

31 May 2022

Director, Crypto Policy Unit  
Financial System Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600  
**by email:** [crypto@treasury.gov.au](mailto:crypto@treasury.gov.au)

Dear Director

**Coinstash's submission to "Crypto asset secondary service providers: Licensing and custody requirements" consultation paper**

**About Coinstash**

Coinstash ("we", "our", "us") is a cryptocurrency broker headquartered in Brisbane that began operating via [www.coinstash.com.au](http://www.coinstash.com.au) in May 2019. The business has been registered with AUSTRAC since 2018 as a digital currency exchange provider (DCE100575420-001). We employ approximately 10 employees and contractors and look to bring more team members on board in the future. We have recorded over 20,000 registered users since the business was inception by co-founders Mr Ting Wang (CEO) and Mr Mena Theodorou (CTO).

In April 2021, we were the first Australian cryptocurrency broker to successfully conduct a retail equity crowdfunding, reaching our maximum fundraising target of \$2.8 million from over 1,400 retail and wholesale investors. Our investors are now an integral part of Coinstash and the wider crypto community in Australia.

**Our view of the future – policy backdrop**

Cryptocurrency in the past decade has been dominated by speculation. Whilst there are many different opinions on cryptocurrencies, it has resulted in robust discussions that have brought into the limelight the disruptive force of cryptocurrency and the underlying blockchain technology.

We strongly believe that the next decade of growth of the crypto industry will be driven by business models that embrace crypto assets and blockchain technology to disrupt the way in which products and services (including traditional financial products and services) are delivered to consumers.

Cryptocurrency brokers/exchanges such as Coinstash play an important role in the emerging virtual economy. They act as a gateway for people into the world of crypto by allowing people to seamlessly exchange their fiat dollars into crypto assets to participate in the crypto ecosystem.

## Australia produces top-tier crypto talent and businesses

Australia's home-grown crypto talent punches above its weight in the global crypto ecosystem.



kyle w @kyleTwang · Nov 5, 2021

FYI there is something in the water in Australia...  
That creates top tier #DeFi and #NFT talent.

However, we have also witnessed crypto businesses leave Australia or set up headquarters elsewhere) where the regulatory framework in the other jurisdiction, whilst not perfect, provides a level of certainty for the business to operate in. Some projects have moved to towards "decentralised" model of governance or relocated to crypto "friendly" jurisdictions in an attempt to escape regulation altogether.

We agree with Treasury's view that "[r]egulation would support consumer confidence and trust in the crypto asset ecosystem and provide regulatory certainty to support crypto businesses' investment decisions." However, we also urge policymakers to introduce a policy setting that does not discourage innovation and experimentation.

### Responses to selected consultation questions

Below are our responses to selected consultation questions.

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

Yes. The exchange product, whilst currently a large revenue driver for many CASSPrs, is only a subset of potential services that a crypto platform can offer to clients. Therefore, a broader term is needed, such as CASSPr.

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

We question whether the word "Secondary" is superfluous. Crypto asset service provider would suffice.

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

It would include most, if not all, crypto assets. However, the definition is also very broad and therefore at risk of overreach e.g., if stocks are tokenised onto the blockchain, how would the regime deal with the overlap with existing financial product rule – perhaps there needs to be a tie breaker.

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

Only to the extent sensible outcomes are achieved. For example, the tax treatment of gains and losses from the sale/purchase of crypto assets is ultimately driven by the nature and scale of the taxpayer's activities i.e., whether the taxpayer is classified as an investor, trade, or hobbyist. If a uniform definition is adopted across all regulatory frameworks, Treasury should consult to ensure there are no unintended consequences to those other regulatory frameworks.

**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)?**

We think there should be some de-minimis exemptions to exclude situations where the services relating to the crypto asset are ancillary in nature.

We don't think NFTs should be carved out of the licensing regime.

**6. Do you see these policy objectives as appropriate?**

Yes, but we would be interested in understanding how Treasury intends to protect the community from "harms arising from criminals and their associates owning ... CASSPrs". For example, requiring either CASSPrs or intermediary platforms to conduct criminal background checks as part of an equity crowdfund would be costly and prohibitive. As noted in the introduction, we have over 1,400 retail and wholesale investors who are shareholders in our business (comprising approximately 14% of our share register).

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

No further comment.

**8. Do you agree with the proposed scope detailed above?**

Yes. We think the scope should be framed as services provided by the CASSPr rather than the crypto assets covered by the licencing regime.

**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?**

See response at 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)**

We don't think duplication is necessarily an issue because the licencing regime is meant to deal with crypto assets that are not financial products. CASSPrs that only provide services relation to non-financial products can remain within the CASSPr regime without necessarily needing to navigate the financial services/product regimes



However, if CASSPrs wish to expand their service offering to include services or products that resemble financial products or services, they may need to seek additional authorisations such as an AFSL for those additional services.

If there is uncertainty as to whether or not a crypto asset is a financial product, we think that they should be regulated under the CASSPr regime. This should mitigate the risks for new tokens.

Additionally, we think expanding the ASIC sand box program to include crypto assets would be a useful tool to provide a safe harbour and help CASSPrs "graduate" into the financial product / services regime.

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

As a general comment, the licence obligations should not encourage anti-competitive behaviour. Centralised exchanges are a key distribution platform for retail customers so the licencing regime should not be too onerous that it places undue and onerous obligations on CASSPrs or reduces competition such that customers have fewer choices. An onerous licencing regime may have the unintended effect of divert customers to 'underground' unregulated, or unlicensed CASSPrs.

In terms of point 8, we agree that CASSPrs need to establish reasonable processes and procedures to ensure the crypto assets it lists are not scams or frauds. However, we also submit that it should not be the responsibility of CASSPrs to gatekeep crypto assets that may underperform due to poor business models/planning or due to the project not finding product-market fit. Whilst a CASSPr may make the commercial decision to not list certain crypto assets, the licencing regime should ensure the CASSPr is *not obligated* to evaluate or curate a selection of crypto assets that it thinks will succeed – ultimately the market will decide the success (or failure) of a particular project – nor should the regime hold the CASSPr responsible for losses resulting from unsuccessful projects.

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

No. We don't see how a potential ban on airdrops will achieve the policy objectives. As part of its custody services, CASSPrs may receive airdrops from token issuers, and they should be able to pass the airdrop on to their customer.

**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)?**

No, there should not be a blanket ban. Some CASSPrs may decide for commercial reasons to remain impartial / neutral and refuse to provide personal advice. Other CASSPrs may only exchange utility tokens or social tokens and it would be natural for these CASSPrs to advise its customers on what tokens suit their personal circumstances, similar to how customers may

request a retailer to provide personal advice when shopping for say, a mobile phone or cosmetic products.

However, a CASSPr should be required to disclose any conflicts of interests or financial incentives that it may receive if it were to provide advice on a crypto asset that takes into account a person's personal circumstances.

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

It is difficult to estimate costs without knowing the particulars.

However, we note that the existing minimum financial requirements (\$10m) for custodians under the AFS regime would be too extreme if it were copied like-for-like into the CASSPrs licensing regime. We submit that the decision to maintain the financial requirements should be made by the CASSPr against criteria such as security practices and certifications, nature and scale of operations.

***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. The existing financial product regime is not flexible enough to accommodate the speed of innovation in the crypto space. In fact, much of the current uncertainty stems from whether or not a crypto asset is a financial product.

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

We think the costs under this alternative option (regulating CASSPrs under the financial services regime) would result in disproportionately high barriers to entry, may minimise competition and therefore innovation in the space. We estimate the cost to be at least \$300,000-\$500,000 per year for new entrants.

***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?***

No. Whilst it is tempting to paint the crypto community / ecosystem as a homogenous group, the crypto community is in fact, highly diverse with its participants ranging from "tradfi" backgrounds who see crypto as an extension of the existing financial system, to web3.0 builders who are at the cutting edge of innovation experimenting with DeFi, DAO, NFTs, stablecoins etc.

If the policy objective is to minimise consumer risk and provide regulatory certainty about the treatment of crypto assets so that the ecosystem can mature and grow, we do not think the policy objective can be achieved via self-regulation.



**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.**

This is difficult to estimate however it will be less than the response provided at Question 16.

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

and

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

We support the custody principles listed above.

However, we note that "hacks" on centralised exchanges are uncommon these days (although we acknowledge the risk is still there). This is likely due to the reputable exchanges already adopting the principles listed above. Nowadays, most of the hacks that make the news headlines are exploits on DeFi protocols/bridges and relate to vulnerabilities in smart contract or sophisticated social engineering scams.

**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?**

We oppose the requirement for an onshore custodian.

We do not think this is practicable from a technological perspective (since private keys would need to be backed up in different geographical locations around the world).

Even if the onshore custodian requirement was legislated, the operator would likely be a domestic storefront of an international custodian using existing technologies.

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

Yes.

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

No further submission

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We thank you for the opportunity to provide our submission.

Please contact Ting Wang at [REDACTED] and Simon Ho at [REDACTED] with any questions.