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Submission

May 2022

Australian Government the Treasury - Crypto asset secondary service providers: Licensing and custody requirements Consultation Paper

Holon provides the following submission to the Australian Government the Treasury - Crypto asset secondary service providers: Licensing and custody requirements Consultation Paper

About Holon

Holon is a next generation fund manager, venture capital firm and Web 3.0 infrastructure and dencentralised data custody/storage provider powered by the Filecoin ecosystem. We believe innovation drives wealth creation, and everyone should have access to investing in the best companies and technologies globally that are driving innovation today, tomorrow and in the future. For more information, visit <http://www.holon.investments>

Context to Holon's responses

Digital assets, such as cryptocurrencies built on Web 3.0 technologies, are a multi-trillion-dollar market. Increasingly, institutions and consumers are investing in digital assets that are broadly unregulated.

As the digital asset market continues to grow, the central issue for Australian regulators in addressing consumer protection is 'custody' (i.e., who legally and technologically owns and manages the asset like any other asset) as digital asset custody underpins all digital asset utility, such as payments and investments.

Web 3.0 digital assets are fundamentally 'data' (on publicly auditable, distributed, and open networks) that represent a potential national security risk in relation to illegal procurement of privacy data and digital assets from Australian consumers at scale.

Australian regulation and, more importantly Web 3.0 infrastructure requirements, are needed that provide secure ownership and control of user data for digital assets to protect consumers and Australian sovereignty. In a rapidly evolving digital world, Australia cannot afford to fall behind, otherwise, it stays behind.

A link to previous responses to Government consultation papers related to digital asset regulation can be found here at [Senate Select Committee on Australia as a Technology and Financial Centre – Questions on Notice](#).

Responses to the Consultation Paper's Questions

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

Not a preferred term.
- 2. Are there alternative terms which would better capture the functions and entities outlined above?**

We would prefer "Digital Asset Service Provider" as it is more encompassing of the functions of digital assets and CASSPrs and is plainer English.
- 3. Is the above definition of crypto asset precise and appropriate? If not, please provide alternative suggestions or amendments.**

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

Yes. We agree with the proposal that one definition for crypto assets be developed to apply across all Australian regulatory frameworks.
- 5. Should CASSPrs who provide services for all types of crypto assets be included in the licencing regime, or should specific types of crypto assets be carved out (e.g. NFTs)?**

Any CASSPrs who provide services for all types of crypto assets should be included in the licencing regime.
- 6. Do you see these policy objectives as appropriate?**

Yes. We see these policy objectives as appropriate.
- 7. Are there policy objectives that should be expanded on, or others that should be included?**

There are no policy objectives that should be expanded on or included at this time.
- 8. Do you agree with the proposed scope detailed above?**

Yes. We agree with the proposed scope.

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?**

All CASSPrs that engage with any crypto assets should be required to be licenced. In the NFT example, NFTs are a potential store of value and fractionalised ownership and any NFT platforms should be licenced to protect consumer assets.

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)?**

Regulation should be clear on crypto-asset taxonomy in relation to intended/justified 'use' to avoid duplication/cross-over with any other regulation. For example, Filecoin (FIL), a crypto-asset, can be used as a utility/community token, cryptocurrency or investable financial product. In effect, CASSPrs will need to justify to regulators not only 'what' crypto-asset but also 'how' it is intended to be used.

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

The proposed obligations are appropriate.

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

Yes. There should be a ban on CASSPrs airdropping crypto assets through the services they provide.

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)?**

Yes. We agree that CASSPrs should 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 if they were not licensed to do so.

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

Not applicable.

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?**

In the absence of any other appropriate regulation, we support bringing all crypto assets into the financial product regulatory regime to protect consumers.

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

Not applicable.

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 do not support self-regulation.
18. If you are a CASSPr, what do you estimate the cost and benefits of implementing this proposal would be? Please quantify monetary amounts where possible to aid the regulatory impact assessment process.
- Not applicable.
19. Are there any proposed obligations that are not appropriate in relation to the custody of crypto assets?
- No. We believe these are appropriate.
20. Are there any additional obligations that need to be imposed in relation to the custody of crypto assets that are not identified above?
- Yes. Custody of crypto-assets should be located in Australia and not overseas to ensure appropriate legal protection for consumers.
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?
- Custody of crypto-assets should be mandated to be located in Australia to ensure legal protection for consumers.
22. Are the principles detailed above sufficient to appropriately safekeep client crypto assets?
- Assuming incorporation of our responses in 20 and 21, then the principles detailed above are sufficient.
23. Should further standards be prescribed? If so, please provide details
- Not at this stage.
24. If you are a CASSPr, what do you estimate the cost of implementing this proposal to be?
- Not applicable.
25. Is an industry self-regulatory model appropriate for custodians of crypto assets in Australia?
- An industry self-regulatory model is NOT appropriate for the custodians of crypto-assets in Australia. Clear legal certainty through Government regulation and compliance on custodians of crypto-assets is needed to advance the industry.

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

The Consultation Paper demonstrates, via examples, the lack of appropriateness for a self regulatory regime. We are not aware of any examples, relevant to crypto-assets, that demonstrate appropriateness of self regulation.

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

Self-regulation model is not preferred.

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

Not applicable.

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.

We have no further views at this time 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.

We note that digital assets are a rapidly evolving space and caution should be sought in attempting a wholesale 'future-proof' taxonomy. We do suggest that taking a progressive approach, perhaps beginning with well-known and used digital assets, such as Bitcoin and Ethereum, might be a better approach.

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

Not that we are aware of.

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

Not that we are aware of.

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

Not that we are aware of.