

27 May 2022

Director, Crypto Policy Unit
Financial System Division

The Treasury
Langton Crescent
PARKES ACT 2600

Dear Director,

Consultation Paper - Crypto asset secondary service provider: Licensing and custody requirements

Thank you for the opportunity to submit responses to the Consultation Paper.
Please find our submissions detailed below.

Terminology changes

- 1 Do you agree with the use of the term Crypto Asset Secondary Service Provider (CASSPr) instead of 'digital currency exchange'?
No. We do not think the term is in line with the current market. The term should not be limited to the Australian jurisdiction, it should be aligned with international terminology to minimise the risk of misunderstanding and confusion.
- 2 Are there alternative terms which would better capture the functions and entities outlined above?
The government should consider using the term 'Digital Assets' or 'Smart Contract Exchange' or 'Smart Contract Service Provider'.
- 4 Do you agree with the proposal that one definition for crypto assets be developed to apply across all Australian regulatory frameworks?
No. This would classify non-assets such as smart contracts as assets. At a minimum there should be at least two definitions, for example a non-asset based smart contract and an asset based smart contract.
- 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)?
Please refer to the response under question 15.



Policy Objectives

- 6 Do you see these policy objectives as appropriate?
Consider incorporating an objective that 'facilitates innovation to promote efficiency in financial markets'.
- 7 Are there policy objectives that should be expanded on, or others that should be included?
The policy objectives address the policy's purpose at a high level. To ensure compliance with the objectives and protection of investor rights the government will need to develop legislative and regulatory guides to ensure that the objectives are met.

Interaction with existing AML/CTF regime

- 8 Do you agree with the proposed scope detailed above?
Yes. The proposed scope is in line with the existing AML/CTF regime for entities that provide designated services.

Proposed obligations

- 12 Should there be a ban on CASSPrs airdropping crypto assets through the services they provide?
No, however there should be a framework in place that details when airdropping is permitted. For example, if the airdrop is compensation for marketing purposes.
- 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)?
It will depend on whether the CASSPr has elected to opt in or out of the financial services licensing regime [refer to the response under question 15]. If the CASSPr elects to be licensed, then it should not be prohibited from providing personal advice. In such circumstance, the provision of personal advice would act as an aid to educate investors on how to invest in crypto in line with their objectives, financial situation and needs.



Alternative 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 this paper?

There should be an option to either opt in or out of the financial services regime by either obtaining an Australian financial services license or being authorised as an authorised representative of an Australian financial services licensee. However, if an CASSPr elects to opt out, disclosure obligations of the risks associated with opting out should be imposed on the CASSPr.

Benefits of the financial services regime include providing protection to investors and ensuring that CASSPrs have general licensee obligations, compliance and risk frameworks, dispute resolution and professional indemnity insurance requirements.

Alternative 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 codes above appropriate for adoption in Australia?

No. Self-regulation would strengthen the deregulation and decentralisation of crypto assets and increase the risks faced by retail investors who invest in crypto assets.

Proposed custody obligations to safeguard private keys

- 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?

Yes, for CASSPrs that elect to the licensed.

Alternate option: Industry self-regulation

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

No.

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

blockchain and creation of bitcoin are examples that should be self-regulated as this is a driving force for innovation.



Specifying classes of crypto assets

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.

Refer to responses in question 2.

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

Yes. For example, DAO, NFT, token, smart contract.

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

No crypto assets should be banned, however not all should operate under the financial services licensing regime. Providers that opt in to meet the obligations of a financial services licensee or authorised representative of a financial services licensee will encourage innovators to aim to be licensed once established as this will likely give them access to more funding and investment options.

The premise of opting into the financial services licensing scheme is to ensure some level of governance is in place to protect the interests of retail investors who want the comfort of investing in regulated products.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Shelley Brown'.

Shelley Brown
Chief Risk Officer
MSC Group