

Crypto asset secondary service providers: Licensing and custody requirements

Tezos Australia

Consultation questions

To help inform consideration of a licensing regime for CASSPrs, the Government seeks stakeholder feedback on the following questions:

1. Do you agree with the use of the term Crypto Asset Secondary Service Provider (CASSPr) instead of 'digital currency exchange'?
2. Are there alternative terms which would better capture the functions and entities outlined above?

1. Yes, as long as there is a reasonable threshold set so that people who wish to custody funds for friends and family can do so without breaking money laundering laws.
2. Digital Asset Manager

Consultation questions

3. Is the above definition of crypto asset precise and appropriate? If not, please provide alternative suggestions or amendments.
4. Do you agree with the proposal that one definition for crypto assets be developed to apply across all Australian regulatory 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)?

3. No. 1) Some crypto assets can be locked for a period of time which would invalidate this definition. 2) It's also possible to transfer ownership using analog methods which would fall outside this definition. 3) Contractual rights are incompatible with cryptographic protocols. A better definition may be: "...a digital token that uses cryptographic proofs to represent or store value and can be readily exchanged for another digital token, physical good, service or national currency."

4. Yes
5. CASSPrs should have a licensing regime if they are doing a significant amount of clients (more than 100) or volume (more than \$100,000). If they are managing or trading other people's capital into NFTs at scale they should still be licensed. People who mint or collect NFTs should not be affected by a licensing scheme.

Consultation questions

6. Do you see these policy objectives as appropriate?
7. Are there policy objectives that should be expanded on, or others that should be included?

6. The threshold set by FATF of \$1,000 USD/EUR is inappropriate because it prevents honest people from helping friends and family to hold crypto on their behalf for fear of heavy handed regulation. The lack of regulatory certainty around custody has already seen many Australians miss out on the price appreciation of crypto assets and bad actors have filled the void.
7. A reasonable KYC free threshold of \$20,000 for a maximum of 20 clients per individual would encourage a burgeoning crypto custody ecosystem in Australia and bring a lot more legitimate businesses into the sector, driving up tax revenue and immigration.

Consultation questions

8. Do you agree with the proposed scope detailed above?
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?
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)?

8. I agree that the licensing regime should not apply to decentralised platforms or protocols. As previously mentioned, I think a generous threshold before requiring registration is crucial for a level playing field.
9. CASSPrs should be required to register not based on which assets they offer but by the volume and number of clients. Centralised NFT platforms should not be treated any differently if they provide a custodial wallet.

10. Draft a legislative bill that defines crypto/digital assets, platforms, KYC thresholds and individual/company registration and compliance requirements.

Consultation questions

11. Are the proposed obligations appropriate? Are there any others that ought to apply?
12. Should there be a ban on CASSPrs airdropping crypto assets through the services they provide?
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)?
14. If you are a CASSPr, what do you estimate the cost of implementing this proposal to be?

11. These obligations appear quite onerous. If they applied to CASSPrs managing capital of more than \$10 million then they would be fitting. However the crypto industry in Australia is still nascent, so the obligations should be more accomodating. There should be a middle-ground requirements list for small business from 20 - 1000 clients managing funds from \$100,000 to \$5 million that could include measures such as:

- * Store client funds on a hardware wallet.
- * Verify client transfer requests over the phone with a pre-agreed verbal password and date of birth.
- * Store recovery phrase in multiple physical locations
- * Backup plan in case of accidental death

12. No.

13. CASSPrs should not be banned from providing advice which takes into account a person's personal circumstances regarding crypto assets on a licensee's platform or service. Part of the CASSPrs business model will necessitate making changes to their client's portfolios so banning personal advice would be very difficult to work around.

14. Tezos Australia and I are not CASSPrs.

Consultation questions

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

15. No. There are too many crypto assets to keep track of. Enforcing a whitelist on this industry will add too much compliance overhead to legitimate startup businesses. It's not a sustainable model for custody services and it will result in bad actors taking advantage of people who are trusting.

16. N/A

Consultation questions

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?
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.

17. This approach is more sensible and less costly for the government. I stand by my policy recommendations for more lenient KYC thresholds.

18. N/A

Consultation questions

19. Are there any proposed obligations that are not appropriate in relation to the custody of crypto assets?
20. Are there any additional obligations that need to be imposed in relation to the custody of crypto assets that are not identified above?
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?
22. Are the principles detailed above sufficient to appropriately safekeep client crypto assets?
23. Should further standards be prescribed? If so, please provide details
24. If you are a CASSPr, what do you estimate the cost of implementing this proposal to be?

19. (3) Capital requirements should not be out of reach for start up Crypto custody businesses. There's a gap in the Australian market for safe custody solutions and it should not be widened by recreating the banking top end of town in cryptocurrency.

20. There should be obligations to either use a hardware wallet, or an air gapped set up.
21. No, mandating a domestic location will make innovative custody solutions more difficult for Australians to use.
22. No.
23. As previously stated, a hardware wallet or an air gapped solution should be a requirement. Also robust cyber and physical security practices should be more detailed.
24. N/A

Consultation questions

25. Is an industry self-regulatory model appropriate for custodians of crypto assets in Australia?
26. Are there clear examples that demonstrate the appropriateness, or lack thereof, a selfregulatory regime?
27. Is there a failure with the current self-regulatory model being used by industry, and could this be improved?
28. If you are a CASSPr, what do you estimate the cost of implementing this proposal to be?

25. Yes, industry self-regulation and policy that reduces the barrier for small business to operate crypto asset custodial services would boost legitimate players and reduce incidents of fraud.

26. Banking deregulation had a positive effect for consumers due to increased competition, the same would happen for the digital assets industry.

27. As a participant in a decentralised blockchain, I don't have much to say about the current self-regulatory model.

28. N/A

Consultation questions

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.
30. Are there any other descriptions of crypto assets that we should consider as part of the classification exercise? Please provide descriptions and examples.
31. Are there other examples of crypto asset that are financial products?
32. Are there any crypto assets that ought to be banned in Australia? If so which ones?

29. As the Treasury has noted, the use cases of crypto assets continually evolve. The regular updating of a token mapping list would be difficult maintain, open to interpretation and time consuming with no added benefit to the consumer.

30. No.

31. There are projects that purport to be crypto assets but are really just a person with a spreadsheet of balances. They have little transparency on which blockchain they use and in many cases aren't using a blockchain at all. These projects are more similar to financial products than crypto assets and the case could be made to regulate/investigate these kinds of projects.

32. As we live in a country that values freedom, I don't believe in banning crypto assets. If some crypto assets are used by criminals there is an opportunity to catch them if there is a globally regulated marketplace and police in every country are equipped with blockchain knowledge and are willing to subpoena exchanges. In the case where regulators start to ban certain crypto assets, new crypto assets and dark web marketplaces will grow and make fraud easier to commit. A proactive policy that encourages education for consumers will prevent a lot more fraud than a reactive policy that tries to stop bad actors using technology.