

Submission to the Australian Treasury on Crypto Asset Secondary Service Providers: Licensing and Custody Requirements

In Response to The Treasury's Consultation Paper

3 June 2022

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Director - Crypto Policy Unit
Financial System Division
The Treasury
Langton Crescent
Parkes ACT 2600

By e-mail to: crypto@treasury.gov.au

Re: Australian Treasury's Consultation on Crypto Asset Secondary Service Providers: Licensing and Custody Requirements

Crypto.com welcomes the opportunity to provide our submission to the Australian Treasury on the matter of *Licensing and Custody Requirements for Crypto Asset Secondary Service Providers* "CASSPrs." We wish to express our appreciation to the Australian Treasury for addressing key issues core to evaluating the appropriate regulatory treatment of crypto assets in Australia.

As a leading provider of crypto asset services, Crypto.com proudly serves the Australian market and is committed to its economic growth and in delivering the social utility of crypto assets to the Australian consumer, investor, and business owner. We agree with the Australian Government, and in particular The Treasury, that a clearly codified regime cements the importance of the ecosystem to the Australian economy, encourages further innovation and competition, and crucially provides greater consumer confidence.

We greatly look forward to continued dialogue with The Treasury on a policy framework that will encourage responsible innovation and thereby enable even more Australians to benefit from a more inclusive, modern digital economy.

Kind Regards,



Katie Mitchell
SVP, Global Head of Policy and Engagement



Karl Mohan
General Manager, APAC

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INTRODUCTION - PRINCIPLES FOR RESPONSIBLE INNOVATION

Crypto.com is grateful for the opportunity to provide our submission in response to the Australian Treasury Consultation entitled “[Crypto asset secondary service providers: Licensing and custody requirements.](#)”

We commend Australia’s role in leading global markets by establishing a regulatory framework that harnesses the power of financial innovation and crypto assets. Crypto.com is a growing global cryptocurrency and digital commerce platform empowering millions of people around the world to participate in a more fair and equitable digital ecosystem - one that gives people greater control over their financial and digital lives. More than 50 million people use our platform across 90 countries. With this global reach and diverse user-base, we can attest that Australia is leading the charge globally. Australia has always been a first-adopter market, setting global pace on what it means to operate a truly “digital economy.” That same enthusiasm and appetite for innovation is also evident in crypto adoption.

In Australia, crypto is cementing itself as a regular fixture of daily economic life for many. Recent [reports](#) have found that over 23% of Australians are holding crypto today, and almost 45% of millennials in Australia own crypto. Companies like ours created avenues for people to spend their crypto in the real world through payment products. Crypto.com was the first exchange to launch a major payment product with a global payment network. Globally, the Crypto.com Visa card experienced [double-digit growth per-user spending in 2021](#) compared to the previous year. That means crypto spending in places like Woolworths and Aldi – the top supermarkets where the product was used in Australia – for everyday purchases.

Before we address the specific and important queries posed by the Treasury in the remainder of our submission, we wished to frame our response by introducing **Crypto.com’s Guiding Principles for Responsible Innovation**, which outline our commitment to key stakeholders - including our users and governments around the world:

- To build a modern financial and digital ecosystem that is **convenient, efficient, and transparent** - and that actively **combats illicit finance, fraud, and crime**;
- To **strengthen digital security** and **consumer protections**;
- To **expand financial access** and to promote digital and financial literacy; and
- Support **environmental stewardship** and sustainability.

We are working with partners in the private and public sectors around the world to make these principles a reality.

We also believe that **common-sense principles should guide approaches to crypto asset regulation**. It is critical that industry players have an opportunity to work with regulators to establish a practical regulatory framework that appropriately balances growth and innovation with other key policy imperatives such as consumer protection and market stability. Therefore, in addition to definitional questions or technical implementation standards, we would encourage any regulatory body, including The Treasury, to **consider the following attributes of an internationally competitive regulatory environment for digital and crypto assets**:

- **Modern**: Regulation of digital and crypto assets should be **fit-for-purpose** and **technology-neutral**; new and existing players providing crypto asset services should be **subject to the same** regulatory requirements.
- **Harmonised**: Given the inherent cross-border nature of the crypto industry, we support as much **global alignment** on terminology and policy where possible; regimes should be **complementary** and tailored to specific activities within the “cryptosphere” and thereby **create clarity**, not confusion, duplication, or arbitrage.
- **Proportionate**: Policies should **empower innovation and ingenuity** while **safeguarding against risks**, with **appropriate differentiation** among products, services and platforms with different risk-profiles.

We very much appreciate the opportunity to respond to The Treasury’s Consultation paper, and specific queries posed therein, below. **Please note** that we have elected to respond to consultation questions where we feel we can offer sufficient insight.

RESPONSES TO CONSULTATION QUESTIONS

1. Proposed Definitions and Terminology

Key Points:

- “CASSPr” is not an appropriate term for the functions and entities identified within the consultation.
- Definitions should aim toward global consistency.
- Definitions of crypto assets as they relate to associated regulated activity/capture should be specific to, and reflective of asset-class.

Question 1: Do you agree with the use of the term crypto asset secondary service providers (CASSPrs) instead of “digital currency exchange”?

No; the term “CASSPr” would be inconsistent with emerging global terminology and could introduce confusion. In reference to our proposed principles for regulation, harmonisation is crucial to ensuring operational clarity. In addition to diverging from other terminology globally (e.g., the European Union’s determined “Crypto Asset Service Providers” (CASP)), the term is inconsistent with the services implied.

We would recommend the use of the term “exchange” when referring to a marketplace, which supports settlement and clearing functions. Other models, by contrast, are either brokered or direct-counterparty models.

Further, the term “Secondary” suggests “secondary market trading,” which is not a feature of a cryptocurrency exchange where the wallet accounts are directly held on the exchange. This is a distinct feature from analogous traditional finance exchanges.

We support activity-based regulation and believe it is important that all firms providing crypto asset-related services, including incumbent players, are subject to similar requirements.

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

Yes. We support aligning terminology globally. See more detail above.

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

No comment, except that the definition of cryptocurrency should be distinct from legal tender but that otherwise the definitions and licensing should be sufficiently broad to allow it to be (a) traded (b) used as means of payment for transactions with merchants (c) transferred (or remitted) between two persons

with no underlying goods/services changing hands (d) used as method of participation into DeFi/Dapp ecosystems; and (e) staked to generate rewards against promising/beneficial projects (to be determined by community of participants rather than by regulators).

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

We agree with The Treasury that there should be consistent definitions for the various crypto/digital assets across all Australian regulatory frameworks.

As described above, however, there are assets and activities that possess distinctive qualities and therefore require distinctive regulatory treatment. A modern approach to digital asset regulation would benefit from sub-asset classes that can be distinctly defined and therefore subject to a regulatory approach commensurate with their activities and design. This approach would also yield positive outcomes in innovation while ensuring firms aren't weighed down by compliance costs for those assets that pose different levels of risk.

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

Inevitably, the Australian Securities and Investments Commission (ASIC) will need to develop exemptions at least on a jurisprudential level. The mere fact that an asset class has latent value and can be traded would not bring it within the statutory powers of ASIC. Apart from this, the risk profiles of different types of crypto assets would necessitate different policy approaches.

Not all crypto assets are an investment option. For instance, fully-backed stablecoins and Central Bank Digital Currencies (CBDCs) are examples of crypto assets that should not be within ASIC's jurisdiction. Likewise, the vast majority of NFTs have artistic value and are most closely connected to traditional art markets on digital rails, but are not financial products (even though the method of paying for a transaction may be and therefore are more apt to regulated under crypto payments generally) and therefore should not fall under ASIC's jurisdiction.

2. Proposed Principles, Scope, and Policy Objectives of the New Regime

Key Points:

- We support the development of a regulatory regime for crypto asset providers that is modern, harmonised, and proportionate.
- The Australian Treasury's policy imperatives align with Crypto.com's *Principles for Responsible Innovation*. Policy objectives should therefore aim to: ensure the development of a modern financial and digital ecosystem, protect consumers, expand access to digital financial services, and encourage environmental stewardship.
- We encourage a whole-of-government approach to regulation, leveraging the convening

power of the Council for Financial Regulators.

Question 6: Do you see these policy objectives as appropriate?

In general, we agree with the policy objectives identified in the Treasury consultation paper. We would again refer to our *Principles for Responsible Innovation* when considering policy objectives. Policy objectives should therefore aim to: ensure the development of a modern financial and digital ecosystem, protect consumers, expand access to digital financial services, and encourage environmental stewardship.

We note the emphasis toward and importance of setting a high standard for crypto-asset service providers' resilience and custodial requirements as well as effective Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT). Establishing such standards and requirements are key to continued growth and the long-term success of the crypto industry. We also suggest that establishing consistent global standards is key to avoiding unfair competition and promoting adequate safeguards, particularly with respect to AML/CFT.

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

No. We feel the policy objectives considered in the consultation are expansive and sufficient.

Question 8: Do you agree with the proposed scope [for a licensing regime] detailed above?

We are supportive of a modern licensing regime for CASPs. The current licensing framework is not fit for purpose and disproportionately onerous as it places market operator and clearing and settlement license requirements on exchanges. We would also support tiered or proportionate licensing requirements for secondary service providers.

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

Licensing requirements should be proportionate. Meaning, as possible, precise to, and reflective of the type of activity undertaken and the corresponding risks. Markets such as the [United Arab Emirates](#) and [Singapore](#) have carefully segmented the crypto-asset activity types into clear, non-overlapping categories and have designed their regulatory approaches based on product feature and activity.

Expanding on our previous point regarding NFTs (Question 5), they are lower risk and any issues of authenticity/ownership are best regulated by independent valuers and dispute resolution forums as any

item of artistic value would. Therefore NFTs and NFT marketplaces shouldn't be subject to regulatory standards otherwise applied to financial markets.

Question 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 would recommend that Australian regulators engage in a thorough mapping exercise – in consultation with industry – to ensure there are no duplicate licensing categories. We envision this as a multi-regulator exercise, involving the input of the Reserve Bank of Australia (RBA), the Australian Securities and Investment Commission (ASIC), the Australian Prudential Regulation Authority (APRA), the Australian Competition and Consumer Commission (ACCC), and possibly others. Therefore, the Council of Financial Regulators (CFR) would have a key role, as it likewise plays on implementation of the 2021 [Payments Review](#). Key policy drafts should be discussed with a panel of key market participants across Australia in an ongoing and open dialogue.

3. Proposed Obligations on Crypto Asset Secondary Service Providers

Key Points:

- We recommend defining significant and systemic compliance breaches in the context of AML/CTF and applying punitive measures in accordance with those definitions.
- Airdropping is an innovative delivery mechanism with benefits. Scrutiny should be placed on the underlying activities incentivising the delivery tool, not on its standalone use.
- It's important to weigh the potential compliance costs of implementing a regulatory regime with the opportunity to cultivate smaller, early-stage startup companies in Australia.

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

We would kindly suggest that the proposed obligations as currently presented are not appropriate. Specifically, we would encourage further consideration to the definition of scope and terms such as 'fit and proper persons' in the context of crypto asset service providers.

We uphold the importance of AML/CTF compliance and invest in our own technology and compliance programmes accordingly. However, including 'breach' of AML/CTF provisions as grounds for license cancellation is not appropriate. We would recommend applying that response if the breach is significant and systemic. A definition of 'significance' and 'systemic' in nature must also be defined in order for the rule to be applied appropriately.

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

No, there should not be a ban on airdropping. Airdropping of crypto assets is an innovative feature that can serve multiple purposes. In some instances, airdropping can reward early participants in a crypto

project, in others it helps establish equitable governance mechanisms by aiding in the decentralisation of the crypto holdings of a platform.

Airdropping itself is a mechanism for delivery and does not pose a standalone risk. We therefore do not support an across-the-board ban on airdropping. Our recommendation, rather, is that regulators focus on the core activity incentivised by airdropping.

Question 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 a provision of personal advice if it were in respect of a financial product (instead of a crypto asset)?

No, there should not be a ban. With respect to CASPs and financial products, issuing such a ban would be duplicative of current requirements that firms with Australian Financial Services Licenses (AFSLs) must already adhere to. That is, CASPs are already subject to such a ban to the extent that they are required to attain AFSLs when they are dealing in financial products.

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

The compliance cost will likely be significant and burdensome, particularly for early stage start-ups. We believe a proportionate regulatory framework is key to promote innovation and the emergence of new and innovative players in the Australian crypto market.

In order to continue to encourage a vibrant, innovative ecosystem in Australia, we would suggest sufficient timing for implementation, particularly so smaller firms are not left behind.

4. Alternative Options

Key Points:

- Crypto assets should be treated based on purpose and risk-profile. Therefore, not all crypto assets should be included in the financial product regulatory regime.
- We first believe the burden of listing or delisting a token should fall to respective platforms.
- In order to raise industry standards, we support use of industry-wide adopted *guidelines* with respect to token listing.

Question 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, we do not believe that would be appropriate. It is critical that regulation treat assets based on purpose and risk-profile, while – to use the Treasury’s words – “looking through” the technology. We wish to reiterate our response to Question 3 regarding definitions, licensing, and activities.

Additionally, crypto securities should be regulated as securities, and crypto assets should not be regulated differently than other commodities such as precious minerals or currencies. Otherwise, we risk putting the cart before the horse, and artificially constraining the product/technology development by inappropriate regulatory labels - running counter to global trends.

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

No comment.

Question 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?

We first believe the burden of listing or delisting a token should fall to respective platforms. In order to raise industry standards, we support use of industry-wide adopted guidelines with respect to token listing, but specific policies should be permitted to be developed by exchanges for their own operations.

Question 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.

5. Proposed Custody Obligations to Safeguard Private Keys

Key Points:

- We do not support, nor do we encourage domestic location requirements for custodians.
- Crypto asset providers should be required to outline what best practices they have in place to effectively safeguard consumers' private keys.

Question 19: Are there proposed obligations that need to be imposed in relation to the custody of crypto assets that are identified above?

We support measures to ensure custody of customers' crypto assets in partnership with globally accepted and specialized custody service providers, or internally where the crypto exchanges or brokerages exhibit the right mix of technical security, data security; and right mix of hot-cold wallet structures (to ensure sufficient liquidity for intraday withdrawals and deep-cold custody for safekeeping). Custody will need to make legislative accommodations for any earn or staking protocols that customers self-select into.

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

We support the adoption of rigorous requirements for fiat-backed stablecoin issuers and algo-backed stablecoin issuers.

Question 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?

Australia has been a leading jurisdiction in ensuring the digital economy develops through the free-flow of data and commerce across borders. Through trade promotion activities and [progressive digital economy agreements](#), Australia has long-recognised the benefits to national and international GDP when cross-border innovation can flourish. We would strongly encourage a similar, globally-leading approach to the crypto asset environment in order to appropriately foster competition and innovation.

A domestic location requirement for custodians does not necessarily improve the standard for safekeeping of crypto assets, and could hinder innovation and security. We believe that Australian consumers should be able to continue to benefit from the security advances and innovations that custodians around the world offer.

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

In general, we believe the principles are sensible and sufficient to ensure the safekeeping of crypto assets for consumers. However, we have concerns about the first principle – “holding assets on trust for the consumer “ – as this will likely incur significant time and cost and will make it cost- and effort-prohibitive for start-ups, in particular, to be easily involved.

Instead, we would propose issuing a gradual requirement, with a specific time horizon for a company to come into compliance, to have assets to be safeguarded by a trust. In the meantime, requiring segregation of customer funds should be sufficient.

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

Each provider should be required to outline what “best practices” and other policies and procedures they have in place to effectively safeguard consumers' private keys.

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

No comment.

6. Alternate Option: Industry Self-Regulation

Key Points:

- We support a modern approach to crypto asset regulation, which reflects both a whole-of-government review and industry consultation. We therefore, do not believe an industry self-regulatory model is appropriate for custodians of crypto assets in Australia.

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

No.

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

No comment.

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

No comment.

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

No comment.

7. Early Views on Token Mapping

Key Points:

- There might be multiple classifications of tokens that likewise evolve over time as new features are added. Therefore, we recommend the burden of appropriate categorisation be left to the platform.

Question 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, (3) other product services or asset type? Please provide your reasons.

There might be multiple classifications of tokens that likewise evolve over time as new features are added. Therefore, we recommend the burden of appropriate categorisation be left to the platform. Prescribing categories before the product development phase has reached stability tends to lead to

unintended consequences - for example that some types of fiat-backed stablecoins are classified as “money” in some parts of the EU and therefore cannot be performed under a VASP-type license, which runs counter to the integral role stablecoins perform in the facilitation of cryptocurrency trading.

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

No Comment.

Question 31: Are there other examples of crypto assets that are financial products?

No comment, please reference our earlier language in response to Question 3.

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

No Comment.

About Crypto.com

Crypto.com is a growing global cryptocurrency and digital commerce platform empowering millions of people around the world to participate in a more fair and equitable digital ecosystem – one that gives people greater control over their financial and digital lives. Digital payments and digital financial technology is advancing quickly to produce new ways for people to manage, save, spend, and invest money. These innovations are improving people’s control of their finances and digital identities. Our mission is to financially empower the next generation through the secure adoption of cryptocurrency.

Crypto.com was formed in 2016 and has grown substantially over the last five years. We are committed to accelerating the responsible adoption of cryptocurrencies and work every day to build a secure platform to provide our more than 50 million users across 90 countries with the tools and resources they need to take control of their financial and digital lives.

We have created one of the first crypto-centric digital commerce ecosystems, integrating payments, trading, and financial services. Our customers use Crypto.com to buy, sell, and hold more than 250 cryptocurrencies. Customers can pay for goods or services and earn rewards through Crypto.com products. Our prepaid Visa card is the largest in its category globally with a cryptocurrency capability and is accepted by more than 60 million merchants. All of what we do is done with compliance, safety, and security at the core, and through our suite of products and services, we offer a most comprehensive cryptocurrency experience for our users.