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Director – Crypto Policy Unit
By Email: crypto@treasury.gov.au

27th May 2022

Dear Director,

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

We appreciate the opportunity to respond to the consultation paper on licensing and custody requirements.

We are the largest Australian owned DCE by volume, number of users (approximately 2.5 million) and overall Australian market share (approximately 65%). We are a trusted company in the crypto space and are one of only three Digital Currency Exchanges certified with Blockchain Australia (leading industry body). We place consumer protection at the forefront in what we do and that translates into how we operate including the formal certifications we adhered to such as ISO 72001 for Information Security & Management. We are a local success story and in our ten-year history have grown to employ over 200+ people in Victoria and make a significant economic contribution to the state. We are also a major sponsor of the Western Bulldogs FC.

We support sensible regulation that protects consumers and encourages innovation for the industry to thrive and to ensure Australia remains competitive in the global crypto landscape.

We agree in principle that there needs to be a licensing regime for crypto assets for CASSPrs who provide services for all types of crypto assets which should be overseen by a government body to provide regulatory certainty, rather than self-regulation. However we are concerned with the options that are presented in the paper related to the licensing regime. The level of detail in the proposals in the consultation paper is lacking in some key areas and still requires additional detail around processes, timelines and guidance. We would welcome further discussions to ensure we have greater clarity around what exactly we are agreeing to adhere to.

In relation to the custody obligations to safeguard private keys, we would recommend that an industry body take responsibility for maintaining minimum standards and expectations that are used by crypto asset custodians rather than a government body. Also, due to the level of detail in the consultation paper, it is not possible to quantify monetary amounts as part of the impact assessment process.

Our specific comments are set out below:

Proposed Terminology and definitions

- CASSPrs

We agree with the new naming convention for CASSPrs whereby DCE's are just one of the type of entities that provide services under that new umbrella.

- Yield offerings

The only additional activity we would like to be defined under the proposed definitions is in relation to a service whereby a customer can loan their assets to the CASSPr to obtain a fixed return. The nature of this still not being classified as a Financial Product based on current interpretation of current legislation.

- Crypto asset definition

We also agree with the proposal that one definition for crypto assets be developed to apply across all Australian regulatory frameworks as this will ensure that people have a shared understanding of crypto assets across the regulatory landscape rather than there being misunderstandings if the definition was to vary.

- Licensing regime

We would also recommend CASSPrs that provide services for all types of crypto assets be included in the licensing regime, rather than specific types of crypto assets being carved out (e.g. NFTs) otherwise there is the risk that this would create a more complex and potentially duplicative regulatory regime.

Proposed principles, scope and policy objectives of the new regime

- Existing legislative framework

As stated in the paper, the "current definition of a financial product, which was written prior to the invention and proliferation of crypto assets, does not provide sufficient clarity as to the intended regulatory treatment of a wide variety of novel crypto assets." The very nature of this indicates that it would not be in the best interest to still tie CASSPrs to current regulation or shoehorn this as a financial product under an AFSL which is clearly not fit for purpose for this innovative industry.

- Tailored licensing regime

Instead, the new licensing regime should be tailored to crypto so as to not stifle innovation. Interagency working groups could be established to feed into the new licensing regime but our recommendation is that these groups only provide feedback and communication/awareness to other agencies and the CASSPr regime should be separated and dedicated to crypto assets to function solely without relying on traditional financial regulatory regimes.

Proposed obligations on crypto asset secondary service providers

- Consumer protections applied to CASSPrs

As the largest Australian owned DCE, we place a huge emphasis on consumer protection. The majority of the proposed obligations are already ingrained in the operations and values of CoinSpot to ensure our customers are protected, so we welcome that they are formalised for all CASSPrs in order to minimise consumer exposure to the risks of crypto. However, it is clear that details need to be fleshed out within the proposed list eg. capital requirements do not indicate monetary values.

- Distribution of airdrops

In relation to airdrops, there are operational, technical and security reasons why it may not be possible to credit customers with airdrops. Consumers always have the ability to send their tokens off platform to external storage to participate in any airdrops. Therefore, we believe it should be up to CASSPrs themselves whether they choose to participate in passing on airdrops to their customers, defined in their terms of use, rather than being a blanket rule on enforcing or banning airdrops.

Alternative option 1: Regulating CASSPrs under the financial services regime

The key drivers for regulation within Australia are to protect consumers while ensuring healthy competition with other international jurisdictions. We note that many jurisdictions have already welcomed this industry through regulation and are now reaping the benefits.

However, one of the key aspects of any proposed regulation must be to ensure innovation is encouraged. As stated in the paper, continued innovation creates jobs and growth. We believe that by regulating CASSPrs under the existing financial services regime would be detrimental to the successful implementation of a licensing regime from an innovation standpoint. Our recommendation would be to not pursue this alternate option but instead create a separate government supported agency to regulate CASSPrs.

Alternative option 2: Self-regulation by the crypto industry

Self-regulation may be more efficient for businesses and can translate to efficient consumer protections. However, for Australian businesses to both compete on a global scale and be leaders within the blockchain industry, regulatory certainty is essential and self-regulation is not

the gateway to achieving that.

Also we would question if risks could be managed efficiently enough via self-regulation. If left to an industry body, would there be enough consumer protection and also company protection / certainty, should we seek investment (if we wanted in the future).

The other concern would be whether an industry body would have sufficient powers to moderate industry players when required. Commercial interests may not be aligned for a self-regulating body; i.e. What is the outcome when a member is not compliant? The commercial interest is unlikely to exclude players from the industry, whereas an existing government body wouldn't have commercial interests. In contrast an independent, government supported body could enforce penalties for non-compliance which is ultimately better for industry.

Proposed custody obligations to safeguard private keys

In principle we welcome the proposed custody-based obligations for CASSPrs. However, it is clear that further work is required to determine exactly what each of the proposed obligations would entail.

- Domestic location requirements

Introducing domestic location requirements would be detrimental to the growth of the industry in Australia as this may introduce friction to the operations of international players who may then need to address onshore storage/custody and view this as too complex or too costly for the relative size of our market. This may leave Australia as the market of last resort, which may discourage investment from global players.

As long as a set of minimum requirements are enforced such as those proposed in the paper, which ultimately protect private keys, be it with the CASSPr or third-party custodian, then we believe there is no need to enforce domestic location requirements.

- Independent verification

Relating to the independent verification of cybersecurity practices we would recommend that CASSPrs who hold custody of customers assets should be required to meet obligations under the ISO 27001 Information Security & Management and also adhere to the Cryptocurrency Security Standard (CCSS) Level 1 (as a minimum).

We would recommend that an industry body take responsibility for maintaining minimum standards and expectations that are used by crypto custodians. The nature of this technology is so specific that it would not make sense for this to be overseen by a government body / regulator. Instead, an industry body could come up with the definitive set of standards / framework to identify risks associated with custodianship, cyber security, etc.

Early views sought on token mapping

In principle, the list of descriptions provided seems to cover the broad range of crypto assets and use cases.

- Privacy coins

One area we would suggest that is also added is specifically around privacy coins, which would be a combination of some of the descriptions provided, but we suggest that this is called out separately due to the ability to obfuscate information/transactions.

- Tokenised stocks

Also we would suggest that “asset-backed crypto assets“ also include tokenised stocks, where crypto assets mimic the price action of publicly traded stocks.

- Banning of asset types

In relation to the banning of crypto assets in Australia, we believe that CASSPrs who provide exchange services such as ourselves, should be able to list tokens based on a risk appetite working within existing laws.

- Product classification

A concern we have is that if left to ASIC, it may deem a large proportion of the tokens as financial products without proper due diligence / care and this would then bring on the unnecessary enforcement of requiring an AFSL which has the impact of time delays and monetary implications. We strongly recommend that there is industry engagement for this token mapping exercise and it's not done in isolation.

As noted above, we are very grateful that The Treasury has opened up these important issues for industry feedback and we trust that this is just the first step in an engagement process. In this light, we would welcome any discussions with yourself or other members of your team to clarify any issues raised by us but also to gain further insights as to the Government's position on a number of issues where further detail will be beneficial. If you wish to do so, please do not hesitate to contact me via email on [REDACTED]

Yours sincerely,



Don Henricus
COO
CoinSpot