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3 June 2022

Director – Crypto Policy Unit  
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The Treasury  
Langton Cres  
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Thank you for the opportunity to respond to the consultation paper on licensing and custody requirements for crypto asset secondary service providers. The Tech Council of Australia (TCA) believes effective and practical regulation of digital assets would both protect consumers and create international opportunities for Australian firms.

The TCA represents a diverse cross-section of Australia’s technology sector, including start-ups, venture capital funds, and online platforms that link Australians to global markets. This also includes local industry leaders in digital assets such as FINDER, Swyftx, Holon and Block. We welcome the opportunity to engage in the early stages of shaping effective and practical industry standards.

We note that this consultation was commenced under the previous government, and that the incoming Albanese government may wish to approach the regulation of digital assets in a different manner to the previous government. As such, we shall be providing a submission addressing the broader regulation of digital assets in Australia, rather than answering the specific questions asked in the consultation. On those specific questions we would refer to the answers provided by our member companies.

### **Effective regulation will protect consumers and provide industry with certainty to invest**

Labor Senators in their comments to the Final Report of the Senate Select Committee on Australia as a Financial and Technology sector stated that:

“...the increased uptake of digital assets requires regulation to ensure the best interests of everyday Australian investors and consumers are protected.”

This is a sentiment that is shared by the TCA and digital asset firms in Australia, who are committed to a high standard of consumer protection and security. With that as a foundation, we encourage Government to work with technical experts in industry to design these regulations as practically as possible.

A collaborative approach that protects consumers while driving investment would mirror recent steps taken by the United States, particularly President Biden’s Executive Order in March to ensure responsible innovation in digital assets. Alongside measures to manage risks to consumers and national security, the Biden Administration committed to establish “a framework to drive competitiveness, leadership in, and leveraging of, digital asset technologies”.<sup>1</sup> We view well-designed regulation as part of such a framework.

Crucially, action is needed to apply obligations to foreign providers of crypto assets in Australia.

- The nature of crypto markets means international platforms may not meet traditional tests of ‘carrying on business’ in Australia, despite providing services to Australian consumers.

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<sup>1</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/09/fact-sheet-president-biden-to-sign-executive-order-on-ensuring-responsible-innovation-in-digital-assets/>

- International crypto platforms also continue to operate in jurisdictions with licensing regimes despite not complying with these systems.

We note page 4 of Swyftx's submission to this process, which further details the need to recognise foreign providers. We encourage Government to consider steps that protect consumers and avoid disadvantaging local platforms that comply in good faith with licensing requirements.

All crypto assets should fall within the scope of a licensing regime, including NFT platforms. These platforms present the same opportunities and risks for consumers, and a consistent approach for all crypto assets should recognise this. Obligations may require tailoring to the diverse range of businesses that fall under the 'crypto asset secondary service provider' umbrella.

### **Self-regulation is not sufficient to protect consumers or create opportunities**

While local digital asset service providers stand ready to help Government design practical standards, we think industry self-regulation is the wrong approach for the following reasons:

1. There are a wide range of digital asset service providers that operate in Australia, with varying views on what a common standard should be. Government involvement will create impetus for action.
2. We believe a government licensing regime is in local business' long-term interests by offering greater confidence to Australian consumers. A regulatory license backed by Government will ensure standards that uphold confidence in the sector.
3. A government license offers international economic benefits also. The Australian Government is respected internationally, and a license backed by government will send a clear signal of quality. Further, a government license builds the foundations of mutual recognition, helping Australian businesses to operate in jurisdictions with licensing systems of their own.

### **Tailored standards are needed to ensure obligations are practical and effective**

The TCA holds and promotes five overarching principles for well-designed tech regulation, and policy more broadly:

- **Informed and coordinated**, through close industry and expert collaboration,
- **Proportionate and targeted**, by ensuring regulation is precise, necessary and makes Australians better off overall,
- **Practical and interoperable**, including through consistency with global norms,
- **Integrated and holistic**, by recognising impacts on wider national outcomes, and
- **Future focussed**, by accounting for long-term and indirect impacts at the outset.

We recognise that a licensing system will involve costs. But to design a system that is practical to implement as possible, we encourage the Government to work closely with industry to recognise the technical specifics of digital asset platforms and service providers. We would welcome a government-led committee process through which industry can co-design practical details. We would also be happy to facilitate consultation with industry participants if that would be useful.

As the government looks towards these details, we support regulation that is future-proofed and ensures space to innovate. To that end, we encourage the government to take a tech-neutral and outcomes-focused approach to regulatory requirements. This will also help to integrate crypto assets more smoothly into the broader payments ecosystem and manage the risk of regulation becoming outdated as technology evolves.

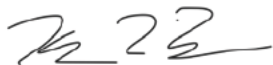
As flagged above, we also note that different obligations will likely need to apply to different subsets of crypto asset secondary service provider service provider, given the term captures many types of service. For example, we note that Swyftx's submission recommends a tiered, risk-based approach to custody obligations that ensures crypto service providers' obligations are not more restrictive than their traditional financial service equivalents.

Also in keeping with our principles, we strongly encourage Government to strive for harmonisation and consistency with international standards. Any Australia-based service provider will also need to comply with the standards of any jurisdiction in which it operates. Aligning local standards with fit-for-purpose international precedents will avoid unnecessarily duplicating the regulatory burden that Australian tech businesses face.

Similarly, creating systems to recognise similar licences from international jurisdictions – such as the European Union's Markets in Crypto Assets (MiCA) framework – will further manage regulatory burden while continuing to protect Australian consumers appropriately.

Thank you once again for the opportunity to comment. Effective and practical crypto asset service licensing is a priority for the Australian tech sector. We look forward to an ongoing dialogue between Government and our members as details are developed further.

Yours sincerely,



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m: [REDACTED]