



Submission by EC Systems Pty Ltd (Easy Crypto) on the Treasury's 'Crypto asset secondary service providers: Licensing and custody requirements' Consultation Paper

Thank you for the opportunity to submit our feedback on The Treasury's 'Crypto asset secondary service providers: Licensing and custody requirements' Consultation Paper (**Paper**).

Summary of our Position

Easy Crypto understands and supports the Government's need to regulate the cryptocurrency industry, with a focus on both ensuring adequate protection for consumers whilst still enabling innovation to thrive. This is an important step to further legitimising this industry and giving consumers greater confidence in CASSPrs, effectively a 'stamp of approval'. However, there is a delicate balancing act between the need to protect customers whilst also fostering an environment for crypto innovation, and encouraging competition (thereby providing consumer choice).

Australia has the opportunity to be a leader in this space and see the economic upside of encouraging crypto businesses to thrive. If regulation is too restrictive, the barriers to entry for businesses like ours will be too great; only those with deep pockets will participate and innovation will be stifled. Accordingly, an overarching theme echoed throughout our submission (rather than a singular point in itself) is that we encourage the Treasury to ensure there is a risk-based approach to any regime to ensure it is fairly applied.

We appreciate the Government understanding that crypto assets are distinct from, and should not be treated the same way as, financial products. We are strongly opposed to CASSPrs being regulated under the financial services regime, as this will completely remove any ability to innovate and mean that Australia becomes an unattractive jurisdiction to conduct business.

We believe any regulation requires a lengthy transitional period for compliance, and as the Treasury continues to develop the proposed regulations, it should work in close collaboration at all stages with industry.

We are keen to remain involved in the process as further consultation takes place.

Introduction to Easy Crypto

Easy Crypto is a cryptocurrency retail platform, headquartered in New Zealand but operating in multiple jurisdictions including Australia, South Africa and Brazil. We offer our customers a secure and simple way to buy, sell and trade more than 150 different types of cryptocurrencies, including Bitcoin, Ethereum Cardano and many more.

Launched in 2018 by siblings Janine and Alan Grainger, Easy Crypto has since transacted over \$1.7 billion (AUD) in total sales to date. As the public awareness of cryptocurrencies has grown, along with understanding of the operation, risks and benefits of it, we are experiencing strong growth. We are seeing more mainstream financial and investor support, partly as the broader fin-tech and blockchain sector in the various jurisdictions continues to mature and be seen as an export-led business success frontier.

Our mission is to make crypto assets accessible and understandable for all, so that everyone can get involved in the cryptocurrency market if they wish. That includes de-mystifying not just the technology and how to use it, but the legally responsible and ethical, compliant management of it.

In 2021, we finalised a successful, oversubscribed Series A funding round in New Zealand, raising NZD \$17 million (a New Zealand record). This saw investment from venture capital firms across New Zealand, Asia and the US. We further have global expansion plans underway, with our current efforts concentrated to expand into Southeast Asia.

Such investment and our growth story shows the clear economic opportunity to Australia to welcome and encourage businesses like ours to thrive.

Responses to Consultation Questions

Below, we have set out specific responses to some of the consultation questions in the Paper. We have not answered all in order but categorised our responses by subject matter.

1. Definitions

- (a) *Questions 1 and 2: Do you agree with the use of the term, Crypto Asset Secondary Service Provider (CASSPr) instead of 'digital currency exchange'? Are there alternative terms which would better capture the functions and entities outlined [in the Paper]?*

We agree with the term 'Crypto Asst Secondary Service Provider' (CASSPr) as opposed to 'digital currency exchange'.

As this is an area which is quickly evolving, the CASSPr definition is more likely to remain relevant, adapt to technological changes and future crypto-related service not yet contemplated, compared to a narrower definition.

However, where new types of crypto-related services are created, it will be necessary for the Government and regulatory bodies to have strong engagement with the industry to assess whether carve-outs/safe-harbours are required.

No matter what defining term is used, it is essential that it is used consistently across all Australian regulatory frameworks to ensure there is clarity for the industry and consumers alike.

- b) *Questions 3 and 4: Is the definition of crypto asset precise and appropriate? If not, please provide alternative suggestions or amendments. Do you agree with the proposal that one definition for crypto assets be developed to apply across all Australian regulatory frameworks?*

This definition is very broad and would likely extend to account for the fast-moving pace of the types of crypto assets. Like our response relating to the CASSPRs definition, having a broad definition will ensure it remains relevant.

There should continue to be strong engagement between the Government, regulatory bodies and the industry to assess whether carve-outs/safe-harbours are required for certain types of assets which are not yet in existence and have bespoke use-cases.

2. Policy Objectives

a) *Questions 6 and 7: Do you see these policy objectives as appropriate? Are there policy objectives that should be expanded on, or others that should be included?*

In principle, we agree that the policy objectives are appropriate. In particular, having minimum standards in place for all CASSPRs is an important step to ensuring there is both integrity within the market and maintaining and building confidence with consumers.

To ensure that Australia is seen as an attractive place to conduct business, Easy Crypto also believes that the following additional objectives should be included:

- To foster and encourage, and ensure the regulation does not stifle, innovation within the cryptocurrency market; and
- promote an open market and competition, with consideration given to the relative size of the CASSPRs.

There is a risk that without these additional policy objectives, regulation will be too strict and prevent true creativity and innovation within the market. For such a fast-evolving space, prescriptive regulation risks becoming out of date as soon as it is published, further limiting innovation.

Moreover, if the restriction threshold is too high (e.g. capital requirements), this will be a barrier to local startups and instead favour deep pocketed international entrants, with smaller players being pushed to pursue business in other jurisdictions - thereby worsening the choices available and outcomes for consumers. By considering the impact relative to the size of the business, this will help ensure systems, alerts, rules are all proportionate to the risk level of each business's operations. Our own journey so far has required regular growth/evolution re-calibrating, which overly prescriptive rules might inhibit.

b) *Question 10: How do we best minimise regulatory duplication?*

We believe having a singular, crypto-dedicated regulatory body (with significant expertise) that works in close conjunction with the Government, is the best way to minimise regulatory duplication.

Alternatives such as oversight sitting with an existing, under-resourced body, or having multiple

regulators would be nonsensical and confusing for the industry - this could lead to blanket guidance being provided to the industry (eg same guidance for financial services and crypto) or the industry being subjected to multiple sets of regulatory expectations.

By having a crypto-dedicated regulator, it would make it clear that the crypto industry is not captured by financial services regulation except to the extent players specifically deal in financial products (eg managed funds).

3. Proposed Obligations (Licensing and Custody)

a) *Questions 11 & 14: Are the proposed obligations [relating to licensing] appropriate? Are there any others that ought to apply? What do we estimate the costs of implementation to be?*

We are supportive of a licensing regime, capturing minimum standards and obligations for CASSPrs. In theory, all of these minimum standards are just good sense and are an ethical way to conduct business.

However, the 'devil is in the detail'. If the thresholds are too high and a blanket approach is taken (as opposed to a risk-based approach relative to size of the CASSPrs or a regulatory sandbox approach), there is a risk of limiting competition; smaller businesses who do not have deep pockets will not be able to initiate their journey, potentially limiting innovation, choice and competition. Accordingly, it is important that requirements are applied proportionally to the risks associated with that business (i.e. those who hold less in custody, should have lower capital adequacy requirements or those who are able to mitigate the risks (eg through technological protections), should be granted lower thresholds, etc).

With any new licensing and other obligations, a substantial transitional compliance period is necessary, with close engagement between the Government, regulatory bodies and the industry to help develop guidelines and understand whether safe harbours are appropriate.

Without any clear direction on the specifics of the requirements, it is impossible to estimate the actual cost of implementation. But, reflecting on implementation costs associated with obtaining and maintaining an AFSL, it is fair to say that compliance with a licensing regime will be substantial. If thresholds are too high, costs could easily be in the millions.

b) *Question 13: Should there be a ban on not providing personal advice in respect of a crypto asset?*

Equipping our customers with information and educating them about crypto assets is a useful tool to be able to help them make informed choices and work towards customers best interests. Providing them with tailored advice would only further help them make these choices.

We do not believe there should be an outright ban on personal advice but think it is appropriate to require minimum competency standards and expertise to be able to provide such advice.

Businesses should also be able to provide more generic advice including advice on the benefits of certain crypto assets or the concepts around diversification as a risk-mitigation tool, without delving into a person's personal circumstances and objectives. However, potentially a general advice disclaimer should be required in such circumstances (ie informing the customer that it is general in nature only and if they required tailored advice, they should engage an expert in that regard).

c) *Questions 19-24: Custody*

- *Are there any proposed obligations that are not appropriate relating to custody? Are there any additional obligations that need to be imposed?*
- *Do domestic location requirements need to be mandated?*
- *Are principles detailed above sufficient to appropriately safekeep client crypto assets?*
- *Should further standards be prescribed?*
- *Cost of implementation*

Similar to our thoughts on the licensing obligations, in theory, these principles seem adequate to be able to protect customers. However, we still think that the Government should maintain either a risk based, or regulatory sandbox approach to this regime, so as to not stifle innovation and push small players overseas, particularly with respect to capital adequacy requirements.

Regarding capital adequacy requirements and compensation arrangement processes, it is important to understand that insurance is very difficult to obtain in the crypto space; if thresholds are too high, CASSPRs simply will not be able to provide competitive services to the market. Also, as mentioned above, capital adequacy requirements should be less onerous where a business has taken adequate steps to reduce the risks of malicious attacks (the main risk to customers here). This can be achieved through robust technological systems and processes.

Domestic location requirements would be completely inappropriate and limit the choices available to customers. By its very nature, cryptographic assets, like the internet, are a global phenomenon. Having domestic requirements creates perverse outcomes which we have witnessed in other jurisdictions of having a single server in a country. The reality of this is it does nothing to mitigate risks associated with the assets. Our recommendation would be to focus more on critical processes like key management controls in order to actually put in place effective safeguards for consumers.

Please see our response in 3(a) regarding likely implementation costs.

4. Alternative regimes

- a) *Question 15 and 16: Do you support bringing all crypto assets into the financial product regulatory regime? What benefits/drawbacks would this option present? What do you estimate the cost of implementation to be?*

As mentioned in our 'summary of our position', we are firmly against the crypto industry being brought under the financial product regulatory regime. As the Treasury identified, crypto assets are

distinct from financial products with diverse use cases and should be treated as such. To simply place them into this regime would ruin any ability to innovate,would completely deter new business from entering and would mean existing businesses exit.

Obtaining an Australian Financial Services Licence is currently an extremely onerous and expensive undertaking for businesses. The burden would be so high and the ability for CASSPRs to onboard new assets and be flexible in listing would substantially decrease - putting us well behind other jurisdictions. It would also completely ignore the fact that crypto is global as opposed to the financial services space where generally providers only deal in Australian financial products.

b) *Question 17 and 18: Do you support this approach [self regulation] instead of the proposed licensing regime, along with a voluntary code of conduct, should they be enforceable by an external dispute resolution body? Are the principles outlined in the referenced codes appropriate for adoption in Australia? Likely costs of implementation?*

This is certainly a viable alternative to a licensing regime and would be a useful way to ensure crypto regulation does not take place in a haphazard manner. It would mean that regulation is formed by experts in the field, as opposed to an over-stressed regulatory body. If such an approach was adopted, Easy Crypto believes it is important for Treasury/regulatory involvement in helping to design the Code of Conduct. Potentially this could be used as an interim measure, with a trial and test approach.

Certainly, such an approach would be far more cost effective and attractive for businesses.

We thank you for the opportunity to provide our feedback. Should you wish to discuss our submission, please do not hesitate to contact us at andrew@easycrypto.com.

A handwritten signature in blue ink that reads "A. Butler". The signature is written in a cursive style and is enclosed within a hand-drawn oval.

Andrew Butler
Head of Australia
Easy Crypto