FinTech Australia

SUBMISSION PAPER:

Treasury CASSPr Consultation

June 2022

This Submission Paper was prepared by FinTech Australia working with and on behalf of its Members; over 400 FinTech Startups, VCs, Accelerators and Incubators across Australia.

Table of Contents

About this Submission

This document was created by FinTech Australia in consultation with its Members broadly, which consists of representatives from over 400 member companies.

Submission Process

In developing this submission, our members participated in a series of roundtables and consultation processes to discuss key issues relating to this submission.

1. Introduction

FinTech Australia welcomes the opportunity to engage with Treasury to develop the regulatory framework for crypto asset service providers. The crypto asset industry has developed from rudimentary bitcoin exchanges to many complex and sophisticated service providers. Simultaneously, ownership of crypto assets evolved from engineers and developers, to mainstream. These changes necessitate consideration of the legal and regulatory framework for crypto asset service providers.

Our members suggest that an effective framework for regulating crypto asset service providers:

- applies rules consistently across crypto assets and other regulated products, focussing on the services provided to ensure that that the same risks result in the same regulatory outcomes;
- facilitates innovation by remaining technology neutral and outcomes focussed;
- avoids regulatory duplication to reduce the compliance burden and the likelihood of regulatory arbitrage; and
- provides adequate and consistent consumer protection.

Above all, any change must be targeted, measured, support innovation and protect consumers.

2. Background

On 8 December 2021, the Government agreed in-principle to recommendations made by the Senate Select Committee on Australia as a Financial and Technology Centre in respect of consulting on a licensing and custody regime for crypto asset secondary service providers.

The Australian Treasury on 21 March 2022 published a consultation paper "Crypto asset secondary service providers: Licensing and custody requirements" ("**Consultation Paper**"). Treasury is seeking feedback on the proposals and options outlined in the Consultation Paper to support minimum standards of conduct by crypto asset secondary service providers ("**CASSPrs**") and safeguards for consumers.

FinTech Australia's response to the questions in the Consultation Paper is set out below.

3. Questions

3.1 Proposed terminology and definitions

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

2 Are there alternative terms which would better capture the functions and entities outlined in the Consultation Paper?

FinTech Australia's Members generally preferred the term CASSPr to "digital currency exchange" but noted that the distinction between "primary" and "secondary" services providers may not provide consistent outcomes in terms of ensuring that service providers understand their obligations and consumers are appropriately protected. The appropriateness of the terms will also depend on the regulatory model adopted. See our response to questions 9, 13 and 15 below for further detail.

Digital currency exchange is narrow and does not include certain service providers intended to be caught, such as 'custodians'. It also better reflects the nature of services provided which may be more akin to brokerage than making a market or operating an exchange. In addition, avoiding the term "exchange" or "market" reduces the implication that businesses are operating a market which would require a tier 1 markets licence under Chapter 7 of the *Corporations Act 2001* (Cth) ("**Corporations Act**").[1]

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

Our Members considered that the term "crypto asset" is appropriate to describe these assets. Generally, the terms "digital asset" and "virtual asset" are too broad, and may capture assets that are not intended to be captured by this regime.

[1] For example, ASIC's Regulatory guide 172 restricts the words 'exchange' or 'stock/securities/futures market' in the title of a market which does hold a tier 1 markets licence, or in documentation such as marketing material: ASIC Regulatory Guide 172, Financial markets: Domestic and overseas operators, rule 172.54(b). The Corporations Regulations also impose some restriction on the use of the term "Stock exchange": *Corporations Regulation 2001* (Cth) Sch 6, item 6319.

In relation to the definition, FinTech Australia encourages Treasury to adopt a principles based approach to regulation of crypto assets. Accordingly, the definition of crypto asset should be, as far as possible, technology neutral.

Further, the current definition focusses on the technological features of a crypto asset. As cryptographic tokens are a feature of many different technological systems a technology focused definition may capture products which should be outside the regime.[2] This includes:

- artwork which takes the form of a non-fungible token ("**NFT**");
- physical goods where title to the goods is recorded and transferred on a distributed ledger using cryptographic proof;
- cryptographic tokens which are used to provide access to services, such as to access a system or data stream; and
- non-convertible cryptographic tokens and those which are designed for a closed-loop system and are not intended to be transferred.

More generally, by defining a crypto asset by reference to its technology, this establishes a technological threshold to inclusion within a regulatory perimeter. As technology evolves, this will inevitably be overcome, rendering any change to legal obligations obsolete.

Instead, FinTech Australia supports a definition of crypto asset which focusses on the function of the asset rather than the form. Rather than creating an entirely new definition, FinTech Australia and its Members suggest Treasury consider a definition which reflects the features of the crypto assets which are intended to be caught. Treasury may consider the definition of "digital currency" in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) ("**AML/CTF Act**") which was intended to capture products which are not already financial products and meet the functional properties of convertible crypto assets.

[2] For example, password protecting information uses a cryptographic token.

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

In principle, a single definition across all Australian regulatory frameworks would significantly ease compliance burden and cost. This may also make the Australian regime more internationally competitive.

We note, however, that there may be cases where it is not practical to adopt a uniform definition, such as between taxation and law. Further, although the definition of a crypto asset may be uniform, regulated activities may not be. This should be considered on a case by case basis.

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)?

Yes. However, we suggest that the definition of crypto asset should reflect only those assets which are intended to be captured. Whether a crypto asset is captured by the CASSPr regime should not be determined by reference to its technology, but by reference to the rights and obligations the crypto asset provides.

In relation to NFTs, these should only be captured where it is appropriate given the rights and obligations associated with the NFT. An NFT should not be included purely as a result of being transferred electronically and effected by cryptographic proof. Some Members submitted that several factors be considered whether an NFT is captured by the regime, such as:

- the intention of the parties in respect of the specific crypto asset;
- the substance and/or purpose of the NFT, taking into account broader context such as the project or product of which the NFT is a component; and
- the rights and benefits provided by that crypto asset.

Where an NFT is a financial product, it should instead be caught by the existing financial services regime.

3.2 Proposed scope and policy objectives

6 Do you see the proposed policy objectives as appropriate?

Yes, our Members considered the objectives are broadly appropriate, however these should include more general consumer protections and emphasise promoting innovation.

One member also noted that the second objective should be changed from "supporting the AML/CTF regime…" to "clarifying the AML/CTF regime…". We understand that this may need to be undertaken in the context of other amendments to the AML/CTF regime. Nevertheless, this consultation provides an opportunity to begin this exercise.

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

Yes, an additional policy objective should be included to incentivise innovation and business. This industry provides a significant economic opportunity for Australia to become a world leader. A measured, consistent and pragmatic regulatory framework will lay the foundations for Australia's continued success in this sector.

8 Do you agree with the proposed scope?

Our Members generally agreed with the proposed scope but noted that it may be worth considering how those who are not "secondary" service providers, and provide services directly to customers might be included in the regime, particularly primary service providers and advisors.

Primary service providers

In addition to secondary service providers, Members noted that primary service providers should also fall within the scope of a regulatory framework to provide adequate protection for consumers. For example, a group of persons who are responsible for the issuance of a crypto asset might be captured by a regulatory regime. So too might those who make a market in crypto assets.

However, imposing these obligations should not hamper innovation. There may be challenges due to the decentralised and global nature of these products. It will also be

necessary to consider how any requirements imposed in Australia may interact with international requirements. Accordingly, work to broaden the scope will require significant thought. Given the importance of ensuring that CASSPRs are captured within a framework, any work to impose obligations on primary services providers should not delay implementation of this regime for secondary service providers.

Advice

Members considered that being able to provide regulated advice in relation to crypto assets would be beneficial for the industry as a whole. This would ensure that advisors were subject to regulatory obligations and that consumers were able to receive information which was of a suitable standard to make investment decisions. Depending on the model, if crypto assets are another form of financial product, the existing financial product advice framework may be fairly seamlessly applied to this new asset class. As with financial product advice, existing exemptions for purely factual information may allow advice that only relates to the technological features of a crypto asset to remain outside the scope to regulated activity. Members also suggested that the standard of knowledge and education to provide advice regarding crypto assets should be product specific and may include technical and market knowledge.

We note that consideration of advice for crypto assets may be considered in the context of reforms to financial advice more broadly, including in relation to finfluencers and facilitating access to tailored advice. Providing effective financial advice is an important consumer protection issue. The current threshold for what constitutes the provision of general or personal advice under Chapter 7 of the Corporations Act is relatively low, which creates an aversion on the part of consumer-facing businesses from making suggestions or recommendations which may well constitute the provision of such advice. Accordingly, this leaves many consumers unable to obtain information that might benefit them.

As a principle, we consider that regulation should encourage consumers to be informed. A situation where consumers who are practically prevented from getting advice that takes into account their personal circumstances is the antithesis of that principle and is likely to disadvantage those consumers. FinTech Australia Members ask that crypto asset finfluencers be regulated just as ASIC is seeking to regulate finfluencers in the traditional financial services sector.

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?

Generally, regulation should reflect the activities undertaken rather than the asset accessed, or entity type. Accordingly, it is important to consider the services being provided as it is not the crypto asset that should be regulated but services provided to others in relation to the crypto asset. Such an approach would align the CASSPr regime with existing policy in relation to corporations law, consumer law, banking law, the AML/CTF Act, payments regulation and tax.

Our position with respect to NFTs is as set out in response to question 5 above.

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)?

Our Members identified that a separate regime governing crypto assets gives rise to the following issues:

(1) regulatory duplication; and

(2) regulatory arbitrage.

Regulatory duplication

If a separate regime for CASSPrs is introduced, regulatory duplication may arise as follows:

(1) crypto assets which are also financial products may be subject to 2 regimes simultaneously; and

(2) businesses which provide services in relation to financial products and crypto assets which are not financial products are likely to be required to comply with both regimes, even where the services provided are equivalent. Practically, this is likely to lead to a duplication of obligations as a person would be required to meet obligations under the CASSPr and AFSL regime simultaneously.

Members are of the view that only one licensing regime should apply at a time. To prevent regulatory duplication it would be necessary to include carve outs from one or the other regime. This can be done in the following ways:

1. ***Exclude crypto assets which are also financial products***

   If a crypto asset is a financial product this would remain subject to the existing obligations under Chapter 7 of the Corporations Act. This is similar to the European[3] and UK regimes.[4] Under this approach, some CASSPrs would still be required to hold licences both under Chapter 7 and as a CASSPr.

2. ***Opt-in to rely on Chapter 7 licence***

   Any person licenced under Chapter 7 who is providing equivalent services in relation to crypto assets to add an authorisation to provide that service in respect of crypto assets as it if was a financial product. Under this approach, a licensee would only need to comply with its obligations under the AFSL. This is similar to exemptions from holding markets licences and clearing and settlement facility licences.[5] It may however be more complex to manage as compliance obligations under Chapter 7 differ depending on the nature of the asset and service provided. Further, if this was included as a separate authorisation on an existing licence, it leads us to question whether it may be easier to simply include a crypto asset as a financial product and require CASSPrs hold the relevant licence under Chapter 7 where providing a financial service, operating a financial market, or a clearing and settlement facility.

Regulatory arbitrage

Where there are multiple regulatory regimes, it is important to consider the possibility for regulatory arbitrage. If a CASSPr has lighter obligations than an AFSL holder, products may be structured to comply with that lighter touch regime.

Regulatory arbitrage may be avoided by making the obligations and requirements under the CASSPr regime equivalent to the financial services regime.

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[3] Article 2 of the European Commission's Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 (**MiCA**) sets out that MiCA does not apply to, among other things, financial instruments and electronic money.

[4] The current position in the UK is that security tokens are generally regulated in the same way as other securities: FCA, "UK regulatory approach to cryptoassets and stablecoins: Consultation and call for evidence", [4.5].

[5] See for example Corporations Act, s911A(2)(d).

Solution

Both regulatory duplication and regulatory arbitrage may be avoided by including a crypto asset as a new form of financial product under section 764A of the Corporations Act. This would require any CASSPr providing similar services to a financial service, operating a financial market or operating a clearing and settlement facility with respect to a crypto asset to comply with Chapter 7. This would benefit CASSPrs as they would have certainty of their obligations, assist consumers who would receive the benefit of existing protections under the ASIC Act would apply, and increase confidence in the industry as it would be required to meet well understood regulatory obligations.

For this to be successful, it will be necessary to consider how compliance might be practically possible taking account of the nature of crypto assets and their issuers. Further detail in relation to this is set out in response to question 15 below.

3.3 Proposed obligations on CASSPrs

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

Our Members considered that the obligations were generally appropriate. However, they suggest the following be considered:

(1) imposing broader consumer protections;

(2) ensuring obligations reflect the services provided and the risks; and

(3) creating a level playing field with international CASSPrs.

Again, Members note that much of this may be more simply managed by incorporating CASSPrs and crypto assets within Chapter 7 of the Corporations Act (and the ASIC Act).

Consumer protections

The suggested consumer protections relating to scams, false and intentionally misleading representations, and anti-hawking provisions fall short of the obligations under both the

Australian Consumer Law[6] and the ASIC Act.[7] For example, these relate to crypto assets specifically, and not in relation to conduct more broadly.[8] Nor does it prohibit misleading and deceptive conduct, including that which is reasonably likely to mislead or deceive.[9] Other consumer protections such as prohibitions against unconscionable conduct[10] and compliance with the unfair contract terms regime should also be considered.[11] We note that some of these may apply under consumer law but may not be sufficiently broad as to properly protect all people who use services of CASSPrs (including those who may not fall under the definition of consumer).

Same services, same risks, same obligations

Members suggested Treasury should consider whether the same obligations should apply to all CASSPrs, regardless of their activities. This appears to be a departure from generally accepted principles that regulatory obligations are adjusted to take account of the risks associated with the activities and products. For example, taking reasonable steps to ensure crypto assets are "true to label" would be outside the scope of the usual obligations imposed on a person providing a service as a custodian or trustee but may be required of a custodian in the context of crypto assets.

In addition, the obligations are based on the compliance requirements of an AFSL holder. This is a lower threshold than the requirements for those operating an exchange or clearing and settlement facility, so persons operating a crypto asset exchange or crypto clearing and settlement facility would be subject to a lower regulatory threshold. This may be appropriate given the nature of crypto assets but should be considered further, particularly in the context of regulatory arbitrage. See our comments in response to question 10 above.

Where crypto assets are used for payments, Members, including Block, have suggested this should be incorporated within the regulation of the payments regime. We understand that this regime may be subject to amendment following the *Report of the Review of the*

6 *Competition and Consumer Act 2010 (Cth),* Schedule 2 *Australian Consumer Law*, Chapters 2 and 3.

7 See *ASIC Act 2001* (Cth) ("ASIC Act"), Part 2, Division 2 – Unconscionable Conduct and consumer protection.

8 Australian Consumer Law, s29, and ASIC Act, s12DB,

9 Australian Consumer Law, s18, and ASIC Act, s 12DA. Note that false and misleading representation is also prohibited but is an offence subject to the criminal code.

11 Australian Consumer Law, Part 2-3, and ASIC Act, Division 2, subdivision BA.

Australian Payments System, provided in 30 August 2021 and the Government's response on 8 December 2021.

Equivalent treatment for overseas CASSPrs

In addition, Members raised the importance of ensuring that foreigners targeting or inducing Australians to access these services should be subject to these same regulatory obligations. This would create a level playing field, providing equal protection for consumers, and would ensure that Australian businesses are not at a disadvantage to their international counterparts.

Incorporation within financial product regime

Generally, most, if not all, proposed obligations are similar to obligations imposed on AFSL holders. The possible gaps identified above would be addressed automatically by incorporation of crypto assets within Chapter 7. This again leads us to questions whether this might be a more appropriate response .

Members welcome the opportunity to work with Treasury to discuss this further and, if a separate regime is implemented, to assist to expand the detail of these requirements.

12 In any case, should there be a ban on CASSPrs airdropping crypto assets through the services they provide?

No. Members were against any ban which restricts the technology used to make a crypto asset (or any product) available. Such a ban would be difficult to define and enforce. It would also be contrary to the principle of technology neutrality. More broadly , the policy reason for banning airdrops appeared unclear.

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. Banning advice would only result in consumer detriment. Instead, we suggest requiring advisors meet regulatory obligations. See our response to 8 above in relation to these obligations.

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

Although FinTech Australia is not a CASSPr, Members have estimated that the costs associated with meeting compliance obligations are likely to be greater under the CASSPr regime than by incorporating crypto assets into Chapter 7. One member, Swyftx, noted over 40% of its workforce is currently involved in ongoing compliance or customer support. It expects this to increase once regulatory obligations are imposed regardless of the model. However the costs to implement a standalone CASSPr licence would be greater than an AFSL as this would include costs of navigating the operation of a new framework, and associated with determining the applicability of that regime and the existing financial services regime.

3.4 Alternative options for regulation

Option 1: Regulating CASSPrs under the financial services regime

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 the Consultation Paper?

Yes. FinTech Australia strongly supports introducing a targeted definition of "crypto asset" as a new financial product. This would enliven all relevant parts of Chapter 7 of the Corporations Act, requiring those carrying on a financial services business, operating a financial market or operating a clearing and settlement facility in relation to crypto assets to meet the existing legal and regulatory obligations under the Corporations Act. Those who are not undertaking these activities would be outside the scope of the regulatory perimeter. This would create a consistent regime regardless of the nature of the asset.

Incorporating crypto assets into Chapter 7 of the Corporations Act may create a better outcome for consumers as it would import disclosure obligations (including design and distribution obligations) and all existing consumer protections under the ASIC Act (including for wholesale clients).

More generally, this approach would ensure that the obligations imposed on CASSPrs (including the ability to rely on exemptions) follow the nature of the service provided and would differ depending on the risk associated with that service. It further supports the

principle of ensuring that the same service results in the same regulatory outcome, creating a level playing field for crypto asset service providers, reducing the potential for regulatory duplication.

FinTech Australia notes that it will be necessary to consider how different service providers might practically comply with the regime before it is implemented. For this to be effective, Members believe it is appropriate to start from the position of implementing all requirements under Chapter 7 and modifying these obligations to account for the particular features of a specific CASSPr business model or idiosyncrasies of crypto asset.

On the other hand, some Members did note that this approach may lock out certain providers who are unable to afford the cost and burden of compliance with the financial services regime. It may also be more onerous than certain overseas regimes such as in Singapore, or differ from the approach in the UK and EU which have created separate regimes. This may not align with the aim of fostering innovation and competition, as well as making Australia an attractive place for international talent and crypto business. Further, certain CASSPrs may be required to comply with the markets licencing regime which imposes a far higher cost and compliance burden than the financial services regime.

However, this cost should be balanced against the cost of compliance with both regimes as many CASSPrs are likely to be required to hold a licence under Chapter 7 and a CASSPr licence. Further, whilst international perspectives are important, Australia should ensure its regime is appropriate in light of its overall regulatory framework. As such, imposing a burden on some to obtain one licence, rather than imposing an obligation on most to comply with two regimes is likely to have a lower cost and provide consistency across the Australian regulatory framework.

Please see out comments in response to questions 8, 10 and 11 above.

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

Although FinTech Australia is not a CASSPr, its Members have estimated that the costs associated with meeting compliance obligations are likely to be greater under the CASSPr regime than by incorporating crypto assets into Chapter 7.See response to question 14 above for further detail.

Option 2: Self-regulation by the crypto industry

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 Consultation Paper appropriate for adoption in Australia?

FinTech Australia Members are of the view that a self regulatory code is only appropriate in narrow circumstances which are unlikely to be appropriate given the nature of CASSPrs. In particular they have identified that these codes are adopted where:

(1) an industry is not too diverse;

(2) the products have a low risk to consumers and are well understood.

Further, even when implemented they have mixed success in promoting consumer confidence.

CASSPrs are a diverse group which operate complex businesses. As a result, there is a significant risk of consumer harm. The purpose of bringing CASSPrs into a licensing framework is to provide certainty of regulatory outcomes, safety for consumers and confidence in the industry. In this context, self regulation does not seem appropriate.

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.

Not applicable.

3.5 Proposed custody obligations to safeguard private keys

General comment

FinTech Australia's preferred approach is that a "crypto asset" is included as a financial product. If adopted, a person providing a custodial or depository service in relation to a crypto asset would be subject to the existing licensing and compliance obligations. Under these obligations, a custodian must be able to act in accordance with its obligations to its client including that it meets the general required to have appropriate technology. However, regulatory obligations should not require or preclude the use of any particular technology as

to do so would be contrary to the principle of technology neutrality. Practically, it may also prevent the use of certain technologies which are better suited to different use cases, this may make it difficult for a custodian to meet their obligations to their client. For example, 'segregated cold storage' is effective for a passive investment strategy but may not be where assets are actively managed. In those circumstances, it may be necessary for assets to be held in an omnibus facility, or self custodied. Regardless of the technology used, the same legal obligation should apply.

If a crypto asset is a financial product, existing exemptions would also apply. For example, a person operating a registered managed investment scheme which holds crypto assets would only be required to comply with the obligations as operator of the scheme, and not as custodian. This would ensure that the legal obligations are applied consistently according to the services provided.

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

See general comment above.

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

See general comment above.

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?

See general comment above.

In addition, our Members do not consider it necessary to require crypto assets to be held in Australia. The more relevant question is whether the person holding the crypto asset is able to meet the legal and regulatory obligations as a provider of a custodial or depository service. Offshore custody providers have well established practices. Many are also subject to equivalent regulatory obligations. Instead, consideration should be given as to how the Australian obligations can dovetail with those existing offshore operations. Further, certain 'custody' providers only provide technology services and are not true custodians. The use of

foreign technology service providers is common in the finical services industry and should not be excluded in this context.

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

See general comment above.

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

See general comment above.

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

Although FinTech Australia is not a CASSPr, Members have estimated that the costs associated with meeting compliance obligations are likely to be greater under the CASSPr regime than by incorporating crypto assets into Chapter 7. See response to question 14 above for further detail.

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

FinTech Australia does not believe a self regulatory model is appropriate in this context for the reasons set out in response to question 17 above. More broadly, however we note that certain 'custody' providers only provide technology services only, not custodial and depository services. In these circumstances, the custodian and not the technology service provider should be subject to regulatory obligations.

See also general comment above.

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

See response to question 25 and general comment above.

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

See response to question 25 and general comment above.

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

Not applicable.

3.6 Early views sought on token mapping

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

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

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

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

FinTech Australia's preferred approach is that a "crypto asset" is included as a financial product in Chapter 7. If this approach is adopted, a person would only be subject to regulation where they are carrying on a financial services business, operating a financial market or operating a clearing and settlement facility and are not otherwise exempt. Whilst certain requirements may change depending on the nature of the asset, broadly speaking, by applying the existing regime, the regulatory burden reflects the activities undertaken, not the financial product. This also provides consistent consumer protections for the same activities.

Questions regarding whether access to certain crypto assets should be restricted are to be determined on the basis of assessing the risks associated with making those assets available.

For completeness, we note that further guidance from regulators may assist businesses to comply. This guidance may relate to the nature of each financial product (including crypto assets), whether activities amount to providing a financial service or not, and when certain exemptions may be relied on.

It may also be necessary to consider whether it is possible to meet certain obligations in relation to crypto assets and to provide exemptions where compliance is impracticable.

FinTech Australia welcomes the opportunity to discuss this further.

4. Conclusion

FinTech Australia appreciates the opportunity to provide its views to Treasury and would welcome any further discussions on the appropriate regulatory framework for crypto assets in Australia.

About FinTech Australia

FinTech Australia is the peak industry body for the Australian fintech Industry, representing over 400 fintech Startups, Hubs, Accelerators and Venture Capital Funds across the nation.

Our vision is to make Australia one of the world's leading markets for fintech innovation and investment. This submission has been compiled by FinTech Australia and its Members in an effort to drive cultural, policy and regulatory change toward realising this vision.

FinTech Australia would like to recognise the support of our Policy Partners, who provide guidance and advice to the association and its Members in the development of our submissions:

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