

March 3, 2022



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

Email: crypto@treasury.gov.au

Dear Sir or Madam,

Ripple Labs Inc. ("Ripple") welcomes the opportunity to comment on the Consultation Paper on Token Mapping (the "Consultation") published by the Australian Government Treasury (the "Treasury") on February 3, 2023.¹

Ripple would like to thank the Treasury for the in-depth and comprehensive analysis that has been undertaken in the Consultation, as well as the related consultation on crypto asset secondary service providers published on March 21, 2022.² We appreciate having the opportunity to provide our comments, and respectfully request the Treasury take them into consideration as it examines the policy direction and scope of intended regulation for the crypto asset ecosystem in Australia. We welcome the opportunity for further engagement with the Treasury on this Consultation and any other related consultations as may be appropriate.

Ripple is also appreciative of the opportunity to comment on the Third Issues Paper (the "Discussion Paper") published by the Senate Select Committee on Australia as a Technology and Financial Centre (the "Committee") on May 18, 2021.³ Ripple responded

¹ See <https://treasury.gov.au/sites/default/files/2023-02/c2023-341659-cp.pdf>, Australian Government Treasury Consultation Paper on Token Mapping.

² See <https://treasury.gov.au/sites/default/files/2022-03/c2022-259046.pdf>, Australian Government Treasury Consultation Paper on Crypto asset secondary service providers: Licensing and custody requirements.

³ See https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Financial_Technology_and_Regulatory_Technology/FinancialRegulatoryTech/Third_Issues_Paper, Senate Select Committee on Australia as a Technology and Financial Centre Third Issues Paper.

to the Discussion Paper (“Ripple Committee Response”) on June 30, 2021,⁴ and our feedback was considered in the final report published by the Committee in October 2021.⁵

1. Introduction

Using blockchain technology, Ripple allows financial institutions to process payments instantly, reliably, cost-effectively, and with end-to-end visibility anywhere in the world. RippleNet, our enterprise software solution which is powered by a standardized application programming interface (“API”) and built on the market-leading and open standard Interledger Protocol, enables financial institutions to facilitate faster and less costly cross-border payments, demonstrating that deep interoperability between commercial financial institutions can make payments truly efficient, particularly in eliminating the uncertainty and risk historically involved in moving money across borders using interbank messaging alone.

Some customers, in addition to deploying RippleNet, choose to leverage XRP - the digital asset native to the XRP Ledger, a distributed ledger platform - as a bridge between fiat currencies, further reducing the friction and costs for commercial financial institutions to transact across multiple global markets.

We would like to highlight that XRP is independent of Ripple (although Ripple utilizes XRP and the XRP Ledger in its product offerings). The XRP Ledger is decentralized, open-source, and based on cryptography. While there are well over a hundred known use cases for XRP and the XRP Ledger, Ripple leverages XRP for use in its product suite because of XRP’s suitability for cross-border payments. Key characteristics of XRP include speed, scalability, energy efficiency, and cost - all of which helps reduce friction in the market for cross-border payments, thereby removing barriers to Australia’s growth as a technology and finance centre.

2. General comments and policy considerations

We respectfully submit that any regulatory framework for crypto assets should encourage responsible innovation by service providers and intermediaries while also ensuring appropriate risk management. In doing so, Treasury will not only promote the strengthened operational resilience of the crypto asset ecosystem, but also transform the way crypto asset services are provided. This will ultimately benefit both industry and end-users, and encourage investment in new technologies and innovation.

⁴ See https://ripple.com/files/Ripple_Australia-Senate_Third-Issues-Paper_May-2021_final.pdf, Ripple response to Senate Select Committee on Australia as a Technology and Financial Centre Third Issues Paper.

⁵ See https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024747/toc_pdf/Finalreport.pdf;fileType=application%2Fpdf, Senate Select Committee on Australia as a Technology and Financial Centre Third Issues Paper Final Report.

We therefore believe it is imperative that the Treasury take into account the following guiding principles as it develops a regulatory framework for crypto assets, or determines where crypto assets best fit into existing frameworks. Taken together, these principles will encourage the potential of blockchain and crypto asset technology, while also establishing important consumer and market protections that ensure global alignment and reduce the risk of regulatory arbitrage.

Principle 1 - Adopt a globally consistent taxonomy

It is important to note that there is no single or generally recognised definition of crypto assets in Australia at present. Ripple respectfully submits such assets should not be solely defined relative to a specific technology (e.g., cryptography), but, for the purposes of regulation, should instead fall under a broader heading such as “digital assets”, and subsequently classified depending on the particular economic function and purpose they serve. Such an approach is consistent with that taken by other jurisdictions like the United Kingdom (“UK”) and Singapore, which have issued classifications that do not depend on whether a business model uses distributed ledger technology or not, but rather on the inherent characteristics of a token and the rights that attach to it.

Therefore, we respectfully request that the Treasury consider adopting a taxonomy for crypto assets consistent with global best practices to provide clarity as to the legal character of such assets in Australia. Additionally, Ripple recommends that there be a clear distinction between payment tokens, utility tokens, and security tokens, as outlined below:

- *Payment or Exchange tokens*: to describe non-fiat native digital assets that are used as means of exchange and have no rights that may be enforced against any issuer;
- *Utility tokens*: to describe those digital assets that create access rights for availing service or a network, usually offered through a blockchain platform; and
- *Security tokens*: to describe tokens that create rights mirroring those associated with traditional securities like shares, debentures, security-based derivatives, and collective investment schemes.

Principle 2 - Implement a risk-sensitive regulatory framework

We are supportive of the Treasury’s approach of applying effective regulation, supervision, and oversight to crypto asset activities and markets in proportion to the financial stability and consumer protection risks they pose (or potentially pose), in line with the principle of “same activity, same risk, same regulation”. However, we recommend that the regulatory framework should also align with the following principles to be truly risk-sensitive:

- The regulatory framework should be **technology-agnostic**, and should not explicitly or otherwise endorse any particular technology. In practical terms, this means that financial services using crypto assets as a solution should not be treated differently from financial services embedding legacy architectures, and there should be parity in the treatment of all technology;
- Given the dynamic nature of crypto assets, prescriptive regulation risks obsolescence. Prescriptive regulation could also have the unintended consequence of hindering innovation and unwittingly increasing financial stability risk through 'business-model herding'.⁶ Therefore, we recommend that the Treasury consider a **principles-based** regulatory framework that is drafted in a way to steer market participants to specific regulatory and policy objectives while maximizing flexibility and breadth of application; and
- The regulatory framework should use a **risk-based** approach to identify crypto asset services that pose sufficient risk to warrant regulation. A simple, and obvious initial distinction in risk-profile should be between crypto-asset intermediaries that provide services to consumers ("B2C") and those that only provide enterprise services to businesses ("B2B").⁷

The recommended regulatory framework, as proposed above, should be forward-looking and flexible while providing regulatory certainty and consumer safeguards, and at the same time meet the policy goals of encouraging innovation and growth of crypto assets in Australia.

Principle 3 - Foster innovation sandboxes

Innovation sandboxes for market participants to test new and innovative products, services and business models with end-users in a controlled environment while being subject to regulatory oversight have been set up in multiple jurisdictions. However, while some regulators have set up successful sandboxes, many regulators currently do not offer any opportunity for such experimentation. This could lead to a potential divergence between jurisdictions in their expertise of supporting the crypto asset sector with the likelihood of regulatory fragmentation, and potentially even regulatory arbitrage, arising.

⁶ That is, the implicit market bias towards certain business models due to the regulatory requirements attached to given financial activities rather than to the behaviour of the market and fundamentals. This can reduce financial stability by undermining actor diversity and hence overall resilience within a financial system.

⁷ Regulation has often drawn distinctions between B2B and B2C business models given the inherent differences between retail consumers and more sophisticated market actors. Examples include but are not limited to the European Union's Second Payment Services Directive and Markets in Financial Instruments Directive.

In order to incentivise innovation and inform the development of clear and consistent regulatory frameworks for crypto assets, we believe innovation sandboxes should be encouraged in Australia, at the very least for specific use cases such as cross-border payments.

For example, the Monetary Authority of Singapore has a FinTech Regulatory Sandbox⁸ which allows market participants to experiment with innovative solutions in a live environment, but within a well-defined space and duration.

However, it is important to note that innovation sandboxes will only be useful if there are clear entry and exit criteria defined, as well as parameters to measure the success of the sandbox.

Principle 4 - Encourage public-private collaboration

Any policy framework intended to regulate crypto assets should promote an active dialogue between regulators and market participants. Such public-private collaboration will lead to more appropriate and effective policy outcomes for the industry and consumers alike. A collaborative forum that brings regulators and industry stakeholders together to build a rational and holistic framework for blockchain and crypto assets would represent a substantial step forward toward achieving regulatory clarity in Australia.

We welcome the opportunity to provide feedback to the Treasury on the Consultation, and recognise this is an important step towards public-private collaboration.

Principle 5 - Ensure global consistency and comparability

Lastly, given the cross-border nature of crypto-asset markets, Ripple supports having minimum global standards, supported by cross-border cooperation and information sharing across jurisdictions, to help ensure an approach that is consistent and comparable.

However, Ripple posits that a framework that supports mutual recognition of licenses across jurisdictions could also lead to a level playing field globally, thereby supporting the sustainable growth and development of the crypto-assets ecosystem.

Such mutual recognition decisions exist for traditional financial institutions and infrastructures, which can be used as a template for crypto asset service providers and intermediaries. Many of the regulatory and supervisory institutions for crypto asset companies would be the same as those for the traditional financial sector, which should foster trust and ease communication between jurisdictions. However, Ripple would like

⁸ See <https://www.mas.gov.sg/development/fintech/regulatory-sandbox>, Overview of Regulatory Sandbox.

to highlight that in making such a determination, a principles-based approach should be followed (in line with Principle 2 noted above). An overly prescriptive process for a mutual recognition determination could disincentivize global firms from exploring this option.

With this overview, Ripple respectfully submits the following responses to the consultation questions set forth in the Consultation in the attached Appendix.

Ripple appreciates the opportunity to provide feedback on the Consultation as the Treasury studies these important issues, and we would encourage and support further dialogue with all stakeholders. Should you wish to discuss any of the points raised in this letter, please do not hesitate to contact Rahul Advani (Policy Director, APAC) at radvani@ripple.com.

Sincerely,

Ripple Labs Inc.

APPENDIX

Ripple respectfully submits the following responses to consultation questions 1, 4, 5, and 8 set forth in the Consultation.

Ripple has no comments on questions 2, 3, 6, 7, and 9-14 as these are more relevant from a consumer-facing perspective, and Ripple is purely an enterprise solution. However, we welcome further engagement with the Treasury on any of these consultation questions.

Q1) What do you think the role of Government should be in the regulation of the crypto ecosystem?

Ripple is supportive of the Government's approach of developing a technology-neutral and functional approach to regulation as outlined in the Consultation. However, we also feel it is important for the Government to ensure innovation and investment into the sector is encouraged, as highlighted by the Discussion Paper and the Ripple Committee Response. Australia has the opportunity to become a global technology leader, and we support the Government's initiative in developing a fit-for-purpose regulatory framework.

Therefore, Ripple respectfully requests that the Government work with the Treasury to implement such a fit-for-purpose regulatory framework, one that facilitates innovation while managing consumer protections.

As highlighted in Principle 1 of Section 2 (General comments and policy considerations) and in the Ripple Committee Response, there is no single or generally recognised definition of crypto assets in Australia at present,⁹ and we believe that the Government should prioritise developing a taxonomy for digital assets to provide clarity as to the legal character of digital assets in Australia. This approach is in line with other jurisdictions, such as the UK and Singapore, and we have summarised the taxonomies for the UK and Singapore respectively in Table 1 & Table 2 below.

⁹ See Ripple Committee Response, Page 4.

Regulated Tokens

a. Security tokens: These are tokens that amount to a 'Specified Investment' under the Regulated Activities Order, excluding e-money. These may provide rights such as ownership, repayment of a specific sum of money, or entitlement to a share in future profits. They may also be transferable securities or other financial instrument under the EU's Markets in Financial Instruments Directive II. These tokens are likely to be inside the FCA's regulatory perimeter.

b. E-money tokens: These are tokens that meet the definition of e-money under the Electronic Money Regulations. These tokens fall within regulation.

Unregulated Tokens

Any tokens that are not security tokens or e-money tokens are unregulated tokens. This category includes utility tokens which can be redeemed for access to a specific product or service that is typically provided using a blockchain platform.

The category also includes tokens such as Bitcoin, Litecoin and equivalents, and often referred to as 'cryptocurrencies', 'cryptocoins' or 'payment tokens'. These tokens are usually decentralised and designed to be used primarily as a medium of exchange. We sometimes refer to them as exchange tokens and they do not provide the types of rights or access provided by security or utility tokens, but are used as a means of exchange or for investment.

Table 1: Summary of the UK Financial Conduct Authority taxonomy for digital assets

Digital Payment Tokens

Refers to "any digital representation of value that is expressed as a unit; is not denominated in any currency, and is not pegged by its issuer to any currency; is, or is intended to be, a medium of exchange accepted by the public, or a section of the public, as payment for goods or services or for the discharge of a debt; and can be transferred, stored or traded electronically".

Digital tokens which constitute capital markets products

MAS will examine the structure and characteristics of, including the rights attached to, a digital token in determining if the digital token is a type of capital markets products under the Securities and Futures Act. This includes, but is not limited to a share, a debenture, a unit in a business trust, a securities-based derivatives contract, or a unit in a collective investment scheme, as defined under the Securities and Futures Act.

Table 2: Summary of the Monetary Authority of Singapore taxonomy for digital assets

Taking into account the taxonomies of the UK and Singapore discussed above as well as Principle 1 of Section 2 (General comments and policy considerations), we recommend that there be a clear distinction between payment tokens, utility tokens, and security tokens.

Q4) The concept of 'exclusive use or control' of public data is a key distinguishing feature between crypto tokens/crypto networks and other data records.

a) How do you think the concepts could be used in a general definition of crypto token and crypto network for the purposes of future legislation?

b) What are the benefits and disadvantages of adopting this approach to define crypto tokens and crypto networks?

Ripple respectfully believes that the concept of 'exclusive use or control' is irrelevant when defining digital assets. Instead, the definition of digital assets should be based on the particular economic function and purpose such digital assets serve, as highlighted in Principle 1 of Section 2 (General comments and policy considerations), and our response to Question 1 above.

While the concept of 'exclusive use or control' might be relevant to the application of law to such digital assets, any general definition should not be predicated on the concept of 'exclusive use and control'.

Q5) This paper sets out some reasons for why a bespoke 'crypto asset' taxonomy may have minimal regulatory value.

a) What are additional supporting reasons or alternative views on the value of a bespoke taxonomy?

b) What are your views on the creation of a standalone regulatory framework that relies on a bespoke taxonomy?

c) In the absence of a bespoke taxonomy, what are your views on how to provide regulatory certainty to individuals and businesses using crypto networks and crypto assets in a non-financial manner?

As highlighted in Principle 1 of Section 2 (General comments and policy considerations), and our response to Question 1 above, Ripple believes that a clear taxonomy for digital assets will provide clarity as to the legal character of digital assets in Australia.

The proposed taxonomy outlined in paragraph 49 of the consultation is far too broad. Ripple respectfully believes that a taxonomy that takes into account the economic function of digital assets will provide the clarity needed, and therefore Ripple recommends that there be a clear distinction between payment tokens, utility tokens, and security tokens.

Q8) In addition to the functional perimeter, the Corporations Act lists specific products that are financial products. The inclusion of specific financial products is intended to both: (i) provide guidance on the functional perimeter; (ii) add products that do not fall within the general financial functions.

a) Are there any kinds of intermediated crypto assets that ought to be specifically defined as financial products? Why?

b) Are there any kinds of crypto asset services that ought to be specifically defined as financial products? Why?

Ripple believes crypto tokens that create rights mirroring those associated with traditional financial products, such as shares, debentures, security-based derivatives, and collective investment schemes, i.e., security tokens, should be defined as financial products, based on the economic function that they serve.

Therefore, Ripple respectfully requests that the Treasury consider the taxonomy proposed by Ripple in Principle 1 of Section 2 (General comments and policy considerations), and our response to Question 1 above.

Ripple does not believe that all crypto assets should be brought into the financial product regulatory regime. Doing so would go against the proposed policy objective of implementing a risk-sensitive framework and will not align with the principle of 'same risk, same activity, same treatment', as outlined in Principle 2 of Section 2 (General comments and policy considerations).