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CONSULTATION PAPER

Crypto asset secondary service providers: Licensing
and custody requirements

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About this Response

This report was created and authored by Dexah Advisory Pty Ltd.

Throughout the development of this response, industry consultation was sought, with the following participants providing their feedback, input, and efforts through co-contribution:

- Joe Richards, BitRocket Bitcoin ATMs
- Mason Technology Consulting PTY LTD

The following representatives have provided their endorsement for this response paper:

- Allan Flynn of Canberracoin
- Bitcoin Babe PTY LTD
- BitRocket Bitcoin ATMs
- CGM Ventures PTY LTD
- Coin Commerce
- Harro's Empires PTY LTD
- Luxy LLC
- Mason Technology Consulting PTY LTD
- McLeod Pacific Investments PTY LTD
- Mitchell Travers
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About Dexah Advisory

Dexah Advisory is a Crypto Asset focused consulting service specialising in areas of operations, compliance, and governance to provide guidance on matters such as AML/CTF compliance, business workflows and operations, operational security, education and mentorship, financial health, and blockchain product and service delivery. Lead consultant Michaela Juric has built Australian businesses through knowledge and experience having been involved in the Crypto Asset industry both professionally and personally for 9 years. Michaela works with a range of stakeholders such as DCEs, businesses, investors, traders, blockchain developers and the broader community. Michaela is an active contributor to policy development, having been a part of the first onboarding of DCEs with AUSTRAC in 2018, as well as providing witness testimony to the Australian Senate committee on Australia as a Technology and Financial Centre in relation to the Crypto Asset sector. Michaela has been featured in multiple news and media programs for her efforts within the Australian Crypto Asset community including the ABC, Sydney Morning Herald and The Age, The Australian Financial Review, and more.



Foreword

The following response paper and recommendations have been provided in consultation with industry individuals and services that have knowledge and/or experience in alternative distribution methods of Crypto Assets. Many such services are regarded to be sole traders or small businesses, operating within the realm of p2p markets, ATMs, boutique services, and so on.

In addition to the advice from other DCE operators, professional service providers have also provided insight into the flow on effects of the proposed regimes.

While we broadly accept the purpose of the policy objectives and proposed obligations outlined within the Treasury's consultation paper, we want to affirm the need for serious consideration of all providers in the industry – not just those who garner their popularity through size or volume.

As we have previously witnessed through consultation or introduction of similar such regimes, a “one size fits all” approach to governing Crypto Assets and/or the products and services that support them, often leads to gaps prone to exploitation or matters simply slipping through the cracks.

Our approach to the following recommendations has been done so based on a measurability of risk to the consumer, as well as the ability to comply within the means of the service provider. Such recommendations include:

- Financial and Capital requirement exemption or relief for non-custodial or small business services
- Recognition of jurisdiction based upon custodial and “market operator” parameters
- The recognition of the right to self-custody Crypto Assets
- Recognition of alternative services in relation to dispute resolution

The need for serious consideration of these items comes not only from a place of personal concern of many small businesses – such as fear for loss of livelihood due to unattainable, impractical or unaffordable requirements - but also out of further concern that “over regulation” could lead to an increase in black market or *underground (unlicensed)* activity in the form of non-compliance to evade having to undergo potentially onerous or unreasonable steps if the burden is not aligned with the level of risk involved in the enterprise or the nature of its risks. In line with the policy objectives, we believe visibility is paramount to supporting the AML/CTF regime – should “industry lockout” occur due to adequate relief not being applied, this visibility (of non-compliant operators) is significantly decreased.

In line with our sentiments, we implore that the decisions made as part of this regime, are done so with diligence and certainty. The perceived “race to the finish line” in relation to the delivery of the proposed policy objectives, leaves us with concern that the issues raised as a part of this process will not be conscientiously assessed, leaving the industry further susceptible to the risks mentioned above.

Consultation Response

Terminology changes and propose definitions

Consultation Questions 1-5

We broadly support the proposed terminology change to recognise relevant participants as “CASSPr’s” (Crypto Asset Secondary Service Providers) instead of “DCE’s” (Digital Currency Exchanges). We would further recommend the use of the term VASPs (Virtual Asset Service Providers), which is the generally accepted international terminology.

In relation to definitions, the paper currently proposes:

Any natural or legal person who, as a business, conducts one or more of the following activities or operations for or on behalf of another natural or legal person:

(...)

ii. exchange between one or more forms of crypto assets;

We request additional clarification for this definition, as the sole offering of this service would constitute a “De-Fi market” – of which any form of domestic regulatory regime would not reach. Furthermore, it should be noted such a service is not currently captured under the current AUSTRAC – DCE regime.

(...)

iv. safekeeping and/or administration of virtual assets or instruments enabling control over crypto assets; and


Recommendation 1: Further expansion on this definition to provide clarity and distinction between a custodial arrangement and a non-custodial arrangement.

This should be achieved by highlighting the ownership of the private key, as this follows the convention of proposed custody obligations.

This would alleviate the possibility of confusion, in relation to a technology provider or product. For example:

A “hardware wallet” is defined as a physical medium developed for the purpose of storing the public and/or private key of a wallet containing a Crypto Asset. The device and its contents are generally encrypted, with access to utilise the wallet only granted through the use of the hardware wallets native “bridge” connection, or connection via a standalone program (such as Bitcoin Core). Hardware wallets grew to popularity through the development of products offered by Trezor and Ledger, who offer a number of purpose-built products. In lieu of this, hardware wallets of similar functionality can be deployed on commonly obtainable storage devices such as USB drives or SD cards.

By the proposed definition, hardware wallets could potentially fall within the category of a custodian through their development of such products. Despite ownership of the private key being in the custody of the wallet owner (a self-custody arrangement), it is difficult to ascertain whether the CASSPr obligations would fall upon the product provider as the “safekeeper” or “the administrator of the assets”. The companies providing these tools are unlikely to see themselves as ultimate custodians, but just as facilitators for others (end users and businesses) to organise self-custody.



Recommendation 2: Definition of jurisdiction in relation to services offered; in particular where the facilitation of a peer-to-peer market is involved.

In context of the following case:

LocalBitcoins is a peer-to-peer escrow service which allows buyers to connect with sellers through the process of creating “advertisements”. While LocalBitcoins offers its escrow services worldwide, it is a registered entity in Helsinki, Finland and complies with all local laws and requirements relevant to its service. Users of the site are also expected to comply with their relevant local laws and requirements when carrying out a business on their service (i.e.: DCE registration with AUSTRAC).

In 2015, the State of New York introduced “BitLicense” (23 NYCRR 200) which made it a “federal offence” to sell Crypto Assets to people living in New York, unless the license was obtained. The uncertainty around the license, as well as the cost implications, caused LocalBitcoins to pull its services from residents and businesses in New York¹.

Recommendation 3: Exemption of services that meet the definition of a “market operator” (such as peer-to-peer) from the proposed CASSPr licensing, especially where it is already a condition of their users who are defined as a CASSPr (i.e.: a broker) to meet the licensing requirements proposed.

Policy Objectives

Consultation Questions 6-7

We accept the Policy Objectives proposed in this paper.

¹ LocalBitcoins Stops Service for New York Residents (13 Aug 2015): <https://cointelegraph.com/news/localbitcoins-stops-service-for-new-york-residents>



Interaction with existing licensing regimes

Consultation Questions 8-10

We broadly agree with the proposed details in relation to scoped regimes, with the following allowances.

Recommendation 4: Requirement to register based on specific subsets of crypto assets should be considered, with Crypto Assets exempt (or partially exempt).

This should be based upon:

- Liquidity and disposal thresholds
- Purpose of utility
- Market cap value/Price/volume
- Blockchain parameters (i.e.: private/permissioned network).

This in turn could allow for leniency on Crypto Assets such as:

- Low value NFTs
- Utility tokens
- Governance tokens
- Zero value/utility tokens

However, without clear classifications confirmed, it is difficult to explore these possibilities further, until the token mapping exercise is completed.

Recommendation 5: CASSPr licensing should be a stand-alone regime, with guidance taken from existing licensing regimes where a condition meets the relevant requirements.

As an example:

Where a Crypto Asset is being offered or accepted in relation to a “Financial Service” (i.e.: Non-Cash Payment Facility), then the entity would be subject to relevant requirements with considerations given in relation to capital and minimum financial requirements.

AUSTRAC registration should remain separated from the regime, with a preference to require potential CASSPr's to register with AUSTRAC first.

Should a current AFSL holder wish to offer services involving the use of a Crypto Asset, then a CASSPr registration would apply.



Proposed obligations on Crypto Asset Secondary Service Providers

Consultation Questions 11-14

We broadly accept the proposed obligations, specifically PO (1), (4), (6), (7), (8), (9), (10), and (12).

We object to the following proposed obligations:

(2) maintain adequate technological, and financial resources to provide services and manage risks, including by complying with the custody standards proposed in this consultation paper;

Further information is required in relation to “financial resources” and how this requirement will be defined and applied; In particular, where the resources involve the use of a bank account or other such ADI service, which has been denied to the CASSPr. Or, alternatively, where the CASSPr is not in custody of customer funds and is a non-custodial service.

(3) have adequate dispute resolution arrangements in place, including internal and external dispute resolution arrangements;

While we accept the need to have such an arrangement, we have particular concern regarding access to external dispute resolution arrangements. These concerns include:

- Current services (i.e.: AFCA) are perceived to be unequipped, uneducated, and under-resourced to handle dispute resolution pertaining to Crypto Assets or establishing such a service in time to meet the requirements of a licensing regime.
- The costs imposed may be unaffordable to a small business, operating as a CASSPr.

Recommendation 6: In lieu of this, we request consideration to recognise external dispute resolution services offered by existing services.


For example:

LocalCoinSwap is a peer-to-peer escrow service which allows buyers to connect with sellers through placing an order via an “offer”. Where an issue arises during a trade that cannot be resolved through the CASSPr’s internal dispute procedure, either party can lodge a “dispute” with the details of the complaint submitted to a LocalCoinSwap moderator for review. It is the role of the moderator to mediate between both parties and in some cases, decide on a fair outcome based on the terms of the CASSPr, and the LocalCoinSwap site itself.

In this situation of a broker employing an escrow service that takes a fee, the cost to the CASSPr is minimal as this service is included as part of the escrow fee taken by the market operator during other successful trades.

If the broker operates directly with the customer (such as at an exchange booth or ATM), it should be possible for trained Anti-Scam Authority to establish whether (for example) the broker withheld payment (and a refund) unreasonably, or whether the customer mishandled the funds despite the broker discharging their obligation to pay the customer (such as through losing a phone, or participating in an ‘advance fee’ scam where the customer expects a windfall after paying a fee)..

(5) maintain minimum financial requirements including capital requirements;



Financial and capital requirements are of concern for small business operators, especially in relation to affordability to meet such obligations.

Recommendation 7: Recognition of non-custodial CASSPr's under the regime by means of exemption from prudential regulation.

The characteristics to define such recognition could include:

- Minimum financial/capital relief or exemption for CASSPr's that meet a "relief requirement" such as:
 - Turnover/volume threshold is equal to or less than a suitable amount.
 - Provide an "instant delivery" service where the Crypto Asset is delivered upon confirmation of funds received (or vice versa), eliminating the requirement to hold assets "in trust" (i.e.: Bitcoin purchased at a Bitcoin ATM, or Ethereum purchased upon redemption of a predefined value voucher).
 - Utilizing a market operator or similar (i.e.: an escrow service, Ethereum contract etc.) to externally validate and authenticate transactions, limiting the consumer loss risk.
- Where capital or financial requirement relief or exemption cannot be provided, Crypto Assets owned by the CASSPr can be recognised in order to meet the requirement.

(11) be regularly audited by independent auditors;

Recommendation 8: While we accept the necessity for independent auditing, consideration should be given for relief from "regular independent auditing" where a CASSPr operates within a lower trade volume, and/or provides a non-custodial service.

Such relief could include:

- Independent audits conducted less frequently based on predefined threshold requirements
- Acceptance of alternative documentation in lieu of an independent audit (i.e.: tax return prepared by an Accountant)
- Spot-checks of individual aspects (such as the presence of KYC documents or blockchain settlement transactions for a random customer/settlement) to reduce the billable time from such auditors to a reasonable standard of certainty

(13) maintain adequate custody arrangements as proposed in the next section.

While we accept the requirement to maintain adequate custody arrangements, consideration should be given for CASSPr's who do not custody consumer assets. We have raised these concerns in the relevant section.

In relation to a ban on CASSPr's airdropping Crypto Assets, we request further clarification on the proposition, as it is unclear what the ban would achieve. Based on the information provided, we could assume that:

- If in the instance of a CASSPr offering an “air dropped” token, representative of a stake in the entity, then there should be no issue with conducting this practice, so long as it meets the applicable requirements by consumer law.
- If in the instance of a CASSPr offering an “air dropped” token, representative of a reward for using the service (i.e.: loyalty points), then there should be no issue with conducting this practice, so long as it meets the applicable requirements by consumer law.
- If in the instance of a 3rd party offering an “air dropped” token (i.e.: a chain forking), it would be the obligation of the CASSPr to distribute the token owed to the consumer as per their rightful entitlement.
 - Should a ban be implemented, consideration would need to be given as to how a CASSPr should manage the receipt of airdropped tokens.

Recommendation 9: In relation to a CASSPr providing personalised advice to a consumer based on their circumstances, this should not be prohibited as suggested; rather, safe and diligent conduct of such a service should be imposed.

Should the CASSPr decides to provide this offering:

- Engagement for the service must come from the consumer.
- The licensing to conduct these services would be included as part of the CASSPr regime.
- The CASSPr must adhere to all regulatory and legal requirements and obligations as set out for a financial advisor or similar.

By providing consumers with easier access to more reputable sources for advice and the correct controls in place, this could potentially limit the losses incurred through consumers acting upon advice received through less than reputable avenues such as “crypto influencers” or social media scammers (fraud). Such an example includes:

Alex Saunders is a social media “FinFluencer” who garnered his popularity through popular YouTube channel “Nuggets News”, which he began in 2017. In April 2021, Saunders propositioned members of his Nuggets News Facebook group to invest in a project he believed would garner positive returns. As a result, it was estimated \$15 million² was sent to Saunders in return for an investment in the project. After it was later discovered the funds had been misappropriated by Saunders, allegedly being used to repay his own debts. Saunders is not a Financial Advisor, nor a registered DCE.

Based on the proposed obligations and research conducted into existing AFSL regime requirements, the following cost estimate has been provided by a current DCE:

ASIC filing requirements:	\$5,000
Independent legal services:	\$120,000
Auditor engagement:	\$6,000
External dispute resolution engagement:	\$15,000
Miscellaneous costs:	\$25,000
Total:	\$171,000*

**The estimation provided does not include the anticipated premium on top of this cost based on the specialist subject matter and niche requirements.*

² Cryptocurrency influencer, Alex Saunders, blames opiate addiction for losing investor funds (23 Apr 2022): <https://www.news.com.au/finance/money/wealth/cryptocurrency-influencer-alex-saunders-blames-opiate-addiction-for-losing-investor-funds/news-story/00999818e92108201101bee60d0cc00b>



Alternative option 1: Regulating CASSPr's under the financial services regime

Consultation Questions 15-16

We reject the proposal to regulate under the financial services regime based on the following parameters:

- The financial services regime is not fit for purpose, having been developed to suit the traditional financial space, and is not adaptable enough to implement the requirements of Crypto Assets.
- As the consultation paper has raised, there is a perception that CASSPr's can operate in a similar way to financial service providers. For the sake of consumer clarity, and the avoidance of further confusion, the regulatory regimes should be kept separate.
- Growth of small to medium enterprises is encouraged in other sectors, over-application of traditional financial services (large groups) requirements and procedures is likely to stifle growth of new enterprises, increase in 'off-shoring' to skirt the requirements or increase the proportion of unlicensed activity occurring without visibility.

Based on the proposed obligations and research conducted into existing AFSL regime requirements, the anticipated costs to implement such licensing requirements would be identical to the breakdown previously required.

Alternative option 2: Self-regulation by the crypto industry

Consultation Questions 17-18

Recommendation 10: We can conditionally support the proposition of continuing to self-regulate, based upon the following parameters:

- Mandatory registration with AUSTRAC as a Digital Currency Exchange (DCE) continues to uphold industry KYC/AML/CTF standards.
- Establishment of an external dispute resolution body which, through industry engagement, develops a code of conduct to uphold adequate standards. Membership to this body is determined based on DCE registration status with AUSTRAC, to avoid exclusion based on sub-service type, company size, volume/turnover, etc.
- Imposing the CASSPr licensing regime when:
 - The CASSPr engages in custodial arrangements of crypto assets on behalf of a consumer
 - The CASSPr provides consumers with personalised advice based on their circumstances.

Based on the proposed obligations, there would be no additional cost to the DCE to implement the proposed requirements, except for a potential membership fee to the suggested external dispute resolution body.



Proposed custody obligations to safeguard private keys Consultation Questions 19-24

We broadly accept the proposed obligations, specifically PO (1), (2), (4), (5), (6), (7), (8), (10), and (11).

We object to the following proposed obligations:

(2) maintain minimum financial requirements including capital requirements.

Financial and capital requirements are of concern for small business operators, especially in relation to affordability to meet such obligations. Furthermore, there is confusion surrounding how a CASSPr may meet this requirement, where a peer-to-peer service is engaged:

A consumer engages a CASSPr's services through Paxful, a peer-to-peer escrow site. The consumer places an order to "buy" Bitcoin, which triggers the event of deducting the CASSPr's prefunded Bitcoin wallet on Paxful (a requirement of most escrow sites) of the required amount and placing it into escrow. The CASSPr conducts its required due diligence checks on the consumer, before sharing their bank details for the consumer to make payment. Once the payment has been verified in the CASSPr's account, the CASSPr authorizes Paxful to release the Bitcoin from escrow. The Bitcoin is automatically released to the Bitcoin wallet on the Consumers Paxful account.

In this scenario:

- The peer-to-peer service is the custodian of the CASSPr's Bitcoin holding
- The peer-to-peer service is the custodian of the escrow wallet
- The peer-to-peer service is the custodian of the Consumers Bitcoin holding (upon being delivered)

Further to this situation, the consumer may engage the CASSPr through a "non-custodial" escrow arrangement via a peer-to-peer service, either via a "multisig" wallet (Bitcoin), or an ERC-20 smart contract (Ethereum). That would be applied to the aforementioned scenario in the following manner:

- The CASSPr is the custodian of its own Ethereum holding
- The ERC-20 smart contract is the custodian of the escrow wallet
- The Consumer is the custodian of its own Ethereum holding (upon being delivered)

Further to these scenarios, services that engage "instant delivery" of consumer Crypto Assets seek clarification on their requirements based on such a scenario:

A consumer engages a CASSPr's Bitcoin ATM to purchase Bitcoin. The consumer validates themselves through the onscreen prompts, provides a Bitcoin wallet address, before depositing the cash into the machine. Upon validation of the notes, the ATM's system triggers the event to send the required amount of Bitcoin to the consumer's nominated address.

In this scenario:

- The CASSPr is the custodian of its own Bitcoin holding

- The consumer is the custodian of its own Bitcoin holding (upon being delivered)
- The “custody” of the funds at the ATM is at most, a few seconds.

It should be noted, the flow of these transactions would work in reverse, where the Consumer is selling a Crypto Asset to the CASSPr.

Recommendation 11: Based on these examples, and other relevant attributes in relation to small business operators, we make the following recommendations for CASSPr’s who meet the following characteristics:

- Exemption from prudential regulation (such as financial and capital requirements) where the CASSPr does not engage in the custody of assets on behalf of its customer for more than a defined reasonable period.
- Exemption from financial and capital requirements where the custody arrangement is provided via a market operator (i.e.: peer-to-peer market, blockchain contract).
- Relief for CASSPr’s that meet a “relief requirement” such as:
 - Consumer custody threshold is equal to or less than a suitable amount.
 - Value of transactions entered into does not exceed a suitable amount.
 - Consumer custody of assets does not exceed more than a specified amount of time.

(9) processes for redress and compensation in the event that crypto assets held in custody are lost;

We request further clarification be addressed as part of this statement to segregate the liability from the CASSPr, dependent on the “point of failure”. For example:

A CASSPr acts as the custodian of its clients Crypto Assets held on its Digital Currency Exchange. Due to improper implementation of security practices, the CASSPr’s wallet is hacked, and its clients Crypto Assets withdrawn to a third-party wallet.


The CASSPr should be liable for this loss and is responsible for compensating its clients.

A consumer stores their Crypto Assets on a Digital Currency Exchange. The consumer meets a third-party through social media, who promises to “double their money” if the consumer sends their Digital Currency Exchange username and password to the third-party. The third-party subsequently gains access to the consumer’s account and withdraws their Crypto Assets, never to be heard from again.

The CASSPr should not be liable for this loss, as the consumer acted negligently.

Recommendation 12: The addition of a CASSPr’s obligation to provide the consumer their right to self-custody.

“Not your keys, not your coin” is a phrase often expressed throughout the community and has become a fundamental of operational security since the inception of Bitcoin, identifying the difference between “accessing” your Crypto Assets and “owning” them. Despite this, a number of services deploy regimented practices, often leaving the consumer confused as to their ownership and the existence of their Crypto Assets. For example:



In October 2020, PayPal customers in the USA were given the opportunity to “buy” and “sell” Cryptocurrencies such as Bitcoin and Ethereum via the PayPal app. Consumers could fund their PayPal wallet with USD and use the balance to purchase their desired Cryptocurrencies. Consumers then discovered their Cryptocurrencies were “stuck” on the app – there was no option to withdraw their Cryptocurrencies to a private cold wallet, or another exchange. Instead, they could only “sell” the Cryptocurrency back to PayPal or use it to purchase goods or services via PayPal enabled merchants.³

In this situation, consumers are denied the right to access the market in the form of the actual Crypto Assets being sold, as well as denied the right to self-custody their Crypto Assets, thus forcing them to entrust PayPal to provide an adequate service. Furthermore, consumers are unable to seek alternative pricing for their Crypto Assets and are forced to sell within the platform.

Based on the potential issues raised from this scenario, we recommend that consumers have the right to transfer assets to “self-custody” their Crypto Assets when purchased from a CASSPr (contingent on the consumer satisfying the due diligence requirements of the CASSPr to allow for the withdrawal). This has the further broad benefit of allowing Crypto Assets to eventually be used for their utility across the blockchain ecosystem, rather than merely being speculative instruments

Recommendation 13: No mandated domestic location requirements for custodians, in relation to hosting private keys.

Per the proposed obligations, a CASSPr would be required to conduct adequate risk assessments on the desired solution. As such, it would be assumed this process would include a review of “jurisdictional risk”; this analysis should be conducted regardless of the decision to self-host or appoint a 3rd party custodian service.

If the jurisdictional risk and risk mitigation factors discovered as a part of this process were considered outside the boundaries of an acceptable tolerance, then in that instance, the solution would be rejected.

In summary, where the security and safeguarding of consumer assets is of primary importance, a CASSPr should not be forced to choose a domestic solution which may be of lesser capability, over a solution of greater capability in a low-risk jurisdiction.

Recommendation 14: Due diligence and disclosure obligations for custodial CASSPr’s.

This could include:

- The addition of a “due diligence” obligation in relation to the assessment of jurisdictional risk and mitigations.
- Consideration regarding the disclosure of outsourced custodian services (regardless of jurisdiction)
- Consideration regarding disclosure of the presence or absence of insurance coverage over custodied Crypto Assets.

³ Buy and Sell Crypto – PayPal US (Accessed 23 May 2022): <https://www.paypal.com/us/digital-wallet/manage-money/crypto>



Based on the proposed obligations and research conducted into existing AFSL regime requirements, the following cost estimate has been provided by a current DCE:

Independent legal engagement to investigate and advise on whether the service is recognised to have a “custody obligation”	\$20,000
(If applicable) Independent consultant engagement to investigate and advise if the 3 rd party custodial service used to self-custody the CASSPr’s own assets is adequate to meet the requirements	\$35,000
Miscellaneous costs:	\$25,000
Total:	\$80,000*

**The estimation provided does not include the anticipated premium on top of this cost based on the specialist subject matter and niche requirements.*

Alternative option 1: Self-regulation by the crypto industry Consultation Questions 25-28

We reject the proposal of self-regulation where a CASSPr is the custodian of Consumer Crypto Assets.

- An industry standard must be set to allow for clear and concise roles and responsibilities for both CASSPr’s and Consumers.
- The current self-regulatory model offers confusion, inconsistency, and doubt, especially regarding consumer recourse and protections.

Based on the proposed obligations, there would be no additional cost to the DCE to implement the proposed requirements.



Specifying classes of Crypto Assets

Consultation Questions 29-32

We accept the list of Crypto Assets on a provisional basis, pending its official publication.

Regarding the categorisation of Crypto Assets as its namesake or a financial product, we believe that the assets themselves should continue to be referred to as "Crypto Assets," with the focus shifting to Services and whether or not they provide a "financial service."

It would be fair to assume that the majority of crypto assets are "decentralised" - with the issuer having no influence over the asset. As a result, the Crypto Asset's utility as a "financial product" is at the exclusive discretion of the owner or holder.

Consequently, it would not be possible to regulate the Assets themselves based on categorisation application.



Further considerations not raised within the Consultation Paper

Validation of CASSPr Licensing Recommendation 15

Concern has been raised regarding if and how stakeholders (i.e.: consumers, third-party services) can authenticate the legitimacy of a CASSPr license, without negative implications of being recognised as such. For example:

During the introduction of DCE registration requirements in 2018, AUSTRAC made the decision not to publish the registration list, or offer any form of registration validation service, partly due to fears of further repercussions for registered businesses - specifically debanking. Initially, the registration was thought to ease debanking, given regulation through AUSTRAC would provide a further mitigation of ML/CF risk associated with such services. As of submission, DCE registrations are still private, with debanking still a problem throughout the industry.

With this scenario in mind, we request for the following matters to be addressed:

- Decision as to whether the CASSPr registration list will be made public or private.
- What safeguards will be put in place to mitigate the list being exploited.

Self-custody management Recommendation 16

As previously mentioned, we believe the right to self-custody is paramount to the fundamentals of Crypto Asset ownership.


Whilst we do not seek to govern self-custody, we believe the development of guidance should be established, particularly regarding best practices and governance over personal ownership of private keys. The development and management of this resource could be executed with assistance or oversight from the ACCC (similar in their deployment of “Scam Watch”), or with support in the form of endorsement via a suitable industry body (such as Blockchain Australia).

Example topics for such resources could include:

- Safe practices in relation to storage, validation, and authentication.
- Contingencies identified in relation to loss or theft.
- Contingencies identified in relation to incapacitation (i.e.: serious illness) or death.

Further to the 3rd point, we raise the following scenario:

David has chosen to self-custody his Bitcoin holding. During a visit with his lawyer to prepare his Will, David has given instructions on how to distribute his Bitcoin holding to his beneficiaries. As part of these instructions, David has given a copy of his private key (either directly, or as part of a multi-sig combination) to the lawyer, in order for the Bitcoin to be dispersed by the executor of the will when the time comes.



Based on the proposed definition previously put forward by the consultation paper, where a third party is engaged for the “custody” of consumer Crypto Assets, the natural or legal person must register for a CASSPr license. As such, we make the following recommendations:

- Request consideration for the role of appointed professionals in relation to self-custody arrangements
- Request consideration for designated businesses who provide services (technological or otherwise) with a specialization in delegation of provided Crypto Assets/private keys to beneficiaries

Further to this recommendation, we request consideration surrounding the governance of self-custody via a legal entity on behalf of a natural person, where the natural person is a primary or shared beneficiary of the legal entity. For example:

- Crypto Assets held by a private Company.
- Crypto Assets held by a Trust for beneficiaries.
- Crypto Assets held by a Self-Managed Super Fund.

As per the aforementioned definition, such legal entities would require registration as a CASSPr. Therefore, we make the following recommendations:

- Request consideration for the role of a natural person within the structure of the legal entity, in relation to self-custody arrangements
- Request consideration for other natural persons or legal entities (where applicable) within the structure of the legal entity in relation to self-custody arrangements

Summary of Recommendations

#	Section	Recommendation
1	Terminology changes and propose definitions	Define a distinction between custodial and non-custodial arrangements
2	Terminology changes and propose definitions	Definition of jurisdiction in relation to services offered
3	Terminology changes and propose definitions	Exemption of services that meet the definition of a “market operator” from the proposed CASSPr licensing
4	Interaction with existing licensing regimes	Requirement to register based on specific subsets of crypto assets should be considered, with Crypto Assets exempt (or partially exempt) based upon prescribed parameters
5	Interaction with existing licensing regimes	CASSPr licensing to be a stand-alone regime, with guidance taken from existing licensing regimes where conditions are met
6	Proposed obligations on Crypto Asset Secondary Service Providers	Recognise external dispute resolution services offered by existing services.
7	Proposed obligations on Crypto Asset Secondary Service Providers	Recognition of non-custodial CASSPr’s under the regime by means of capital exemptions
8	Proposed obligations on Crypto Asset Secondary Service Providers	Independent audit relief for non-custodial/small business CASSPr’s
9	Proposed obligations on Crypto Asset Secondary Service Providers	No prohibition to CASSPr’s providing personalised advice to consumers.
10	Alternative option 2: Self-regulation by the crypto industry	Self-regulation of CASSPr’s with external dispute resolution and mandatory licensing for custodians.
11	Proposed custody obligations to safeguard private keys	Exemption from financial and capital requirements based upon prescribed parameters (non-custodial CASSPr)
12	Proposed custody obligations to safeguard private keys	The addition of a CASSPr’s obligation to provide the consumer their right to self-custody.
13	Proposed custody obligations to safeguard private keys	No mandated domestic location requirements for custodians, in relation to hosting private keys.
14	Proposed custody obligations to safeguard private keys	Due diligence and disclosure obligations for custodial CASSPr’s.
15	Further considerations not raised within the Consultation Paper	Safe practices for CASSPr Licensing validation
16	Further considerations not raised within the Consultation Paper	Guidance on consumer Self-custody management