-term net benefit to Australia and Australians.

The pipeline of innovation from DAOs, tokens, and the token activities that are possible with autonomous protocols are key economic priorities. Without this innovation, or confidence of innovators to continue this innovation, the risk increases that CASSPrs have less tokens, or lesser tokens of good quality, to list, exchange, arrange, deal in and custody on behalf of users.

Sound regulatory reform should have clearly defined objectives and provide targeted methods to address the identified harms. These objectives should be clearly identified and articulated before, or as a minimum in parallel to the assessment of whether the proposed CASSPr regime is an appropriate regulatory approach.

There are foundational policy priorities (set out below) that should be considered before a CASSPr regime can be properly developed or scrutinised. If the policy effort does not commence by tackling the foundational policy issues, the CASSPr regime may create unintended consequences as other aspects of this sector develop.

Greater, sustainable economic impact would flow from solving the foundational policy issues at the heart of this innovation:

(a) clarifying 'money' and 'currency' status for fully fiat-collateralised fiat currency pegged stablecoins – everyday people are and will increasingly use stablecoins as money, and the quality of stablecoin reserves is a key issue for systemic risk management;

(b) characterisation of DAOs and what constitutes a 'sufficiently globally decentralised' organisation for legal and tax purposes; and

(c) a legal and tax regime that regulates and taxes token activities instead of relying on characterisation of the token at the time of issue by an issuer.

New or amended law around privacy enhancing standards and requirements for identification and verification of identity and customer due diligence, in the context of managing anti-money laundering and counter-terrorism financing risk, would flow from the nature of token activities and the extent to which analytics and other technology (such as 'zero-knowledge KYC') is readily available and reliable.

Survey results

- *70% of respondents agreed that Treasury should focus on foundational policy issues (stablecoins and DAOs) before a regime for CASSPrs is introduced;*
- *10% disagreed with the above proposition;*
- *5% felt Treasury could proceed with establishing a regulatory regime for centralised CASSPrs, but decentralised CASSPrs should be excluded if there is no Stablecoin/DAO policy in place;*
- *10% felt that in the interests of time and for overall regulatory clarity, these initiatives should be considered in parallel and foundational issues should inform the broader holistic approach;*
- *2.5% felt that Treasury needs to lay out clear overall guidelines – that a focus should not be put on Stablecoins OR DAOs before we have a generally accepted framework for tax treatments;*
- *2.5% felt that stablecoins and DAOs are not foundational policy issues – they are use cases but policy questions must be addressed to develop common and stable vocab / terminology.*

2. The economic opportunity for Australia is to strategically prioritise policy resources

The speed and priority in which policy resources are directed will have a significant impact on Australia's ability to attract and retain the best kind of blockchain and digital assets innovation in the next five years. The next five years are the critical years to form Australia's footing to participate in the decentralised digital economy.

Australia has this opportunity now but is also at risk of falling behind other key competitor jurisdictions like the UK, Canada, Singapore and the US amidst accelerated efforts internationally to amend or introduce law to attract the best kind of blockchain and digital asset innovation. The rapid pace of change in innovation and adoption of blockchain technologies and token use cases requires a decisive and strategic policy response that acknowledges the significant challenge for regulation and regulators to keep pace with innovation domestically and internationally.

Jurisdictional and regulatory arbitrage opportunities will only increase in the next five years, strengthening the case for Australia to take great care in strategically prioritising policy resources. The nature of regulatory efforts being made by the likes of Germany, Switzerland, Liechtenstein and at the European Union level will increasingly draw talent and capital away from Australia.

Survey results

- *85% of respondents agreed that the economic opportunity for Australia is to strategically prioritise policy resources;*
- *5% disagreed;*
- *5% articulated the proposition further that acting on the time sensitive opportunity available now is important in order to create an innovative framework surrounding DAOs and crypto-friendly legal entities which will encourage projects to be based in Australia;*
- *2.5% feel the strategic priority focus on DAOs or CASSPrs is incorrect and the strategic focus should be on establishing the first robust and accepted cryptocurrency tax framework in the developed world;*
- *2.5% felt that harnessing the economic opportunity is definitely aided by allocation of resources, including resources that shape policy but that influencing the concentration of participation and the network effect of certain online communities that are decentralized is the economic benefit Australia should be seeking with its policy.*

3. Foundational policy issues

The foundational policy focus areas in order of priority should be as set out in the table below, and as further explained in the following sections:

Policy Focus	Why	By When
1. Provide 'currency' or 'currency equivalent' status to fiat currency pegged stablecoins that are fully fiat collateralised, for Australian legal and tax purposes.	Assumption: The use and adoption of 'fully fiat-collateralised', fiat currency pegged stablecoins by the 'mainstream' (i.e. retail investors and consumers, small, medium and large businesses) will occur rapidly once they are offered by well-known financial institutions which is anticipated in 2022 and 2023. The term 'fully fiat-collateralised' will need to be defined. Clear labelling of 'fully fiat-collateralised' stablecoins will assist in informing the market of risky and riskier stablecoins such as some crypto-collateralised and some algorithmically-collateralised stablecoins. Given the potential systemic risk posed by fully fiat-collateralised fiat currency pegged stablecoins, it should be a prudential policy priority to promptly develop standards and requirements around reserves and other mitigating strategies that attach to 'currency' or 'currency equivalent' status.	1 November 2022, with retrospective effect (subject to minimum conditions) from ~ September 2018 (launch of USDC and GUSD).
2. Legal recognition to DAOs, where legal recognition grants limited liability and introduces a definition of 'sufficiently	Assumption: The adoption and use of DAOs to coordinate capital and people around the world will only increase. The term 'sufficiently globally decentralised' (**SGD**) will need to be defined, preferably	31 December 2023, with retrospective effect (subject to minimum

globally decentralised' organisation.	through a collaborative process to bring public and private sectors together. If the SGD test is met, as well as the minimum standards for Australian recognition of the DAO, the Digital Activities Act (see Policy Focus 3 below) applies and existing laws (e.g. Corporations Act, AML/CTF Act, Income Tax Assessment Acts) do not apply to the DAO token activities. A DAO team may have non-binding reference back to the requirements of existing laws and guidance in relation to the application of those laws as if the DAO was centralised and managed in and from Australia. A minimum standard for Australian legal recognition of the DAO could be to require the DAO to publish an analysis against existing laws as to why the protocol and/or token/s are not the 'same asset/liability, with same risks' as a premise for why existing laws are not fit for purpose for the particular innovation proposed by the DAO. In addition, a mechanism could be developed to 'self-attest' to the DAOs SGD status, and then verification of the self-attestation. Government third parties and/or CASSPrs could build in verification processes.	conditions) from either ~ June 2020 (launch of COMP token) or January 2009 (launch of BTC and Bitcoin protocol).
3. Introduction of a Digital Activities Act, which defines and distinguishes between 'data structures' and 'data activities', where DAO tokens may be one subset of a data structure.	Assumption: Standardisation of tokens, such as the ERC-20 fungible token standard, the ERC-721 non-fungible token standard, and the ERC-1155 semi-fungible token standard, will continue. This is because global network effects are accessible when building on blockchain infrastructure with standardised token structures. The source code of a standardised token is typically functional only. Issuers can add limited additional information into the smart contract source code such as a link to a website with terms and conditions or they can add a controller of the token contract. They can also add, but often don't add, conditional functionality – for example, the blacklisting feature in the USDC ERC-20 token that prevents transfer of USDC from or to any wallet that is blacklisted but introduces a higher gas cost than tokens that don't have this conditional functionality. Using the 'standardised' token is at the heart of building 'open-source' and allows token holders to access global network effects of a token that can 'plug in' to global blockchain innovation. Whilst a standardised token may be used, a project team 'adds rights' by representations in documentation, website or social media rather than changing the 'source code' (or data structure). Teams try to avoid any departure from a standardised token so as to allow token holders the benefit of	31 December 2023, with retrospective effect (subject to minimum conditions) from the same date that is determined for legal recognition of DAOs. Government should also seek to participate in international standardisation efforts around data activities and data structures.

	composability of the token with other protocols built on the blockchain network. For example, a standard ERC-20 token may be airdropped to provide holders with access to discounts of a business. The standardised nature of an ERC-20 token is such that the 'access rights' only attach to the token if the token is used to claim the discount from the business that offers it (the 'data activity'). Otherwise, the token (as a 'data structure') has no other rights and functions as a standardised fungible token. By its standardised nature though, the token could be used with other protocols for token 'data activities' such as payment, lending, borrowing, investing, access, identification and verification activities. A recent example is the ENS token airdrop where a recipient was able to vote on a number of articles and then sign to ratify the ENS DAO Constitution with their private key when claiming the airdropped tokens (using Snapshot voting platform in the back end). Certain 'data activities' may warrant regulation depending on the associated risk assessment of that activity, rather than the 'data structure' of the token. A blunt approach to regulate the token itself will create confusion, which is why 'token mapping' to characterise the token for legal and tax purposes is unhelpful and instead the exercise should seek to map token 'data activities'. Instead, industry and regulators should be aware of latest open source standards and categorisations.	

Provide 'currency' or 'currency equivalent' status to fiat currency pegged stablecoins that are fully fiat collateralised, for Australian legal and tax purposes.

Mainstream financial systems will increasingly adopt and use fiat currency pegged stablecoins (before CBDCs are issued), whether the stablecoin is pegged to the Australian dollar or other fiat currencies. As a consumer protection effort, labelling 'fully fiat collateralised' fiat currency pegged stablecoins as 'currency' or 'currency equivalent' will assist in plainly informing consumers about the different risk profiles of stablecoins. Reference to 'stablecoin' in this section does not refer to crypto- or algorithmically-collateralised stablecoins.

Fully fiat collateralised stablecoins have a drastically different risk profile to other types of stablecoins.

Stablecoin issuers, like all issuers, are not captured by the CASSPr regime. Accordingly, issuers and CASSPrs dealing in fiat currency pegged stablecoins would continue to be confused by and/or overburdened by the requirement to obtain multiple licences across financial services, markets, banking and credit, and possibly inappropriate taxation outcomes if 'currency' or 'currency equivalent' status isn't available. The scattering of potentially applicable legislation and licensing is a disincentive to consumer protection oriented stablecoin innovation and development.

Minimal law reform is achievable in the next 6 months to support the issue of fully fiat collateralised fiat currency pegged stablecoins that can be treated as 'money' or 'currency' for legal and tax purposes. Such reform would support innovation in payments, tax, digital government and supply chain management and financing, particularly whilst we await the outcome of the ALRC review into the Corporations Act and the outcomes of the Farrell Review to be implemented. Suggested law reform is set out at Attachment A.

Critically, Australian currency pegged stablecoins will accelerate learning by our government, policy makers, central bank and other regulators, as well as business and individuals, ahead of any serious design and launch of an Australian CBDC (whether retail or wholesale or a hybrid design that deals with retail and wholesale). Such learning is critical to inform a CBDC design that is trustworthy, reliable, resilient, internationally competitive, and privacy-enhancing. In addition, the 'mainstream' (i.e. retail investors and consumers) will largely be introduced to blockchain and digital assets via a stable not volatile form of crypto-asset.

Legal recognition to DAOs, where legal recognition grants limited liability and introduces a definition of 'sufficiently globally decentralised' organisation

If a DAO is sufficiently decentralised but comprises of members all in the one state or country, arguably the application of existing national law is straightforward. It is only when a DAO is sufficiently *globally* decentralised that the application of one country's laws or the application of laws of multiple countries becomes unclear.

DAO is an umbrella term that is often mis-used or misunderstood. The term, 'DAO in name only', or DINO, has emerged because of the mis-use of the term DAO.

Incorrect uses of the term DAO stem from either or a combination of each of the below components of the acronym:

1. insufficient decentralisation;
2. insufficient autonomous operation, of either or both of:
    a) the governance; and
    b) the protocol; and
3. insufficient articulation of purpose and/or values that attract people to form an organisation.

To date, there has been no consensus-gathering process amongst international standard-setters to agree the appropriate metrics for each of the above components of a DAO. Such a process relies on articulating a taxonomy of DAOs, or most common DAO typologies from which fit-for-purpose metrics can also be articulated.

Whilst this international standard-setting work is underway, driven by industry and including the World Economic Forum, Australia can play its part in the experimentation of minimum standards that allow for Australian legal recognition of DAOs and 'DAO tokens'. Tokens issued by sufficiently globally decentralised DAOs should be labelled as 'DAO tokens' to signal their different, global and emerging nature.

Key policy questions in considering the recognition of DAO tokens from SGD DAOs include:

- If a token is issued by a 'sufficiently globally decentralised' organisation (not necessarily a decentralised *autonomous* organisation), is an 'issuer' identifiable upon which to impose initial and ongoing regulatory obligations? Should there be?
- Similarly, if a protocol that can function autonomously is launched by a 'sufficiently globally decentralised' organisation, is an operator identifiable upon which to impose initial and ongoing regulatory obligations? Should there be?

Typically, any obligations associated with raising capital via a token issue, or an autonomous protocol accepting token contributions that are pooled to produce a financial benefit, would apply to the 'issuer' at the time of 'issue'. Disclosure with respect to the instrument issued or protocol launched is not always an ongoing obligation in an unlisted environment. Accordingly, when subsequent representations are made by the issuer or an unrelated party about what the token grants access to and there is not another 'issue' of those tokens, disclosure to the market typically would not occur nor is it clear who is responsible for that disclosure. There is a policy question as to whether token 'issuers' that do not prohibit global transfers and use of the token should be held to the standard and compliance and disclosure of a listed company.

Based on the example above, the policy gap based on existing laws globally appears to be missing or insufficient disclosure. One of the conditions of eligibility for registration as a limited liability DAO in Australia could be the allocation of funds in the DAO treasury wallet, from funds that are raised from a token issue or operations, to secure a core contributor role or team responsible for continuous

disclosure to the market. This person or persons should not have to register with any government registry, which some DAO regulation proposals around the world seek to require. The legislation or regulations could propose a template format for the continuous disclosure to ensure minimum standards of timeliness and quality of information to the market.

Again, based on the example above, a policy gap to solve is the potential introduction of protocol (i.e. smart contract) audits prior to the protocol being deployed to the blockchain (from which point the protocol lives forever). Existing protocol audits, 'security audits', focus on code vulnerabilities that could be exploited by an attacker which prevent the protocol from functioning as intended, or that could result in loss of tokens or value. Some of the conditions for eligibility for legal recognition as a limited liability DAO in Australia could be the requirement for a security audit as well as a 'financial market audit' before the protocol is deployed to the blockchain. Some auditors are already providing 'security audits' and 'financial logic' audits, but this standard has not made its way consistently across industry. The CASSPr would be responsible for checking for these items if offering an activity with the DAO token. Where the team decides to launch the protocol and/or token and risks still exist because mitigation or elimination of the risk is unclear, bug bounty programs and contingency programs to protect consumers should be mandatory. Whilst transparency around assessment, identification and reporting of risks is suggested, the associated downfall is that bad actors become aware of vulnerabilities to exploit. The audit reports should be open to the public and set out aspects of the tokenomics design that could be arbitraged or manipulated to such an extent that the token value could decrease to zero quickly and what mitigation measures are recommended. If the DAO decides to proceed to issue the token and /or deploy the protocol, the market must be strongly and prominently warned of the risks specific to this particular token and protocol.

Obligations to ensure fair, orderly and transparent markets are largely imposed on a market operator. However, where an ERC-20 fungible token contract is deployed to the Ethereum blockchain without control rights specified to the issuer or a third party there is no ability for the token 'issuer' or any market operator to intervene in a token transaction or pause trading of that token. As such, where a standardised token can operate globally and without any control rights or 'trading halt' rights, a minimum responsibility imposed upon the issuer should be a requirement to obtain advice and a report from a person experienced in financial markets and web3 token behaviours. So, for example, ERC-20 tokens issued and represented by DAO members and the market as governance tokens with a right to vote can be freely transferred and used for many things other than merely governance. Without the issuer of a token specifying control rights over token transfers or activities, the issuer or a market operator interacting in some way with the token, have no effective supervision or control over the activities of the token.

Finally, for 'gamefi' (blockchain-based gaming that incorporates financial elements) that is attractive and available to people under the age of 18 there needs to be workable ways to anticipate, prevent and remediate harm.

Comparison with Wyoming DAO LLC law

The Wyoming DAO LLC law came into effect on 1 July 2021 and seeks to support the legitimacy of DAOs with legal recognition and limited liability as long as baseline requirements are met. The baseline requirements are in large part fit-for-purpose and flexible for small DAOs; however, large and the largest DAOs have not been attracted to register in Wyoming due to all or a combination of the following requirements each of which introduce points of centralisation:

- the state-based nature of the law, lack of clear recognition of the Wyoming DAO LLC in other US states and foreign countries, and lack of transitional or safe harbour relief from US federal securities laws (and mutual recognition of same safe harbour / transitional relief by other countries);
- the requirement to have and continuously maintain in Wyoming a registered agent (Article 17-31-105(b));
- the requirement that all underlying smart contracts are able to be updated, modified or otherwise upgraded (Article 17-31-105(d)); and
- no recognition for a 'foreign DAO' (Article 17-31-116).

Already, an amendment has been brought into effect in March 2022 because the 'quorum' requirements were too restrictive for the evolving models of governance of even small DAOs.

In addition, the '99-member limit' on for-profit Wyoming DAO LLCs which operates through surrounding LLC legislation prevents large DAOs or teams with aspirations to form large global DAOs from registering a Wyoming DAO LLC.[1]

Introduction of a Digital Activities Act, which defines and distinguishes between 'data structures' and 'data activities'

A 'data activity' subject to the Digital Activities Act could be the activity of using a DAO token as an instrument to raise capital and to grant a right to access discounted goods and services. Listing the token activities that are most likely to face retail consumers and/or do the most harm to the market should be the activities prioritised to work out the grey areas of existing legal and tax rules and set out simplified and clear legal and tax treatment for the issuer and purchaser, especially where a token is multi-characteristic on issue.

Furthermore, the 'rights' that seem to attach to a token often do not exist in the token's source code and only exist in representations made in a white paper, website or social media. In the recent UK High Court case of *Lavinia Deborah Osbourne v (1) Persons Unknown (2) Ozone Networks Inc. trading as OpenSea*, NFTs were recognised as property capable of being frozen but the rights to the underlying artwork (the 'Boss Beauties' images referenced to the token IDs of the stolen NFTs) were not dealt with. If the underlying artwork was or is hosted by Boss Beauties Inc using centralised data storage such as through Amazon or Microsoft, then Boss Beauties Inc could remove the artwork from its location and re-reference to a newly issued tokenID. Boss Beauties is not attempting to label itself a DAO so the 'centralised interference' of restoring an NFT owner with the underlying property that the token ID relates to should have been considered. If the underlying artwork was or is stored using the InterPlanetary File System (**IPFS**), then 'centralised interference' by Boss Beauties Inc may not have been possible and add merit to the freezing order course of action.

Survey results - stablecoins

- *85% of respondents agreed that Australia should provide 'currency' or 'currency equivalent' status to fiat currency pegged stablecoins that are fully fiat collateralised, for Australian legal and tax purposes;*
- *10% disagreed;*
- *5% felt that stablecoins, deployed as hedging mechanisms, may serve only one of the 3 uses of money (specifically, stores of value) so they may not require currency status if they aren't used for the other two (medium of exchange, unit of account).*

Survey results – legal recognition to DAOs

- *85% of respondents agreed that Australia should grant legal recognition to DAOs;*
- *5% disagreed or had no opinion;*
- *5% felt that limited liability may be entirely moot, if there is no underlying obligation arising between participants in a DAO;*
- *5% felt that other countries should regulate or give legal recognition to DAOs before Australia does.*

Survey results – introduce Digital Activities Act

- *90% of respondents agreed, and made the following comments:*
    - *"In addition to this - there should be better definitions around on and off-chain activities and whether it is a data structure or data activities, the key is in the behaviour and actions, not the crypto assets themselves."*

[1] Dave Rodman, 'DAOs: A Legal Analysis' (1 April 2021) available at: https://www.jdsupra.com/legalnews/daos-a-legal-analysis-6177928/.

  - *"Yes as long as such tokens are excluded from the current financial services/products regulatory framework (current obligations to obtain AFS licensing and register managed investment schemes in Australia are unrealistic in the web3 space)."*
  - *"would love to understand what turns on the distinction between data structure and activity? Data structure has a fairly clear meaning in computer science but it may not be of any use to regulation. Tokens are simply IDs connected to Accounts. Their programmable nature makes categorisation meaningless. Instead it may be more useful to regulate with focus on outcome rather than activity"*
- *10% disagreed or had no opinion.*

4. Clarity to the market could be provided by regulators and/or government articulating how broadly or narrowly the existing legislation is to be interpreted.

The CASSPr regime's focus on licensing and custody requirements for 'secondary service providers' rather than primary service providers or issuers, often which are DAOs – sometimes in substance 'sufficiently globally decentralised' and often decentralised by name only – means that the foundational policy issues are not being dealt with. The existing financial services regime in the *Corporations Act 2001* (Cth) already captures 'secondary service providers' that are dealing, arranging, or making or operating a market in tokens that can be characterised as securities or other financial products. However, the existing regime is not being consistently applied across industry or enforced by Australian regulators.

The 'policy gaps' that the proposed CASSPr regime is seeking to solve can be addressed by more active involvement in and contribution to the space by regulators such as the Australian Securities and Investments Commission (**ASIC**). Continued reference is made by regulators to the 'regulatory perimeter' (around the world, not just Australia) but there has not been sufficient information provided to the public about what falls in versus what falls out of the regulatory perimeter. The exercise of clarifying what is 'in' and 'out' first needs to be undertaken by reference to Australia's existing laws before a meaningful policy consultation exercise can or should commence.

Greater involvement in the space by regulators requires dedicated resourcing and should incorporate meaningful industry engagement, reviews/investigations, enforcement action, timely consultation as outlier issues are identified and the release of guidance. Effective industry self-regulation and codes of conducts and as appropriate, regulation and supervision of the blockchain and digital assets industry is a welcome initiative to improve minimum standards. However, dedicated and meaningful resourcing of regulators such as ASIC, the ACCC, APRA and AUSTRAC and targeted enforcement action by those regulators using existing law could assist in lifting minimum standards and identifying the true policy gaps worthy of amended or new law. Such resourcing and effort would also assist with speedier identification and response by regulators to behaviour that is harmful to consumers and/or markets.

Survey results

- *90% of respondents agreed that clarity to the market could be provided by regulators and/or government articulating how broadly or narrowly the existing legislation is to be interpreted, with one qualification that this should be a temporary measure whilst awaiting more specific law;*
- *5% disagreed;*
- *5% felt that it was best to propose a transitional period in any new or amended law.*

5. The word 'crypto asset' and the definition of 'crypto asset' will not lay the appropriate foundation if used across multiple laws

This submission uses the words crypto-asset, digital asset and token interchangeably but with a deliberate and justified preference for the word token. This is because the inclusion of 'asset' is limiting and not always accurate and will be less clear and precise as tokens are developed to do

more and varied things including representing either an asset or a liability or something else such as identity credentials which are highly sensitive but don't necessarily have a positive or negative financial value.

In addition, if Australia and other countries move toward the introduction of a Digital Activities Act, then in order to maintain clear separation from the existing financial services, banking, AML/CTF and tax regimes, different foundational language from those regimes needs to be used. Different language that is more articulate than existing legal definitions is necessary to form a proper basis upon which to understand the technology and how its use should be regulated or taxed when the autonomous technology facilitates an activity and when governance is carried out by a 'sufficiently globally decentralised' organisation.

To the extent that a 'data activity' is in substance the same activity that is regulated as a financial service, such as custody of a financial product, but the DAO meets the SGD test and the core minimum standards of Australian legal recognition of the DAO, further specific minimum standards for the specific activity could apply. As set out in the table above, a specific minimum standard for Australian legal recognition of a DAO could be to require the DAO to publish an analysis against existing laws as to why the protocol and/or token/s are not the 'same activity/asset/liability, with same risks' as a premise for why existing laws are not fit for purpose for the particular innovation proposed by the DAO.

A proposed definition and mental model to understand the paradigm shift required for regulatory and tax principles fit for web3 is set out below. This is a working definition for discussion purposes.

My proposed working definition of tokens derives from an umbrella definition of 'data structures':

> *Short: A representation of attributes, rights or obligations or all in source code, where the purpose of interaction with the data structure becomes apparent when the data structure is 'in transit' once an action or transaction is initiated.*
>
> *Long: A representation of attributes, rights or obligations or all in source code, where the 'ability to direct' an action of or because of those attributes, rights or obligations is 'sufficiently linked' to an 'identifier' and where the attributes, rights or obligations 'may change or be multi characteristic' while the data structure is 'at rest' and the 'purpose of interaction with the data structure becomes apparent when the data structure is 'in transit' once an action or transaction is initiated.*

Key mental model components to understand in critiquing the definition:

- No reference to digital in the definition – it is likely more appropriate to define 'data activities' and then how our activities with data structures should be regulated and taxed, at least until lawyers are involved in drafting 'smart legal contracts' where the contractually binding obligations are written into or clearly linked with the source code.
- No reference to person, which allows for organisations with decentralised models of governance.
- No reference to value (either positive or negative), and reference to attributes in addition to rights and obligations, so as to capture identity and credential token 'data structures' that may not have a value when at rest or in transit.
- No reference to blockchain or cryptographically secured, so that this term can be used in law and regulation (or recognition and minimum standards) for other technology such as activities possible with artificial intelligence and quantum computing.
- No reference to control - this is highly controversial but concepts of ownership and control could be dealt with separately to the definition of 'data structures'.
- Introduction of 'data structure' concept provides the foundation upon which data structure and source code standards can be developed where regulatory protections and tax concepts can be built.

- Introduction of concepts of 'at rest' and 'in transit', 'sufficiently linked', and 'ability to direct' which will each need to be defined.
- Introduction of concept of identifier which is not linked to human person or known legal structure – digital identity management will be its own 'data activity' which may be regulated depending on the use case and risk assessment.
- Introduction of concept of 'purpose of interaction with the data structure becomes apparent when the data structure is 'in transit' once an action or transaction is initiated' to move away from transaction by transaction analysis when the bundle of transactions should be looked at to inform the regulatory and tax approach for the relevant 'data activity'.
- Assumes a human or artificial person should be entitled to, and will have multiple valid digital identities that can be used in different situations.
- Assumes there will be a need to regulate from the perspective of 'data activities', and before the protocol that enables the 'data activity' is deployed immutably and permanently to the blockchain, where the 'data structure' doesn't embody the legal rights and obligations that may have been represented in other materials (e.g. white paper and website) at the time of issue, exchange and dealing with the tokens. Not all token activity will necessarily be in relation to a 'digital representation of value or rights'. For example, consider dealing with a token where its value goes to nil. In such case, the source code doesn't embody any rights (only the surrounding representations create the rights that inform the perception of value).

Survey results

- *70% of respondents agreed the word 'crypto asset' and the proposed definition by Treasury of 'crypto asset' will not lay the appropriate foundation if used across multiple laws*
- *25% disagreed;*
- *5% felt that a single technically accurate definition across laws will be helpful, but laws will necessarily need to apply to such assets in different ways and potentially to subsets of crypto assets or only in specific circumstances.*

6. Introduce a simplified digital asset tax regime that covers historical years and at least the next 2 years

With respect to the taxation of digital asset transactions and of DAOs, and in the absence of timely binding guidance from the ATO, a simplified digital asset tax regime should be introduced to cover historical years and at least the next 2 years. This is a realistic assessment of time that it will take the Board of Taxation to properly review and report on the appropriate bases of taxation of digital asset transactions, DAOs and whether tax restructure relief should be afforded where existing structures move to a DAO structure (in order for Australian businesses to remain globally competitive).

The regime could introduce a 'best efforts' requirement where the taxpayer is required to document how they have used best efforts to determine their tax obligations. Alongside this, there could be an obligation to adopt a tax position that makes 'economic sense' where a tax technical analysis could produce anomalies of double or triple (or more) taxation with reference to the same transaction or bundle or rights. Often, it is unclear at what point of a digital asset transaction (which involves a bundle of transactions and rights) a taxing event or events occur, such as on contribution of tokens as liquidity to a liquidity pool it is unclear whether there has been a disposal of those tokens and acquisition of an interest in a scheme or only a micro disposal of the tokens each time a third party trades with the liquidity pool. It is too costly for retail consumers and investors to pay upwards of $10,000 per protocol and token for tax advice written to the level of a reasonably arguable standard.

Survey results

- *75% of respondents agreed;*
- *20% disagreed or had no opinion;*
- *5% felt that crypto should be tax free*

7. Industry should codify minimum and best practice token custody standards

Before new legislation is introduced, Treasury should work with industry to codify the minimum and best practice token custody standards into a Code of Conduct. Such a process will assist in greater awareness by policymakers and regulators as to the practical constraints of the existing financial services regime. For example, the requirement to have professional indemnity insurance when the insurance market is not mature enough to provide affordable offerings.

Survey results

- *90% of respondents agreed, emphasising that codification isn't necessarily regulation and could be things like Ethereum Improvement Proposals but in all cases must occur subject to consultation with the industry;*
- *10% disagreed or had no opinion.*

Concluding remarks

Direction of policy resources to legislating the proposed CASSPr regime in isolation without addressing the foundational policy issues considered in this submission will be a suboptimal allocation of resources. As proposed, the CASSPr regime is too similar to the existing financial services regime, seeks to regulate for the same risks (where we place trust in humans to hold, invest or manage our assets) but does not adequately reduce the range of actual risks for consumers of holding or dealing with tokens nor does the CASSPr regime foster a pipeline of safe or safer tokens.

From January 2020, through January 2021, to January 2022 the market capitalisation of the 10 biggest USD-pegged stablecoins has gone from US$5 billion, to US$36 billion, to US$167 billion, respectively.[2] Institutional and consumer adoption, and the pace of that adoption, is expected to hasten, particularly as more fiat currency pegged stablecoins are launched around the world which feel "easier" and "less risky" for retail consumers, businesses and governments to use and experiment with.

Over the same period, the market capitalisation of all tokens has gone from US$191 billion, to US$934 billion, to US$2.3 trillion.[3] Total token value locked in decentralised finance (DeFi) applications increased from US$601 million at the start of 2020 to US$239 billion so far in 2022.

The industry is not slowing down.

I thank the global web3 community for their conversations and insights shared with me as I have discussed ideas and concepts with them, and for those that have approved the publication of their votes and comments on each proposal in this submission. Those that have reviewed and contributed specifically to this submission are listed in **Attachment B**.

I welcome the opportunity to provide further, necessary detail that supports this high level submission and ultimately a strategic and internationally competitive regulatory environment in Australia.

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[2] Raynor de Best, Statista, 'Market capitalization of the 10 biggest stablecoins from January 2017 to April 4, 2022', (5 April 2022), available at: https://www.statista.com/statistics/1255835/stablecoin-market-capitalization/.
[3] Raynor de Best, Statista, 'Overall cryptocurrency market capitalization per week from July 2010 to May 2022', (17 May 2022), available at: https://www.statista.com/statistics/730876/cryptocurrency-maket-value/.

Yours sincerely,

Signed by:
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Attachment A Stablecoin law reform

As set out in the recent National Blockchain Pilot Report to the Department of Industry, Science, Energy and Resources by Convergence.tech Australia (Aus) Pty Ltd:

a) APRA and the RBA should consider providing guidance to clarify whether a 'tokenised Australian dollar deposit' issued by an Australian Deposit-taking Institution (**ADI**) can be interpreted as 'currency' or 'Australian currency' under the Currency Act and Reserve Bank Act, which may include specifying at least equal fiat currency must be held in reserve by the ADI to support this characterisation.

b) The Treasurer should consider signing an instrument under the Currency Act to specify a variation from the standard weight applicable to coins, that 'coins' issued as fiat currency pegged crypto-assets on a blockchain are a type of composition of coins, or stablecoins, accepted for circulation and that have the status of 'currency', which may include specifying at least equal fiat currency must be held in reserve by the ADI to support this characterisation.

c) The ATO should consider providing guidance regarding whether a tokenised Australian dollar deposit can be treated as 'currency' for income tax purposes when it represents the unit of account of each Australian dollar, which may include guidance regarding when a fiat currency pegged stablecoin should be treated as a CGT asset, trading stock or a TOFA financial arrangement for income tax purposes.

d) The ATO should consider providing guidance to clarify whether payment of a tax-related liability with a tokenised Australian dollar deposit may be acceptable as 'currency' if the private-permission blockchain or control rights specified for the token contract deployed on a public blockchain is considered an 'electronic funds transfer system' under subparagraph 3(a) of Regulation 21(a) of the Taxation Administration Regulations 2017.

e) The Governor-General should consider amending Regulation 21(a) of the Taxation Administration Regulations 2017 to allow for tax-related liabilities to be paid in stablecoins that are designated as 'currency' or 'currency equivalent' which would enable innovation in digital government to keep pace with innovation in the payments system.

f) The Government should consider amending the GST definition of 'digital currency' to permit characterisation as a 'digital currency' if a fiat currency pegged stablecoin is restricted but still intended to operate as digital currency by a platform or application.

g) The Government should consider amending the definition of an NFP facility to clearly exclude arrangements involving Australian currency pegged stablecoins and could use this amendment to specify the conditions of that exclusion. This could be done by way of regulations under the Government's regulatory modification powers under Chapter 7 of the Corporations Act.

h) The Government should consider amending the definition of a financial market to clearly exclude arrangements involving Australian currency pegged stablecoins and could use this amendment to specify the conditions of that exclusion. This could also be done by way of regulations under the Government's regulatory modification powers under Chapter 7 of the Corporations Act.

i) The Council of Financial Regulators, the ATO and the ACCC should consider defining the parameters in which a fiat currency pegged stablecoin can and should be given 'currency' status or 'currency equivalent' status, as well as the extent of existing licensing obligations that should apply to stablecoin issuers as well as platforms that integrate use of stablecoins until the SVF framework is finalised.

j) The Council of Financial Regulators should consider the issues raised in this report regarding the regulation of fiat currency pegged stablecoins under the proposed SVF framework,

particularly those stablecoins that may be issued on public blockchains without control rights which allow use of the stablecoin beyond the anticipated use and jurisdiction of the issuer.

Attachment B Contributors to this submission

Each person is listed in alphabetical order and has contributed in their individual capacity unless an organisation is specified. Some individuals are not listed as only an email address was provided in their survey response.

Adrian Forza

Aiden Slavin

Alex Maron

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Angus Eaton, Mycelium

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David Wither

Dion Seymour

Gordon Christian

Graeme Fearon

Jack Deeb, Mycelium

John Studley

Julie Inman-Grant

Kelsie Nabben

Liya Dashkina

Luke Higgins

Mark Bland

Mark Monfort

Max Matthews

Paul Derham

Roslyn Baker

Ryan Kris, Verida

Simon Cant

Susannah Wilkinson

Sydney Gondwe

Trent MacDonald

Zubin Pratap

Attachment C Reference materials

Malta

Legizlazzjoni Malta, 'Innovative Technology Arrangements and Services' (November 2018), available at: https://legislation.mt/eli/cap/592/eng/pdf

Gonzi & associates, 'The Innovative Technology Arrangement & Services ('ITAS') Act', available at: https://gonzi.com.mt/investment-services-fintech-capital-markets/blockchain-icos/itas-act/#:~:text=The%20enactment%20of%20the%20'Innovative,of%20investor%20protection%20and%20regulatory

Vermont

Vermont General Assembly, 'Title 11: Corporations, Partnership And Associations; Chapter 025: Limited Liability Companies; Subchapter 012: Blockchain-based Limited Liability Companies', (30 May 2018), available at: https://legislature.vermont.gov/statutes/section/11/025/04173

dOrg LLC Operating Agreement, available at: https://lib.openlaw.io/web/default/template/bbllc-dao%20-%20vermont

Freeman Law, 'Vermond Blockchain Legislation Status', available at: https://freemanlaw.com/cryptocurrency/vermont-blockchain-legislation-status/

Wyoming

State of Wyoming Legislature, 'SF0038 – Decentralized autonomous organizations' (1 July 2021) available at: https://www.wyoleg.gov/Legislation/2021/SF0038

Summary:

- *A decentralized autonomous organization (DAO) is a limited liability company with special provisions allowing the company to be algorithmically run or managed (in whole or in part) through smart contracts executed by computers.*
- *This bill creates a supplement to the Wyoming Limited Liability Company Act to provide law controlling the creation and management of a DAO. The provisions of the LLC Act apply to a DAO except as specifically modified by the supplement.*
- *This bill establishes baseline requirements for member managed or algorithmically managed DAO's and provides definitions and regulations for DAO formation, articles of organization, operating agreements, smart contracts, management, standards of conduct, membership interests, voting rights, the withdrawal of members and dissolution.*

Andrew Bull, CoinDesk, 'Regulators Everywhere Should Follow Wyoming's DAO Law' (9 July 2021) available at: https://www.coindesk.com/markets/2021/07/08/regulators-everywhere-should-follow-wyomings-dao-law/

State of Wyoming Legislature, 'SF0068 – Decentralized autonomous organisations-amendments' (9 May 2022) available at: https://www.wyoleg.gov/Legislation/2022/SF0068

Summary:

This act amends the decentralized autonomous organizations supplement to:

- *Clarify the definitions of "majority of the members," "membership interest," and "smart contracts."*
- *Clarify that a DAO is not either "member managed" or "algorithmically managed" but may vary in the extent that it is member or algorithmically managed.*
- *Allow the Secretary of State to dissolve a DAO thirty (30) days after formation if no publicly available identifier is included in papers filed with the Secretary of State.*

- *Clarify that a smart contract may constitute a DAO's operating agreement.*
- *Clarify that management is vested in the DAO members or the DAO members and any applicable smart contracts.*
- *Require any smart contract utilized by a DAO to be capable of being updated, modified or otherwise upgraded.*
- *Clarify rights of members and dissociated members as well as how a person becomes a member and withdraws from membership in a DAO.*
- *Provide additional events that cause dissolution of a DAO and provide a process to petition a court for dissolution.*

Attachment D Response to Consultation Questions

Short form responses are provided here and are supported by the fuller analysis set out in the letter and earlier Attachments.

1. Do you agree with the use of the term Crypto Asset Secondary Service Provider (CASSPr) instead of 'digital currency exchange'?

No. Both terms are apt to mislead consumers.

2. Are there alternative terms which would better capture the functions and entities outlined above?

Reference should be made to 'token'. For the 'data/digital activity' of 'exchange', an exchange provider could be labelled a 'token exchange'. If the token exchange lists tokens issued by 'sufficiently globally decentralised' (**SGD**) DAOs, then those tokens should be labelled 'DAO tokens'.

If the token exchange is centralised, it makes sense to leverage from existing regulation to the extent the same or similar risks are present. If the token exchange is a DAO that is SGD, then it should meet the proposed minimum standards of Australian legal recognition.

Any attempt to regulate tokens, token activities, or entities involves in tokens or token activities as if the tokens are a 'financial product' or a modified financial product under the Corporations Act should take account of the latest findings from the ALRC review into the Corporations Act. Until the ALRC review is complete, Treasury should seek to assist industry to codify best practice standards.

3. Is the above definition of crypto asset precise and appropriate? If not, please provide alternative suggestions or amendments?

No, the definition is flawed and not future fit. Notwithstanding the similarities to other country proposals, litigation is only just commencing to test the effectiveness of these definitions and is expected to show the inadequacies of existing prevailing definitions.

4. Do you agree with the proposal that one definition for crypto assets be developed to apply across all Australian regulatory frameworks?

Yes, but the term would need to be 'data structure' and seek to regulate or tax the 'data/digital activities' to have broad application.

5. Should CASSPrs who provide services for all types of crypto assets be included in the licencing regime, or should specific types of crypto assets be carved out (e.g. NFTs)?

Centralised providers of 'data/digital activities' such as exchange, investing, managing financial risk, lending, payments, custody etc should each be labelled as such and observe latest and best industry standards. This is at least until the ALRC review is completed and an informed approach to reform of the payments and financial services licensing is developed following the Farrell report recommendations. The data structure, i.e. whether the token is an ERC-20 (fungible), ERC-721 (non-fungible) or ERC-1155 (semi-fungible), should not matter so much as the activity undertaken with the token.

6. Do you see these policy objectives as appropriate? [consumer protection, AML/CTF compliance and reg certainty for CASSPr licensing regime]

Not as they are presented in isolation with the proposed CASSpr regime. The policy objectives need to be recontextualised through the lens of the foundational policy issues presented by global, decentralised technology.

7. Are there policy objectives that should be expanded on, or others that should be included?

Yes, the foundational policy priorities set out in this submission:

(a) clarifying 'money' and 'currency' status for fully fiat-collateralised fiat currency pegged stablecoins – everyday people are and will increasingly use stablecoins as money, and the quality of stablecoin reserves is a key issue for systemic risk management;

(b) characterisation of DAOs and what constitutes a 'sufficiently globally decentralised' organisation for legal and tax purposes; and

(c) a legal and tax regime that regulates and taxes token activities instead of relying on characterisation of the token at the time of issue by an issuer.

8. Do you agree with the proposed scope detailed above? [scope of CASSPr licensing regime, DeFi carve-out, reducing reg duplication, interaction with AML/CTF regulation]

The scope has not been defined in sufficient detail or contextualised against the foundational policy priorities. Metrics to determine what constitutes a 'sufficiently globally decentralised' organisation is necessary to clearly identify DAO tokens issued from Blockchain Layer DAOs (e.g. Bitcoin blockchain and network of nodes) or Application Layer DAOs (e.g. MakerDAO with MKR governance tokens; Uniswap with UNI governance tokens).

9. Should CASSPrs that engage with any crypto assets be required to be licenced, or should the requirement be specific to subsets of crypto assets? For example, how should the regime treat non-fungible token (NFT) platforms?

Refer to response to Question 5.

10. How do we best minimise regulatory duplication and ensure that as far as possible CASSPrs are not simultaneously subject to other regulatory regimes (e.g. in financial services)?

The ALRC Review and the Farrell review both favour a graduated, scaled licensing regime. With this in mind, there are three possible regulatory scenarios:

- Category 1: If the CASSPr or 'regulated token activity provider' is dealing with non-DAO tokens (and other traditional instruments) that are financial products, the provider should be licensed under an existing AFSL, PPF, ADI, or ACL with modifications for requirements that the crypto industry cannot or cannot easily meet, such as professional indemnity insurance.

- Category 2: If the CASSPr or 'regulated token activity provider' is dealing with DAO tokens as well as non-DAO tokens that are each financial products, the provider should be licensed as above for a transition period only until a future regime is developed in cognisance of the foundational policy issues.

- Category 3: If the CASSPr or 'regulated token activity provider' is dealing with DAO tokens only, the foundational policy issues related to decentralised global technology need to be resolved first or concurrently with the development of a specific regime.

Understanding the exposure of each 'regulated token activity provider' to DAO-tokens relative to non-DAO tokens will increasingly be a critical metric for prudential and financial market observation.

11. Are the proposed obligations appropriate? Are there any others that ought to apply?

Other obligations that ought to apply will come out of the work focussed on the foundational policy issues.

12. Should there be a ban on CASSPrs airdropping crypto assets through the services they provide?

No. Obligations could apply to a 'regulated token activity provider' or SGD DAO such as minimum checks and disclosure, respectively, before the airdropped token is made available or dropped, respectively.

13. Should there be a ban on not providing advice which takes into account a person's personal circumstances in respect of crypto assets available on a licensee's platform or service? That is, should the CASSPrs be prohibited from influencing a person in a manner which would constitute the provision of personal advice if it were in respect of a financial product (instead of a crypto asset)?

Lifting minimum standards of information available about DAO tokens, such as is proposed as a minimum requirement for Australian legal recognition of DAO that is SGD, would help inform the market about the nature of the token and its risks.

The foundational policy issues need to be considered before any ban is determined appropriate.

14. If you are a CASSPr, what do you estimate the cost of implementing this proposal to be?

No comment.

15. Do you support bringing all crypto assets into the financial product regulatory regime? What benefits or drawbacks would this option present compared to other options in this paper?

No. Non-DAO tokens are arguably already within the financial product regulatory regime or the consumer product regime. Bringing DAO-tokens into the financial product regulatory regime does not solve for the foundational policy issues.

16. If you are a CASSPr, what do you estimate the cost of implementing this proposal to be?

No comment.

17. Do you support this approach instead of the proposed licensing regime? If you do support a voluntary code of conduct, should they be enforceable by an external dispute resolution body? Are the principles outlined in the codes above appropriate for adoption in Australia?

As set out in an earlier submission I made when I was employed with Mills Oakley, the case is strong for a Treasury and industry led, multi-agency taskforce to design, implement and administer a Safe Harbour before any new law is introduced: https://www.millsoakley.com.au/wp-content/uploads/2021/08/Mills-Oakley-submission-to-ASIC-Consultation-Paper-343-Senate-Select-Committee-on-Aus-as-Tech-Fin-Centre.pdf

18. If you are a CASSPr, what do you estimate the cost and benefits of implementing this proposal would be? Please quantify monetary amounts where possible to aid the regulatory impact assessment process.

No comment.

19. 19. Are there any proposed obligations that are not appropriate in relation to the custody of crypto assets?

The foundational policy issues need to be dealt with first. Custody requirements for DAO-tokens and for SGD DAOs may need different and bespoke considerations.

20. Are there any additional obligations that need to be imposed in relation to the custody of crypto assets that are not identified above?

Refer to response to Question 19.

21. There are no specific domestic location requirements for custodians. Do you think this is something that needs to be mandated? If so, what would this requirement consist of?

No, but customers should be clearly informed on the main webpage that control of the tokens resides offshore (if there is no Australian resident/s with the ability to control or access necessary information such as keys and seed phrases) which may increase the customer's risk of non-recovery in the event the provider becomes insolvent or is the subject of an attack.

22. Are the principles detailed above sufficient to appropriately safekeep client crypto assets?

Refer to response to Question 19.

23. Should further standards be prescribed? If so, please provide details

Refer to response to Question 19.

24. If you are a CASSPr, what do you estimate the cost of implementing this proposal to be?

No comment.

25. Is an industry self-regulatory model appropriate for custodians of crypto assets in Australia?

If the Australian legislature cannot commit to legislative amendments at least every year to keep pace with emerging technology, a balance needs to be struck between an industry self-regulatory model and legislation. As the Wyoming DAO LLC law shows – needing to be amended within 9 months of the legislation coming into effect – the legislation cannot just be 'set and forget'. An attempt to legislate must come with an ongoing commitment to keep that legislation fit for purpose.

26. Are there clear examples that demonstrate the appropriateness, or lack thereof, of a self-regulatory regime?

The Ethereum Improvement Proposal process demonstrates the community and industry effort for constant improvement of standards that the whole community relies on.

27. Is there a failure with the current self-regulatory model being used by industry, and could this be improved?

Industry self-regulation is largely based on improving technology functionality and security rather than legal requirements, financial or markets regulatory experience.

28. If you are a CASSPr, what do you estimate the cost of implementing this proposal to be?

No comment.

29. Do you have any views on how the non-exhaustive list of crypto asset categories described ought to be classified as (1) crypto assets, (2) financial products or (3) other product services or asset type? Please provide your reasons.

Refer to responses to Questions 1, 2, 3 and 5.

30. Are there any other descriptions of crypto assets that we should consider as part of the classification exercise? Please provide descriptions and examples.

Refer to letter and earlier Attachments, and responses to Question 2.

31. Are there other examples of crypto asset that are financial products?

A number of tokens meet the definition of 'financial product' but there is no 'issuer' or 'operator' in the case of a SGD DAO. Secondary providers are already captured as 'dealing' or 'arranging' or 'giving advice' in relation to a financial product.

32. Are there any crypto assets that ought to be banned in Australia? If so which ones?

Those that chain analytics show have come from criminal or suspicious wallets or activity.