



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

27th May 2022

### **Executive Summary**

Luno is a leading global cryptocurrency company with over 10 million customers in 40 countries. Founded in 2013, and with a team of 850 people, Luno operates across Africa, Asia Pacific, the UK and Europe, and the US.

In Australia, Luno has approximately 53,000 customers and currently employs 6 staff, based in Sydney.

Luno welcomes the open and constructive way in which *The Treasury* is seeking views on the future of crypto-assets and the manner in which they can contribute to the broader Australian financial system.

Australia is well placed to take advantage of the growing cryptocurrency sector. Through financial inclusion and a focus on financial literacy - two issues that Luno places a premium on - Australia can emerge as a leader in cryptocurrency adoption, bringing with it innovation, economic growth and an array of new employment opportunities.

Luno welcomes regulation of the cryptocurrency sector. Principles-based and with deep industry engagement, regulation will provide certainty and clarity for providers and consumers alike.

Set out below are Luno's considered responses to the consultation questions that are relevant to our business model, and which reflect our experience in multiple other jurisdictions where we act as a crypto-asset service provider. We look forward to engaging further with the Treasury as this process progresses.

Best Regards,

***Thomas Tudehope***

Thomas Tudehope  
Global Head of Public Policy

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**Question 1: Do you agree with the use of the term Crypto Asset Secondary Service Provider (CASSPr) instead of ‘digital currency exchange’?**

No. Luno does not support the term CASSPr. Luno prefers the existing terminology of VASP (Virtual Asset Service Provider) or CASP (Crypto Asset Service Provider), which are already in widespread use across the sector at an international level (including the Financial Action Task Force (FATF), which added the terms “virtual asset” (VA) and “virtual asset service provider” (VASP) to its Glossary in 2018. Introduction of an alternate - CASSPr - while not dissimilar, will only further accentuate inconsistencies.

**Question 2: Are there alternative terms which would better capture the functions and entities outlined above?**

Yes. As mentioned above, Luno has a preference for the pre-existing terminology of VASP or CASP.

**Question 3: Is the above definition of crypto-asset precise and appropriate? If not, please provide alternative suggestions or amendments.**

ASIC defines a crypto-asset as “...a digital representation of value or contractual rights that can be transferred, stored or traded electronically, and whose ownership is either determined or otherwise substantially affected by a cryptographic proof”.

As with the response above, Luno’s concerns with the adoption of this definition relate primarily to the potential for further global inconsistency. By way of example, the UK government proposes defining a crypto asset as “a digital representation of value or contractual rights that can be transferred, stored or traded electronically, and which may (though does not necessarily) utilise cryptography, distributed ledger technology or similar technology”.

As is apparent, the two definitions are substantially similar but differ in their qualifiers in that the ASIC definition requires cryptographic proof whereas the same is optional pursuant to the UK definition. While such a difference may in practice be immaterial, even slight differences have the potential to give rise to unnecessary complexity and inconsistency of application.

**Question 4: Do you agree with the proposal that one definition for crypto assets be developed to apply across all Australian regulatory frameworks?**

Yes. Luno welcomes the proposal to have a singular definition for crypto assets across the Australian regulatory framework. Despite the obvious complexities, having a singular definition of crypto assets should afford a more seamless level of compliance and engagement with regulatory authorities.

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Importantly, a singular definition will also engender greater levels of confidence for consumers, avoiding duplication and unnecessary levels of complexity.

As previously noted, Luno would welcome international consistency, both in terms of naming conventions (with the use of the term VASP or CASP) and definitions.

**Question 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)?**

Yes. Any future licensing regime should be, as far as is reasonably possible, asset agnostic and include CASSPrs that provide services for any asset falling within the definition of a crypto asset.

Ultimately, a licensing regime that seeks to broadly capture all crypto-assets will better ensure consumer protection (as nothing will “fall between the cracks”), will give businesses the regulatory certainty they require and will have the added benefit of increasing trust in the sector. Providers that operate outside of such a licensing regime by virtue of offering a niche or less adopted offering like NFTs are perhaps more likely to fall foul of adequate customer protections.

**Question 6: Do you see these policy objectives as appropriate?**

Yes. Luno supports these objectives and considers them appropriate. Specifically, Luno welcomes the focus on providing certainty for the sector coupled with protections for consumers while also supporting the AML/CTF regime.

**Questions 7 & 8: Are there policy objectives that should be expanded on, or others that should be included? Do you agree with the proposed scope detailed above?**

No. Luno welcomes the specific framework that the Treasury has set out in this consultation, noting the importance of consumer protection in any future regulatory framework.

Notwithstanding this, and what is undoubtedly an obvious point to Treasury, there are many other issues that warrant further examination within the very broad policy ecosystem of the cryptocurrency sector. In particular, given the focus on consumer protection, Luno would welcome further clarity and/or public consultation as to how Treasury and the Australian Taxation Office may look at crypto-assets. We note that other jurisdictions, particularly in the Asia-Pacific region have already enacted regulations in this regard which has significantly impacted consumer behaviour.

**Question 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?**

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Yes. CASSPrs that engage with any crypto-assets should be required to obtain a licence. This is consistent with the approach taken in other markets with an advanced regulatory position, most notably Singapore, where the licensing regime under the Payment Services Act encompasses a broad array of digital assets and requires any entity providing services related to those assets to obtain a licence prior to commencing operations.

Since Luno's inception in 2013, Luno has always supported the introduction of substantive licence regimes in the cryptocurrency space. Doing so provides consumers or potential consumers the necessary comfort that the relevant service provider is held to a defined regulatory standard, which typically incorporates robust consumer protections. Imposing such standards will in turn enhance general trust in and stability of the market.

In relation to the treatment of NFTs and other subsets of crypto-assets, we refer to our answer under Question 5 above.

**Question 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)?**

This consultation rightly identifies the problem that regulatory duplication may pose for CASSPrs. As an emerging sector, with a foundation in innovation and disruption, unnecessary duplication may have unintended consequences, slowing growth opportunities and preventing customers from accessing products in a timely and compliant manner.

To avoid this challenge, Luno is of the view that having a singular regulatory authority dedicated to the supervision of the provision of crypto asset-related services is preferable to multiple potential regulatory bodies having some form of jurisdiction. In addition to the regulatory burden this would place on a growing sector of the economy, such an approach could also give rise to inconsistent treatment and consumer confusion.

We note, however, that an AML/CFT regime administered by a regulatory body separate from that responsible for substantive regulation of the crypto asset sector is not unusual across the jurisdictions Luno operates in globally, and may in fact be preferable. The specialised expertise required for the administration of an AML/CFT regime lends itself to those duties being carried out by a specialist agency and there is no significant risk of inconsistent treatment or consumer confusion given the distinct objectives.

**Question 11: Are the proposed obligations appropriate? Are there any others that ought to apply?**

Luno broadly agrees with the proposed obligations but notes that certain of them (e.g. "adequate technological and financial resources") would require clarification. In addition, we

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note that the proposed obligation to “not hawk specific crypto assets”, may require further detail and consideration. We acknowledge the later clarification that the “hawking prohibition would not generally apply to advertising or the mere provision of information” but nonetheless recommend that separate, more detailed consideration be given to the marketing and promotion of crypto assets.

More broadly, and while not exhaustive, Luno considers the following areas should be required in any licencing process:

- a) A full description of the proposed services;
- b) A business plan and financial forecast to cover at least a 24 month period;
- c) An organisational structure chart, including key management, and a summary of the governance and reporting arrangements that will be in place;
- d) An explanation of the measures implemented to mitigate and manage conflicts of interest;
- e) An overview of any 3rd party providers that will be used to provide the relevant services, and an explanation of the means by which the applicant will retain adequate oversight of such 3rd parties;
- f) An explanation of the measures the applicant will take to safeguard customer funds, and ensure such funds are ring-fenced from any operational or other company funds, together with an overview of the accounting practices that will be used in relation to the same;
- g) A comprehensive overview of the security (including information security) arrangements the applicant has in place. Such overview should include relevant systems and processes, together with evidence that experienced personnel are in place to effectively implement and monitor such systems and processes;
- h) A summary of the business continuity arrangements the applicant has in place, including evidence that the applicants’ systems are of sufficient quality and stability to protect against major outages or loss of data;
- i) A comprehensive overview of the applicant’s risk management framework;
- j) An explanation of the compliance function the applicant will have in place, including evidence of senior and experienced personnel with the necessary expertise;

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- k) Details of the anti-money laundering and countering the financing of terrorism controls (AML/CFT) the applicant has in place. Such details should include policies and procedures in relation to financial crime, customer due diligence, transaction monitoring, suspicious activity reporting and record keeping;
- l) Evidence that adequate risk disclosures are made by the applicant to its customers;
- m) Clear and transparent trading (if applicable) rules, policies or other documentation including in relation to order interactions, market-making arrangements and requirements and mechanisms designed to ensure orderly trading.

Finally, Luno recommends that licensed CASSPrs are required to comply with the FATF's "Travel Rule". We note that consideration will need to be given to whether the implementation of Travel Rule obligations into Australian law better sits within the AML/CFT regime, but regardless of how the obligations are imposed, it is essential that Australia joins its global counterparts in implementing Travel Rule requirements sooner rather than later.

**Question 12: Should there be a ban on CASSPrs airdropping crypto assets through the services they provide?**

No. Luno does not support a ban on airdropping within the context of this consultation. Luno would welcome additional clarity from the Treasury as to the intent of such a ban and what a measure like this is intending to address.

**Question 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)?**

While Luno does not support a blanket prohibition on the provision of advice in relation to crypto-assets, it should in our view be the subject of similar treatment to the provision of advice in relation to financial products.

**Question 14: If you are a CASSPr, what do you estimate the cost of implementing this proposal to be?**

Luno is unable to provide a specific estimate on the likely cost of implementing such a proposal but notes that the costs will inevitably be greater for those entities that do not already choose to adhere to accepted regulatory standards.

In the event that the Treasury were to advocate for and seek to legislate in this area, Luno would welcome a transitional regime, allowing for adequate time to ensure compliance with new

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rules and implement the required technological solutions. In other jurisdictions, we have seen entities already providing crypto-asset services added to a “temporary register” such that they are permitted to continue operating, subject to the submission of an application to be licensed prior to a specific date. Such an approach may also be of utility in Australia, particularly if CASSPrs consider the likely cost of implementation to be significant.

**Question 15: Do you support bringing all crypto assets into the financial product regulatory regime? What benefits or drawbacks would this option present compare to other options in this paper?**

No. As identified earlier in the paper, regulation should address the relevant risk and the risks of crypto assets are clearly distinct from those presented by financial products.

Further, pre-existing legislation drafted prior to the development of the crypto asset sector does not adequately cater for this new technology and thereby risks unintended regulatory detriment where requirements simply can't be met or don't take adequate account of the specific nature of crypto assets.

**Question 16: If you are a CASSPr, what do you estimate the cost of implementing this proposal to be?**

Luno is unable to provide a definitive estimate of the cost of implementing this proposal but notes that the cost of attempting to comply with a regulatory regime not specifically designed for crypto-asset services (and therefore not fit for purpose) is likely to be considerably greater than the costs of compliance with a bespoke regime.

**Question 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. Luno does not support this approach. The crypto industry globally is yet to see an example of effective self-regulation and a self-regulatory regime is unlikely to give consumers and other external stakeholders sufficient comfort that a CASSPr is adhering to defined regulatory standards.

While requiring that self-regulatory standards are enforceable by an external dispute resolution body may go some way to alleviate the aforementioned concerns with a self-regulatory approach, it is not a solution. A dispute resolution body typically requires that a dispute is brought before it. As such, such an approach would likely suffer either from (i) no suitable person bringing the necessary dispute where there is a lack of compliance, or (ii) far too many complaints being brought before the body (e.g. by consumers who regret a decision to invest) such that resource constraints will ensue.

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Finally, an external dispute resolution body is unlikely to possess the same skills and expertise as a financial regulator, rendering such a body less suited to considering the numerous technical and complex issues that could arise during the course of a dispute.

**Question 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.**

Luno is unable to provide any estimates as to the costs and benefits of implementing this proposal.

**Question 19: Are there any proposed obligations that are not appropriate in relation to the custody of crypto assets?**

Luno broadly agrees with the proposed principles-based obligations.

We note, however, that as currently drafted the obligations are unlikely to be sufficiently clear. For example, there are multiple ways in which an obligation to “maintain minimum financial requirements including capital requirements” could be imposed, so without understanding the specific nature of that obligation it is not possible to confirm whether or not we consider it appropriate.

Similarly, the obligation to have “processes for redress and compensation in the event that crypto-assets held in custody are lost” is of course appropriate if that loss can be attributed to a failure of the CASSPr but if, for example, it results from a customer providing their log-in details to a malicious actor, such loss may not reflect a CASSPr failure and may not justify compensation.

In summary, we consider the proposed obligations to be sensible in principle but look forward to further detail on how those obligations will be applied in practice.

**Question 20: Are there any additional obligations that need to be imposed in relation to the custody of crypto assets that are not identified above?**

Yes. While not exhaustive, Luno currently considers the following to fit within the category of ‘obligatory’ and within the best interests of customer protection:

- a) Maintenance and testing of a robust disaster recovery process;
- b) Backups of the private keys used to access customers’ crypto assets must be generated and securely stored;
- c) Maintenance and testing of a robust business continuity plan.



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**Question 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?**

No. Luno does not believe that this measure should be mandated. In general terms, Luno considers it necessary that any entity applying to be licenced under the Australian regime (regardless of the specific services it provides) should be incorporated in Australia.

Luno does not, however, think that a domestic location requirement should be implemented for any third-party entity that a CASSPr uses for the provision of custody services. The relatively early stage of the crypto-asset industry means that the most reliable and established custody providers are not necessarily located in Australia, thus imposing a domestic location requirement upon the provision of custody services would deny Australian consumers the choice of engaging an entity that stores its customers' crypto with these established providers.

For the purposes of this consultation and noting the Treasury's interest in other jurisdictional arrangements, one consideration that may be feasible is to only allow foreign storage in locations that have regulatory frameworks that have the same foundation and are 'aligned' with Australia.

In this regard, Treasury may seek to adopt a tiered approach based on 'high risk' or 'low risk' locations allowing for storage to only take place in a select group of locations.

Luno would also make the point that having keys split among multiple countries can be more secure than all the keys being in a single country.

**Question 22 & 23: Are the principles detailed above sufficient to appropriately safekeep client crypto assets? Should further standards be prescribed? If so, please provide details**

Yes, noting the points raised above.

**Question 24: If you are a CASSPr, what do you estimate the cost of implementing this proposal to be?**

As Luno would already be compliant in this regard, we do not estimate any additional cost.

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

No, for the reasons set out above under Question 17.

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

N/A

**Question 27: Is there a failure with the current self-regulatory model being used by industry, and could this be improved?**

N/A

**Question 28: If you are a CASSPr, what do you estimate the cost of implementing this proposal to be?**

N/A

**Question 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.**

Rather than attempting to categorise each type of crypto asset, especially when the use case of the technology continues to evolve and expand, Luno suggests that the Treasury continues to focus on the provision of activities related to crypto-assets broadly, rather than the specific nature of a particular crypto asset.

However, we also emphasise the importance of technology neutrality in this context and note our agreement with the classification of “crypto-assets that replicate the functions of a financial product (whether they strictly meet the definition or not, for example, derivatives where technology is the intermediary instead of the issuer”.

**Question 30: Are there any other descriptions of crypto assets that we should consider as part of the classification exercise? Please provide descriptions and examples.**

No.

**Question 31: Are there other examples of crypto assets that are financial products?**

No.

**Question 32: Are there any crypto assets that ought to be banned in Australia? If so, which ones?**

Luno does not have a view on banning crypto assets within a particular market.

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Luno suggests that the Treasury either:

- (a) adopts a long list of crypto assets, based on its own risk assessment, which CASSPrs are permitted to offer for trading in Australia; or
- (b) require a CASSPrs to conduct its own risk assessment of any new coin it proposes listing, with the relevant regulator being empowered to review and take action in relation to such risk assessment where necessary.

For completeness, we note that a system whereby prior regulatory approval is required for a CASSPr to list a new asset can give rise to significant delay and potential detriment to both businesses and consumers.