

Craig Cameron
Griffith University

Joshua Murchie
Social Impact Group Pty Ltd

C\ Parklands Dr
Southport QLD 4222

27 May 2022

By Email: crypto@treasury.gov.au

Director – Crypto Policy Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Director

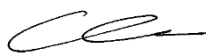
The Australian Government the Treasury, Crypto asset secondary service providers: Licensing and custody requirements – Consultation Paper

Thank you for the opportunity to provide a response to The Australian Government the Treasury, *Crypto asset secondary service providers: Licensing and custody requirements – Consultation Paper*. The following sets out our submission with respect to token mapping, in particular the classification of crypto assets associated with not-for-profit organisations.

The submission has been prepared by Craig Cameron, Senior Lecturer in Corporations Law at the Griffith Business School, Griffith University, and Joshua Murchie, CEO at Social Impact Group Pty Ltd. A summary of our background in crypto assets, regulation and not-for-profits is covered in the submission.

Please do not hesitate to contact us should you require any further information or clarification with respect to aspects of this submission.

Yours faithfully,



Craig Cameron
Senior Lecturer
Griffith University

Joshua Murchie
Chief Executive Officer
Social Impact Group Pty Ltd

Background

About this submission

1. The primary purpose of this submission is to identify the opportunities and issues associated with a governance crypto asset ('governance token') which can be used by a Decentralised Autonomous Organisation ('DAO') in the not-for-profit (NFP) sector. Although the Consultation Paper does not seek comment on a DAO, we argue that a governance token used by a DAO presents opportunities and regulatory issues (or risks) unique to the NFP sector. Further, the DAO is not a 'far-fetched' legal structure in Australia, and therefore warrants consideration. In October 2021, The Senate Select Committee on Australia as a Technology and Financial Centre recommended "that the Australian Government establish a new Decentralised Autonomous Organisation company structure".¹
2. This submission was prepared by Joshua Murchie and Craig Cameron.
 - a. Joshua Murchie is the cofounder of Little Phil and Social Impact Group, and a Yunus Centre Fellow (Nobel Prize Winner Dr Yunus). Since 2017, Joshua has been working with emerging Web3.0 technology and business models to fix the charity industry and empower people, businesses, and brands to create and track their impact. Social Impact Group provides an array of advisory, executive education and consulting services in the Web3.0 and digital assets sector, and is frequently featured at technology conferences around the globe. Joshua has a deep level of knowledge and hands on experience with fungible and non-fungible cryptocurrency tokens, tokenomics models, and the not-for-profit sector.
 - b. Craig Cameron is a Senior Lecturer and Member of the Law Futures Centre at Griffith University, legal practitioner, and an advisor to Little Phil. Craig's current research interests include the regulation of crypto assets and crypto-philanthropy in Australia, with recent publications exploring the regulation of crypto assets to remunerate employees, the opportunities and hazards of DAOs for charities, and tax issues in crypto-philanthropy.
3. The sections which follow provide context to the relationship between an NFP DAO and a governance token, followed by two case examples of how a governance token used by a DAO presents opportunities, as well as regulatory issues, for the NFP sector. Recommendations for a governance token, fundraising token, and DAO company limited by guarantee are then proposed.

NFPs: Governance Token and DAO

4. The NFP sector "consists of organisations whose purpose is something other than the generation of profit or gain for individual members or directors".² Charities are one type of NFP organisation. A charity registered with the Australian Charities and Not-for-profits Commission (ACNC) can apply to the Australian Taxation Office (ATO) for tax concessions and Deductible Gift Recipient (DGR) status. There will also be a legal structure that underpins the NFP organisation such as a trust, association, cooperative, or company limited by guarantee.
5. The DAO is not a recognised legal structure in Australia. As such, the law is likely to impose a legal structure on the DAO based on an examination of its characteristics. In a NFP scenario, a DAO may be an unincorporated association. Therefore the DAO is subject to existing laws relating to unincorporated associations, and members are exposed to personal liability for DAO activities. A

¹ The Senate, *Select Committee on Australia as a Technology and Financial Centre - Final Report*, at para 6.36 (Recommendation 4).

https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024747/toc_pdf/Finalreport.pdf;fileType=application%2Fpdf (accessed 25 May 2022).

² Philanthropy Australia, *Sector overview*: <https://www.philanthropy.org.au/tools-resources/sector-overview/> (accessed 25 May 2022).

DAO company limited by guarantee is a recommended legal structure for NFP organisations (see section 'Recommendation 3: DAO company limited by guarantee').

6. A DAO collapses the traditional organisational hierarchy of management and members, such that 'DAO governance' is the responsibility of its members, with attendant rights and obligations. Governance tokens enable DAO members to discharge their obligations and exercise their rights, with the scope of those rights and obligations determined by the rules of the DAO, which can be coded in a smart contract and recorded on a blockchain.
7. The DAO and governance token are new fundraising and governance tools for a NFP that have the potential to improve donor engagement, as well as speed and transparency in decision-making and giving, and decrease operating costs. For example, an NFP DAO and governance token can combine to replace the traditional NFP organisation and campaign-based funding, by empowering DAO members to control, using their governance token, the distribution of funds. The potential categories of DAO for NFPs (Charity DAO, community-based DAO; project-based DAO; cause-based DAO), have been previously identified by the authors.³
8. The next section provides two case studies to demonstrate the potential applications and issues associated with an NFP DAO operating with a governance token.

NFP DAO (no DGR endorsement) and governance token: opportunities and issues

Case Study 1: The NFP DAO is not endorsed by the ATO as a Deductible Gift Recipient, and raises funds for a specific campaign

9. A DAO starts with an agreed target amount of funds that need to be raised, and coding this into a smart contract. For example, Bob wants to set up a DAO to help support homeless people in his local area. Bob and 100 local community leaders agree that they will all contribute funds in the form of a stable coin crypto-currency (TAUD) to the sum of \$1,000,000 AUD. Each community leader contributes \$10,000 TAUD and receives a governance token in exchange (1 TAUD = 1 BOB token). The \$1,000,000 in TAUD is held in a multi-signature smart contract wallet (no individual has control). Owners of the BOB token can put forward proposals to the DAO and the smart contract will release the funds for a proposal if BOB token holders with 50% or more BOB tokens vote to fund a proposal. For example, Dave holds 10,000 BOB and decides he wants to put forward a proposal to the value of \$250,000 TAUD to the DAO to fund 5 new tiny homes for local homeless people. Holders with 600,000 BOB tokens vote in favour of the proposal by a stipulated deadline. The DAO smart contract conditions are met and the funds are released.
10. The potential issues associated with this arrangement are:
 - a. Is the TAUD a separate category of crypto asset, for example a 'fundraising token', based on the recipient of the TAUD at the time of its disposal by the donor, in this case the NFP DAO? In fact, this is a relevant question to any type of NFP structure. As the Consultation Paper acknowledges, crypto assets are dynamic and its attributes may change during its life cycle (and therefore the category of crypto asset), making the categorisation of crypto assets a complex task. In this case, the TAUD is being received for fundraising purposes by the NFP organisation, and as such the TAUD could be recognised as a fundraising token at the time of its disposal by the donor.
 - b. Is the classification of TAUD as a fundraising token necessary? We argue the answer is "yes", based on existing tax law. The donors are gifting \$10,000 TAUD each and not receiving a tax deduction because the NFP is not DGR endorsed by the ATO. Our understanding, based on ATO guidance, is that the gifting of cryptocurrency, irrespective of the NFP's DGR status, is a Capital Gains Tax (CGT) event. In the case of gifted TAUD, the

³ C. Cameron, *Decentralised Autonomous Organisations (DAOs) for charities: Opportunities and hazards*, 12 April 2022: <https://www.linkedin.com/pulse/decentralised-autonomous-organisations-daos-charities-craig-cameron/>

CGT in theory should not be significant because the stable coin regulates price volatility. However, what if the donor was gifting Bitcoin in which they were holding a significant capital gain at the time of disposal? The donor receives no tax deduction, and is required to pay CGT. A fairer outcome would be that any fundraising token gifted to a non-DGR NFP is CGT free provided that the donor does not receive a “benefit, advantage, right or privilege” in exchange for the donation, in similar terms to how tax deductibility of a donation to an NFP with DGR status is determined under section 78A(2)(c) of the *Income Tax Assessment Act 1936 (Cth)* (see Case Study 2). A “benefit, advantage, right or privilege” would not include the receipt of a governance token.

NFP DAO with DGR endorsement and governance token: opportunities and issues

Case Study 2: The NFP DAO is endorsed by the ATO as a Deductible Gift Recipient, and raises funds for a specific campaign

11. You Belong Ltd, a registered charity with DGR 1 status, decides it wants to use a DAO to fundraise for a micro-campaign that fits under their eligible charitable areas of fundraising. You Belong sets a target amount of funds that need to be raised, and this is coded into a smart contract.
12. 100 You Belong donors all contribute funds in the form of a stable coin crypto-currency (TAUD) to the sum of \$1,000,000 AUD. The donors contribute varying amounts and receive a DAO governance token in exchange (1 TAUD = 1 YOU token). The \$1,000,000 in TAUD is held in a multi-signature smart contract wallet (no individual has control). You Belong can put forward funding proposals to the holders of YOU token and if 50% or more of the token holders vote to fund a proposal, the smart contract will release the funds for the proposal. For example, You Belong have identified a refugee recipient who requires basic essential items and shelter to the value of \$20,000 AUD. You Belong puts a proposal forward to the DAO, and 50% of the DAO token holders vote in favour of the proposal. The funds are released, the beneficiary receives the assistance and the governance token holders are notified of the outcome.
13. In addition to the classification of TAUD as a fundraising token (refer Case Study 1, para 10(a)), another potential issue with this arrangement is the tax deductibility of a donation, whether made in crypto or fiat, in which the donor receives a governance token. There are complex tax issues associated with a crypto asset donation, which is outside the scope of this submission, and has previously been identified by the authors.⁴ Our concern, relevant to the classification of crypto assets, is the potential impact of a governance token on tax deductibility of the donation.
14. A governance token (in this case, the YOU token) provides the holder with rights, including voting on funding proposals. Under the Australian tax rules, a gift made to a DGR endorsed charity is tax deductible. However, a gift is not tax deductible if:
 - a. *By reason of an act, transaction or circumstance occurring as part of, in connexion with or as a result of the making or receipt of the gift, or an agreement entered into in association with the making or receipt of the gift ... the donor or an associate of the donor has obtained, will obtain or may reasonably be expected to obtain any benefit, advantage, right or privilege other than the benefit of a tax deduction.*⁵
15. ATO guidance is that the relevant benefit must be ‘material’.⁶ The relevant issue is that the YOU token holder rights may be a material right in addition to any tax deduction that they may receive for their donation. Further, the rights granted to the YOU token holder may be considered “part of, in connexion with or as a result of” the making of a gift. The NFP DAO member donates to the DAO

⁴ C. Cameron, *Australian tax issues in crypto-philanthropy*, 5 April 2022: <https://www.linkedin.com/pulse/tax-issues-crypto-philanthropy-craig-cameron/>

⁵ s 78A(2)(c), *Income Tax Assessment Act 1936 (Cth)*.

⁶ Australian Taxation Office, *Gifts and donations*: <https://www.ato.gov.au/individuals/income-and-deductions/deductions-you-can-claim/other-deductions/gifts-and-donations/> (accessed 27 May 2022).

and receives governance tokens (YOU token). As such, the relevant 'transaction' or 'act', being the provision of governance tokens, is connected to, or a result of, the DAO member making the gift (or donation), and therefore the donation may not be tax deductible. This interpretation would deter NFPs with DGR status from issuing governance tokens, which undermines the public good of a governance token to promote donor engagement with charities.

Recommendation 1: Governance Token

16. A crypto asset classification of 'governance token'.
17. Any token can be classified as a governance token according to its features, which may include:
 - a. The provision of rights and obligations pertaining to the operation of the relevant entity issuing the token (whether that be a DAO or otherwise); but
 - b. The token does not provide the holder with the right to propose or receive a personal financial or 'in kind' benefit, for example the payment of a dividend; and
 - c. The token can be transferable without value, that is, the transferor of the governance token does not receive any consideration (being something of value) from the recipient or a third party for the transfer.
18. The receipt of a governance token does not constitute a "benefit, advantage, right or privilege" according to section 78A(2)(c) of the *Income Tax Assessment Act 1936 (Cth)*. Consequently, any fiat or crypto donation to a charity with DGR endorsement in which the donor receives a governance tax remains tax deductible. This exception could be in the form of a 'carve-out' provision in the legislation, or alternatively a broader and prescriptive ATO ruling on governance tokens. A governance token that does not negatively impact the tax deductibility of donations will encourage governance token use, as well as donor engagement, in the NFP sector.

Recommendation 2: Fundraising Token

19. A crypto asset classification of 'fundraising token'.
20. Any crypto asset donated to a non-DGR NFP, which is classified as a 'fundraising token', be Capital Gains Tax free (100% exemption) provided that the donor does not receive a "benefit, advantage, right or privilege" in exchange for the donation other than the CGT exemption. The CGT free status would not extend to a fundraising token received by an NFP with DGR endorsement, as the donor may otherwise receive a 'double tax benefit': a CGT free disposal of the crypto asset and a tax deduction. The CGT exemption would encourage crypto asset donations to NFP organisations that are not charities such as sporting, recreational, community service, social and cultural groups that are a public good, have been significantly impacted by recent external events (COVID-19, floods, bushfires etc.), and are reliant on donor generosity.

Recommendation 3: DAO company limited by guarantee

21. The legal recognition of a DAO company limited by guarantee. As with a 'traditional' company limited by guarantee, the DAO members' liability in the event of insolvency is limited to an amount determined on application for registration of the DAO with the Australian Securities and Investments Commission (ASIC).