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Australian Payments Network (AusPayNet) welcomes the opportunity to respond to the Treasury's consultation on crypto asset secondary service providers (CASSPrs): licensing and custody requirements. In particular, AusPayNet supports the Treasury's policy objectives in minimising the risks and harms to consumers arising from their use of CASSPrs in making payments, and to provide regulatory certainty.

AusPayNet Membership and Role

AusPayNet is the industry association and self-regulatory body for the Australian payments industry. We manage and develop procedures, policies and standards governing payments in Australia. Our purpose is to enable competition and innovation, promote efficiency, and control and manage risk in the Australian payments ecosystem. AusPayNet has 150 members, including financial institutions, operators of Australia's payment systems, merchants, and financial technology companies.

Introduction

AusPayNet follows the same two principles that this consultation employs: regulation according to the risks presented and technology neutrality. The primary theme of our submission will be that where a CASSPr is making payments and where there is similar risk in so doing, there should be similar rules (same risk, same rules). We would also encourage Treasury to review relevant international crypto licensing regimes to establish best practice, especially as it relates to crypto payments.

Context: Consumer Harm and Single, Tiered Licensing

The recently concluded Review of the Australian Payments System (the Treasury Report)¹ noted that cryptocurrencies, a class of cryptoassets, present new risks to consumers. It noted 'instances where cryptocurrencies have been used to scam individuals or where the trading platforms have failed, resulting in losses for the individual involved.'² The report recommended strong coordination between regulators and clear policy direction from the government with the aim of protecting consumers.³

The Treasury Report further recommended a single, tiered payments licensing framework. It noted that "the regulatory framework should be sufficiently flexible to support [Payment Service Providers]

¹ Australian Government: Department of Treasury. (2021). Payments Systems Review. Canberra: Australian Government ([link](#)).

² Ibid 84-5.

³ Ibid.

PSPs as they grow and expand the range of services they provide... the licensing framework should accommodate the various ways that PSPs can participate in the payments ecosystem.”

Our recommendations below are based on the recommendations from the Treasury Review.

Q15 – Alternative option 1: Regulating CASSPrs under the Financial Services Regime

AusPayNet supports a licensing regime to protect consumers, either through a new framework administered by ASIC or through the existing Australian Financial Services Licencing (AFSL) model. As per the Treasury review, this should be administered by ASIC who should co-ordinate with other relevant regulators as appropriate.⁴ Other obligations such as AML/CTF should continue to sit with the relevant regulators.⁵

This approach would be aligned to the Treasury Report recommendation of a single, tiered payments licensing framework. It would allow sufficient flexibility whilst ensuring there is no duplication of licensing requirements or added red tape. It would also provide certainty for consumers in ensuring that the CASSPrs that they are dealing with are properly licensed.

Per s763A(1)(c) of the *Corporations Act*, ‘a financial product is a facility through which, or through the acquisition of which, a person makes non-cash payments.’ When performing the function of a payment, there should be no distinction just because it is crypto-based: AusPayNet believes that if it carries the same risk, the same rules should apply. For this reason, AusPayNet is not supportive of designating CASSPrs as a distinct category of product: this would create a regulatory regime that is difficult to navigate for participants and creates uncertainty for consumers.

Q17 – Alternative option 2: Self-Regulation by the Crypto Industry

AusPayNet is not supportive of a self-regulatory licensing regime. As noted above, payment systems that carry similar risk should be regulated in a similar way. The introduction of a self-regulatory regime would introduce a separate set of rules that would complicate the regulatory framework and create uncertainty for consumers.

Conclusion

AusPayNet is supportive of a licensing scheme for CASSPrs. This licensing scheme should be founded on the ‘same risk, same rules’ principle and be aligned with the single, tiered licensing scheme recommended in the Treasury Review. This would see CASSPrs that are used as payment methods regulated in the same way as other payment schemes that carry similar risks.

⁴ Ibid

⁵ Ibid