



**Australian Government**  

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**AUSTRAC**

# Crypto asset secondary service providers: Licensing and custody requirements

Treasury consultation paper (21 March 2022)

May 2022

**AUSTRAC Submission**

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## Outline of submission

The Australian Transaction Reports and Analysis Centre (AUSTRAC) welcomes the opportunity to make a submission to Treasury's consultation on *Crypto asset secondary service providers: Licensing and custody requirements*.

AUSTRAC's submission provides broader context related to financial crime risks and global anti-money laundering and counter-terrorism financing (AML/CTF) standards for Treasury's consideration.

The submission is provided in four parts.

- Part 1 provides an overview of AUSTRAC and AUSTRAC's regulation of digital currency exchanges under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.
- Part 2 address the international policy context for applying AML/CTF measures to the businesses providing services related to crypto assets.
- Part 3 discusses desirable attributes of a licensing framework for businesses providing services related to crypto assets (including digital currency exchanges).
- Part 4 provides specific responses to consultation questions.

## Part 1: Overview

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### About AUSTRAC

AUSTRAC is Australia's financial intelligence unit (**FIU**) and anti-money laundering and counter-terrorism financing (**AML/CTF**) regulator.

As Australia's FIU, AUSTRAC provides financial transactions data and actionable financial intelligence to law enforcement, national security, human services and revenue agencies (AUSTRAC's partner agencies), as well as international counterparts. Partner agencies use this information to assist them to detect, prevent and disrupt money laundering, terrorism financing (**ML/TF**) and other serious crime.

As a regulator, AUSTRAC oversees the compliance of more than 16,000 Australian businesses with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (**AML/CTF Act**) and associated Rules. AUSTRAC's regulated population (referred to as **reporting entities**) includes a broad range of businesses from across the financial services, gambling, bullion, remittance and digital currency exchange sectors. These businesses range from major banks and casinos to single-operator businesses, but all must comply with applicable obligations in the AML/CTF Act and implement effective AML/CTF systems and controls to identify and mitigate ML/TF risk.

AUSTRAC uses its knowledge of reporting entities, industry trends and ML/TF risks to direct our regulatory efforts towards vulnerabilities and high-risk entities, which increases resilience to criminal abuse within the financial sector. Our regulatory work and engagement with reporting entities improves the volume and value of financial intelligence provided to AUSTRAC and then subsequently disseminated to AUSTRAC's partner agencies.

AUSTRAC may take enforcement action against a reporting entity for serious and/or systemic non-compliance with the AML/CTF Act. In instances where reporting entities fail to meet their obligations, well-targeted and proportionate enforcement action can benefit reporting entities and the wider community by contributing to the broader integrity of the financial system.

### AUSTRAC regulation of digital currency exchanges

Australia's AML/CTF regime adopts a risk-based and principles-based approach to regulation and recognises that reporting entities are best placed to identify, mitigate and manage their ML/TF risk.

Businesses that provide a designated service listed in section 6 of the AML/CTF Act are **reporting entities** and have certain regulatory obligations.

The designated service relevant to the digital currency exchange (**DCE**) sector is item 50A<sup>1</sup> in Table 1 of section 6 of the AML/CTF Act. Item 50A is the service of exchanging digital currency for money

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<sup>1</sup> Designated service item 50A focuses on the fiat-digital currency on and off ramps, i.e. the exchange of fiat currency for digital currency (i.e. crypto asset) and vice versa.

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(whether Australian or not) or exchanging money (whether Australian or not) for digital currency, where the exchange is provided in the course of carrying on a digital currency exchange business.

Like all reporting entities, DCEs providing item 50A services must:

- enrol with AUSTRAC;
- establish and maintain an AML/CTF program to help identify, mitigate and manage the ML/TF risks the business faces;
- conduct initial and ongoing customer due diligence;
- report certain transactions, including notifying AUSTRAC of suspicious matters and, threshold transactions; and
- keep records.

DCEs must also register with AUSTRAC before providing digital currency exchange services. Failure to do so is a criminal offence. Registration is intended to reduce the risk that criminals and their associates enter the DCE provider sector and the key consideration is whether registering the person would involve a significant ML/TF or other serious crime risk.

AML/CTF obligations for DCEs commenced on 3 April 2018.

As at 21 April 2022, there are 399 businesses registered on AUSTRAC's Digital Currency Exchange Register (**DCER**), that provide services involving the exchange of digital currency for fiat currency, and vice versa.

Since April 2018, AUSTRAC has cancelled nine registrations of DCE providers, suspended five registrations and refused 23 registrations.

## Part 2: International AML/CTF context

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Australia is a founding member of the Financial Action Task Force (FATF)<sup>2</sup>, the global AML/CTF standard-setting body. The Department of Home Affairs and AUSTRAC leads Australia's engagement with the FATF. As a FATF member, we are committed to implementing the FATF Recommendations and are publicly reviewed for our compliance with the FATF's international best practice standards (FATF Standards).

A range of escalating consequences can be applied where a country fails to effectively comply with, and implement, the FATF Standards. This can include a public statement, referral to the FATF's International Cooperation Review Group for formal monitoring, and revocation of FATF membership. Serious shortcomings in FATF compliance can affect a country's economy, increasing the cost of doing business with the country, reducing foreign investment, and making it more difficult for businesses to engage with the global financial system.

### FATF Recommendation 15 in relation to virtual assets and virtual asset service providers

Australia implemented AML/CTF obligations for the DCE sector before the FATF adopted global standards for regulating the sector.

In 2019 the FATF amended its standards to require countries to apply AML/CTF regulation to five categories of services. These services are set out under the FATF's definition of 'virtual asset service provider', which is the international equivalent of 'digital currency exchange' under the AML/CTF Act.

Virtual asset service provider (VASP) means any natural or legal person who is not covered elsewhere under the FATF Recommendations, and as a business conducts one or more of the following activities or operations for or on behalf of another natural or legal person:

- i. exchange between virtual assets and fiat currencies;
- ii. exchange between one or more forms of virtual assets;
- iii. transfers of virtual assets;
- iv. safekeeping or administration of virtual assets or instruments enabling control over virtual assets;
- v. participation in and provision of financial services related to an issuer's offer and/or sale of a virtual asset.

Australia currently regulates the first activity listed in the definition—the exchange between virtual assets and fiat currencies—for AML/CTF purposes. AUSTRAC registration requirements, and other AML/CTF measures, do not currently apply to the remaining activities in the FATF definition, unless they incidentally involve the exchange between virtual assets and fiat currency.

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<sup>2</sup> Refer to <https://www.fatf-gafi.org/> and the [FATF Recommendations](#)

*FATF VASP licensing/registration requirements*

FATF requires that VASPs undertaking any of the five activities in the FATF's definition be licensed or registered by a competent authority that takes measures to prevent criminals and their associates from owning, controlling or managing a VASP.

- VASPs are expected to be supervised or monitored by a competent authority (not a self-regulatory body), which should conduct risk-based supervision or monitoring.
- Supervisors are expected to have powers to impose a range of disciplinary and financial sanctions, including the power to withdraw, restrict or suspend the VASP's licence or registration, where applicable.

The FATF does not require that VASPs be subject to a bespoke AML/CTF licensing or registration regime—a licensing framework that applied to a broader range of financial services providers including VASPs would be sufficient if it achieves the purpose of keeping criminals out of the sector (e.g. through fitness and propriety checks).

AUSTRAC supports Treasury's proposal to build on the Financial Action Task Force's definition of 'virtual asset service provider' when determining the scope of activities subject to the new licensing framework.

## Part 3: The purpose of licensing

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The report of the [Senate Select Committee on Australia as a Technology and Financial Centre](#) recommended the establishment of a market licensing regime for DCEs, including capital adequacy, auditing and responsible person tests under the Treasury portfolio (refer to Recommendation 1 of the Senate Select Committee's report). AUSTRAC considers that one of the purposes of such a regime should be to replace the existing DCE registration regime under the AML/CTF Act administered by AUSTRAC (consistent with paragraph 6.12 of the Committee's report). An appropriately designed framework would improve efficiencies for business and regulators, rather than introducing a new and additional licensing framework on top of already existing requirements. This would bring crypto asset businesses into line with many other sectors, for which licensing is undertaken by ASIC or APRA or other authorities, while AUSTRAC supervises the AML/CTF compliance of licence holders.

Therefore, apart from consumer protection and investor confidence, licensing needs to also include protecting the Australian community from the harm of criminal enterprises becoming involved in the DCE sector. To achieve this objective, and streamline the regulatory framework for DCEs, it is essential that any licensing framework:

1. cover all activities specified in the FATF VASP definition; and
2. apply fitness and propriety checks to any owner or controller of a business providing such services, and their key personnel, to ensure criminals and their associates do not enter the market and any licence can be revoked swiftly when this is identified.

The FATF VASP definition is not limited to those businesses providing services to retail consumers. Just as with banking regulation, regulation of VASPs should apply to those providing one of the specified services to institutional customers or other VASPs. This recognises that financial crime risks, and the flow-on harms to the Australian community, are not limited to retail services. AUSTRAC recognises that it may be appropriate to distinguish between services provided to retail and wholesale customers for some regulatory purposes (e.g. consumer protection), but we consider that as a baseline fitness and propriety check should apply to the service provider regardless of the customer type.

Robust fit and proper person checks would also ensure that the *competency* of the licence applicant/holder to operate a crypto-asset related business is taken into consideration. AUSTRAC considers that having the requisite knowledge, skills and experience in implementing AML/CTF obligations is a core competency for any crypto-asset related business, and has increasingly focused on this aspect since AUSTRAC registration commenced in 2018. As the proposed licensing framework develops, further consideration will be required to outline how AUSTRAC and ASIC will work together to ensure that licence applicants have the required AML/CTF competency.

**Recommendation 1:** AUSTRAC recommends that an appropriately designed licensing framework for businesses providing crypto asset related services should replace the existing Digital Currency Exchange Register.

**Recommendation 2:** AUSTRAC recommends that robust fitness and propriety checks for owners, controllers and key personnel be undertaken for all categories or types of licence holders.

**Recommendation 3:** AUSTRAC recommends that robust fitness and propriety checks apply to those providing regulated services to both retail and/or wholesale customers.

## Implications for de-banking of crypto asset businesses

While AUSTRAC's regulatory focus is on financial crime risk, failing to meet international standards in the design of a new crypto asset business licensing framework could have significant impacts for the sector in Australia.

Compliance with the FATF Standards is commonly used by financial institutions globally as an indicator of the risks involved in dealing with a particular sector in a jurisdiction. Should Australia's regulatory framework fall significantly short of the FATF Standards there is the potential that Australian crypto asset businesses will be classified as higher risk by banks overseas, as well as within Australia. This potential will only increase as more jurisdictions implement the FATF Standards.

Businesses within sectors classified as higher risk due to a weak or absent regulatory framework may find that this classification increases the compliance costs incurred by banks and other financial services providers with which the business seeks to engage or transact. Ultimately, it may contribute to such businesses being denied bank accounts or other financial services in Australia, and see them cut off from the global financial system including counterpart crypto asset related businesses overseas. It is therefore imperative that the proposed licensing framework consider the developing global context in which Australian crypto asset businesses will operate.

## The importance of regulatory certainty and minimising duplication

AUSTRAC supports the development of a licensing framework that is easy to understand by both regulators and industry. Ideally, there should be a single licensing framework for all crypto asset businesses, although it may be appropriate to introduce 'tiered' requirements for some regulatory obligations (other than AML/CTF regulation) for which risks may vary by product type.

A single licensing framework would provide efficiencies both for regulators and industry. For AUSTRAC, a streamlined regulatory framework would permit us to work with the regulator overseeing licensing to refuse, suspend or cancel a licence where there are ML/TF and other serious crime risks, or a lack of competence around AML/CTF obligations without having to identify which licensing framework applies. A streamlined licensing framework would also facilitate taking action against those operating illegally without a licence—who represent a significant financial crime risk—by minimising the need to engage in technical and lengthy analysis of which of multiple licensing frameworks may be applicable.

A single licensing framework could also generate significant efficiencies for industry. While AUSTRAC does not have data on the numbers of DCEs offering different types of tokens, anecdotally we consider the most DCEs in Australia provide services involving multiple categories of crypto assets,



such as cryptocurrencies that operate solely as a means of exchange or store of value (e.g. bitcoin), stablecoins (asset-backed or otherwise), utility tokens and governance tokens. Many DCE also operate trading platforms. This means that a significant number DCE providers in Australia may potentially be required to hold:

- a CASSPr licence for services involving crypto assets that are not financial products
- an AFS licence for services involving crypto assets that are financial products, and
- an Australian market licence.

AUSTRAC welcomes Treasury's proposal to ensure, as far as possible, that service providers are not subject to multiple regulatory regimes.

**Recommendation 4:** AUSTRAC recommends that Treasury consider having a single, streamlined licensing framework for businesses providing crypto asset related services, with possible tiers for non-AML/CTF regulatory obligations where appropriate.

## Token mapping

Under the global FATF standards, all types of crypto assets, except collectable non-fungible tokens (NFTs), must trigger AML/CTF regulation. While the token mapping may be relevant to other regulatory considerations, businesses undertaking VASP activities with any crypto asset should be subject to robust fit and proper person checks.

The AML/CTF Act contains a single definition of 'digital currency' and does not categorise digital currencies by token, its use or any other attribute or marketing term (e.g. altcoin, privacy coin, stablecoin, NFT, utility token, central bank digital currencies (CBDCs)). This single definition reduces the complexity of regulating the sector for AUSTRAC.

The existing definition of 'digital currency' in the AML/CTF Act, and the globally recognised FATF definition of 'virtual assets', focus on the digital nature of the assets, and exclude CBDCs. AUSTRAC recommends adopting this approach to future-proof the licensing framework and ensure harmonisation with global standards and overseas regulatory regimes.

While the overwhelming majority (if not all) current digital currencies/virtual assets use cryptographic key technology, AUSTRAC cautions against building this technology into the definition of assets subject to the new licensing framework. Such an approach, if adopted in a definition intended to apply across regulatory frameworks, would represent a rolling back of the existing AML/CTF Act definition by tying it to a specific technology. It may also incentivise the development of digital currencies or virtual assets that seek to structure the product in a way that avoids this element, particularly in crypto-asset ecosystems involving centralised ledgers.

Globally there appears to be a consensus that CBDCs are not digital currency/virtual assets, but rather a form of fiat currency and should be regulated as such. However, issuing authorities should consider financial crime risks when designing the underlying technology.

**Recommendation 5:** AUSTRAC recommends that the definition of assets to be subject to the new licensing framework should be linked to the digital nature of the asset and not to more specific underlying technologies such as the use of cryptography.

## Part 4: Responses to consultation questions

<i>Terminology changes</i>	
1	Do you agree with the use of the term Crypto Asset Secondary Service Provider (CASSPr) instead of 'digital currency exchange'?
	While digital currency exchange is AML/CTF Act terminology, AUSTRAC suggests using the globally recognised term Virtual Asset Service Provider (VASP). VASP is already well known and understood by digital currency exchanges and other regulators around the world compared to the newly introduced term of CASSPr. This will also assist with future-proofing the regulatory framework and minimise the incentive to design around the new regime, by avoiding tying the concept to a particular technology, i.e. use of cryptographic keys.
2	Are there alternative terms which would better capture the functions and entities outlined above?
	Per the answer to Q1, AUSTRAC suggests using the FATF terminology of Virtual Asset Service Provider (VASP). While less ideal in the Australian context given the fact that it ties regulation to specific technology, the European Union's term 'Crypto asset Service Provider' also has the benefit of simplicity and international recognition. The EU's use of this term possibly reflects the separate regulation of 'e-money' in many EU jurisdictions.
<i>Proposed definitions</i>	
3	Is the above definition of crypto asset precise and appropriate? If not, please provide alternative suggestions or amendments.
	The definition of assets subject to the new licensing framework should be linked to the digital nature of the asset and not to more specific underlying technologies such as the use of cryptography. The definition could build on the existing definition of 'digital currency' in Commonwealth legislation (the AML/CTF Act) and the global FATF Standards.
4	Do you agree with the proposal that one definition for crypto assets be developed to apply across all Australian regulatory frameworks?
	Ideally yes, but this must be consistent with global standards to minimise the risk of regulatory arbitrage and/or the possibility of Australian businesses being rated as higher risk. A consistent definition will reduce complexity across the various Australian regulatory frameworks and should not give rise to undue regulatory burden between 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)?
	For global consistency and regulatory harmonisation, we consider that CBDCs should be considered to be fiat currency and subject to relevant existing regulatory frameworks. We note that internationally, a functional approach is taken to determining whether NFTs should be subject to AML/CTF regulation. NFTs that operate purely as collectibles, in practice, fall outside the global FATF Standards. However, NFTs that operate as means of payment or investments should be regulated for AML/CTF purposes, regardless of how they are marketed. We consider that collectible NFTs could be excluded from the proposed regulatory framework for the time being, but with flexibility built in to allow specific NFTs, classes of NFTs or all NFTs to be brought within regulation if relevant risks materialise.
<i>Crypto asset secondary service providers: policy objectives</i>	

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6	Do you see these policy objectives as appropriate?
	Yes.
7	Are there policy objectives that should be expanded on, or others that should be included?
	We consider that harmonisation with global approaches to regulation, and ensuring that financial institutions have confidence in the quality of regulation in Australia (to mitigate de-banking), could both be added as policy objectives.
<i>Crypto assets covered by the proposed licensing regime</i>	
8	Do you agree with the proposed scope detailed above?
	<p>The AML/CTF regime applies to all types of crypto assets regardless of whether they are a financial product or not. For Australia to be compliant with the FATF Standards, the licensing regime will need to cover the five limbs of the FATF’s VASP (and CASSPr) definition. There are still gaps with the types of secondary service providers as outlined in the consultation paper compared to the VASP definition, such as payment service providers for the transfer of crypto assets (limb iii) and those providing financial services related to the issuance crypto assets (limb v).</p> <p>The consultation paper indicates issuers are primary services (page 3, figure 1) yet does not explain or propose how the licensing of primary and secondary service providers may work together (e.g. where issuers exchange the crypto assets they issue for fiat currency).</p>
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?
	<p>Yes, all CASSPrs that engage with any crypto assets should be required to be licenced for Australia to comply with global AML/CTF standards, with the exception of:</p> <ul style="list-style-type: none"> <li>• CBDC; and</li> <li>• NFTs used <i>in practice</i> solely as collectibles (i.e. not as means of payment or investments).</li> </ul> <p>Flexibility should be built into the regime to allow inclusion of ostensibly collectible NFTs where financial crime or other relevant risks emerge.</p>
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)?
	<p>Ideally, the new licensing framework would involve a single licence type applicable to all businesses providing crypto asset related services. AUSTRAC does not take a view on whether this could involve expanding an existing licensing framework or applying a new, holistic, licensing framework. If different levels of regulation were desirable for policy objectives such as consumer protection (etc.), tiered obligations within a single licensing framework may be appropriate, and easier to enforce in the case of unlicensed operators due to simplifying the task of identifying the applicable licensing regime(s).</p>
<i>Proposed obligations on crypto asset secondary service providers</i>	
11	Are the proposed obligations appropriate? Are there any others that ought to apply?
	<p>The proposed obligations are appropriate and will assist with mitigating financial crime risk in the sector. In particular, AUSTRAC supports the proposal to require licensed businesses to:</p> <ul style="list-style-type: none"> <li>• ensure directors and key persons responsible for operations are fit and proper persons and are clearly identified; and</li> </ul>

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	<ul style="list-style-type: none"> <li>comply with AML/CTF provisions (including a breach of these provisions being grounds for a licence cancellation).</li> </ul>
12	Should there be a ban on CASSPrs airdropping crypto assets through the services they provide?
	AUSTRAC does not have a view on the sending of free crypto assets to wallet addresses to market or promote adoption of a particular crypto asset. We are unaware of significant ML/TF risks associated with airdrops. We note this type of activity is a transfer which not ordinarily would be regulated under the AML/CTF regime and the gratuitous provision of crypto assets (i.e. with no exchange for fiat currency or another crypto asset) falls outside the FATF Standards.
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)?
	Nil comment.
14	If you are a CASSPr, what do you estimate the cost of implementing this proposal to be?
	Not applicable.
<i>Alternative option 1: Regulating CASSPrs under the financial services regime</i>	
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?
	AUSTRAC does not have a view on whether or not all crypto assets should be included in the definition of 'financial product' or not. The distinction is largely irrelevant for financial crime risk. However, we would be concerned if questions about whether a service provider was involved in services related to financial products or not led to delays in taking action against unlicensed operators, or against persons failing fitness and propriety checks. For this reason, we would favour any approach that allows the applicable regulatory framework to be determined simply and unambiguously.
16	If you are a CASSPr, what do you estimate the cost of implementing this proposal to be?
	Not applicable.
<i>Alternate option 2: Self-regulation by the crypto industry</i>	
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?
	<p>No. Self-regulation is expressly not permitted under the FATF Standards and would raise a number of concerns within the Australian context. Should a self-regulation regime be adopted in Australia, it:</p> <ul style="list-style-type: none"> <li>will likely result in Australian based CASSPrs being rated as a high financial crime risk, and</li> <li>could result in CASSPrs being de-banked in Australia and internationally and being increasingly cut off from the global financial system as the FATF Standards are progressively implemented around the world.</li> </ul>

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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.
<i>Proposed custody obligations</i>	
19	Are there any proposed obligations that are not appropriate in relation to the custody of crypto assets?
	Nil comment.
20	Are there any additional obligations that need to be imposed in relation to the custody of crypto assets that are not identified above?
	<p>We understand that as the proposal relates to CASSPrs providing custodial services, the following obligations will apply by definition:</p> <ul style="list-style-type: none"> <li>• ensure directors and key persons responsible for operations are fit and proper persons and are clearly identified, and</li> <li>• comply with AML/CTF provisions (including a breach of these provisions being grounds for a licence cancellation).</li> </ul> <p>Such obligations should also extend to any 'third party custodians' providing services to CASSPrs, to ensure that financial crime risks are appropriately mitigated.</p>
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?
	<p>While AUSTRAC does not have a view on whether there should be domestic location requirements for custodians, AUSTRAC recommends that if an Australian-licensed crypto custodian uses the services of third party custodians, that such third party custodians must operate in jurisdictions where they are subject to adequate AML/CTF regulation and supervision in line with the global FATF Standards.</p> <p>Beyond AML/CTF issues, AUSTRAC notes that a domestic location requirement may simplify proceeds of crime restraint and confiscation by ensuring that crypto assets held by Australian crypto custodians are subject to Australian jurisdiction.</p>
22	Are the principles detailed above sufficient to appropriately safekeep client crypto assets?
	Nil comment.
23	Should further standards be prescribed? If so, please provide details.
	Nil comment.
24	If you are a CASSPr, what do you estimate the cost of implementing this proposal to be?
	Not applicable.
<i>Alternate option: Industry self-regulation</i>	
25	Is an industry self-regulatory model appropriate for custodians of crypto assets in Australia?
	No, per the reasons outlined in the answer to Q17 above. Custodians of crypto assets falls under limb iv of the VASP (and CASSPrs) definition.
26	Are there clear examples that demonstrate the appropriateness, or lack thereof, a self-regulatory regime?

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	A self-regulatory regime, or the absence of a regulatory regime (for third party custodians) would fail to meet global AML/CTF standards and could contribute to Australian custodians being classified as high-risk for financial crime purposes. This could result in increased costs of doing business and contribute to the possibility of de-banking.
27	Is there a failure with the current self-regulatory model being used by industry, and could this be improved?
	Nil comment.
28	If you are a CASSPr, what do you estimate the cost of implementing this proposal to be?
	Not applicable.
<i>Token mapping: specifying classes of crypto assets</i>	
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.
	<p>The list of crypto asset types is based primarily on the use of the token and its source of value. AUSTRAC notes that a range of other factors are relevant to determining the financial crime risks associated with particular crypto assets that go beyond the classification of the token itself, including whether:</p> <ul style="list-style-type: none"> <li>• the underlying distributed ledger technology related to the crypto asset is permissionless or permissioned;</li> <li>• the underlying distributed ledger technology facilitates anonymous transactions or anonymity enhancing technologies;</li> <li>• the underlying distributed ledger technology allows any third party to create wallet software and facilitates peer-to-peer transfers;</li> <li>• there are associated applications and links to other service providers (e.g. social media services) that could encourage and facilitate mass adoption;</li> <li>• there is a centralised governance body that sets rules for use of the crypto asset ecosystem;</li> <li>• there is a centralised governance body that enforces standards for service providers dealing with the crypto asset;</li> <li>• there is a centralised governance body monitoring activity on the distributed ledger and whether the centralised governance body can intervene to freeze proceeds of crime or assets subject to targeted financial sanctions; and</li> <li>• there is a centralised governance body based in a jurisdiction subject to AML/CTF regulation and cooperates with law enforcement authorities.</li> </ul> <p>While none of these factors (or their absence) necessarily creates an unacceptable risk by itself, they are relevant to an assessment of the overall risk associated with a crypto asset. That said, all crypto assets are likely to present some financial crime risk. At a minimum, any business dealing with crypto assets (other than NFTs that are, in practice, purely collectibles) should be subject, at the very least, to licensing that includes fit and proper person checks.</p>
30	Are there any other descriptions of crypto assets that we should consider as part of the classification exercise? Please provide descriptions and examples.
	AUSTRAC supports a holistic approach to crypto assets for the purposes of mitigating financial crime risk. We note the reality that new tokens are created every day, and the



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	likelihood that new categories and functions for tokens will likely to continue to evolve for the foreseeable future. We would not want the dynamic nature of the sector to impede appropriate risk mitigation.
31	Are there other examples of crypto asset that are financial products?
	Nil comment.
32	Are there any crypto assets that ought to be banned in Australia? If so which ones?
	<p>AUSTRAC queries whether it is possible to ban crypto assets themselves, as opposed to activities related to those crypto assets (e.g. owning certain types of crypto assets, mining them, staking them, exercising rights granted by crypto assets, etc.).</p> <p>We note that certain categories of crypto assets, such as privacy coins and those for which mixer/tumbler technologies are widely available, present specific risks by making tracing of transactions through the blockchain more difficult. However, any decision to ban activities associated with such crypto assets needs to be balanced against the benefits of having people who engage with such assets interacting businesses in the regulated sector. Regulated business are required, under AML/CTF obligations, to implement risk mitigation measures and report suspicious matters to AUSTRAC, which provide potential investigative leads for law enforcement, revenue protection and other regulatory agencies.</p> <p>AUSTRAC's preference would be to avoid banning certain crypto assets unless there is clear evidence that such a ban would be more effective in combating financial crime when weighed against the benefits of the continued development of regulated businesses' understanding of the ML/TF risks associated with such crypto assets, and the sophistication of their systems and controls to mitigate such risks.</p>

## Conclusion

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AUSTRAC welcomes the proposed licensing framework for CASSPrs. As noted in the submission, AUSTRAC:

- supports Treasury's proposal to build on the Financial Action Task Force's definition of 'virtual asset service provider' when determining the scope of activities subject to the new licensing framework
- recommends that an appropriately designed licensing framework for businesses providing crypto asset related services should replace the existing Digital Currency Exchange Register
- recommends that robust fitness and propriety checks for owners, controllers and key personnel be undertaken for all categories or types of licence holders
- recommends that robust fitness and propriety checks apply to those providing regulated services to both retail and/or wholesale customers
- recommends that Treasury consider having a single, streamlined licensing framework for businesses providing crypto asset related services, with possible tiers for non-AML/CTF regulatory obligations where appropriate.
- recommends that the definition of assets subject to the new licensing framework (and proposed as a general definition across all regulatory frameworks) should be linked to the digital nature of the asset and not to more specific underlying technologies such as the use of cryptography.

AUSTRAC would be happy to provide further information on any of the points raised in this submission if it would assist.