
19 May 2023

Mr Tas Larnach
Committee Secretary
The Senate Economics Legislative Committee
Canberra, ACT,

Dear Sir,

Australian Custodial Services Association Submission on Digital Assets (Market Regulation) Bill 2023

The Australian Custodial Services Association (**ACSA**) is the peak industry body representing members of Australia's custodial and investment administration sector. Our mission is to promote efficiency and international best practice for members, our clients, and the market. Members of ACSA include NAB Asset Servicing, J.P. Morgan, HSBC, State Street, BNP Paribas Securities Services, BNY Mellon, Citi, Clearstream and The Northern Trust Company.

Collectively, the members of ACSA hold securities and investments in excess of AUD \$4.7 trillion¹ in value in custody and under administration for Australian clients comprising institutional investors such as the trustees of major industry, retail and corporate superannuation fund, life insurance companies and responsible entities and trustees of wholesale and retail investment funds. Those institutional investors are responsible for a sizable proportion of the money invested and held for Australian retail investors. ACSA member services are therefore integral to supporting the investment and retirement savings of a large part of the Australian population.

ACSA recognises that crypto and other digital assets are emerging rapidly in Australia as both an asset class and a fungible “currency” that can change the nature of trading, settlement, transacting and safekeeping for traditional assets, new digital assets, and digital contracts. A key priority for ACSA is ensuring that future regulation allows for efficient and effective market operations that ensure adequate investor protection, particularly for institutional and wholesale investors.

ACSA has formed an industry working group made up of ACSA members with local and global experience relating to digital assets licensing and custody which enables ACSA to provide unique input to the **Digital Assets (Market Regulation) Bill 2023 (the “Bill”)** inquiry.

DETAILS OF SUBMISSION

ACSA welcomes the continued discussion on the development of regulatory policy for licensing regimes for digital asset exchanges, custody services, stable coins and reporting requirements for digital

¹ As at 31 December 2021, <https://acsa.com.au/page/IndustryStatistics>

currencies. ACSA has previously provided a detailed response to the Crypto Asset Secondary Service Providers (CASSPrs): Licensing and custody requirements consultation paper a copy of which is provided in Appendix A.

While the Bill proposes a new licensing regime for digital asset exchange digital asset custody service providers and stable coin issuers; ACSA's position is that the AFSL regime be the licensing regime for custodians providing digital asset custody services. ACSA believes The Government should consider authorising digital assets as a subset of products to those holding existing financial service licenses (such as the product authorisation for carbon emission units).

ACSA believes regulations and laws should look through the technology, and digital assets should be treated similarly to comparable traditional financial products, with similar licensing, disclosure, and other requirements. To the extent entities provide a service in respect of a digital asset which meets the definition of financial product, they should comply with the existing relevant regulatory regimes.

Key themes in ACSA's Treasury submission which remain relevant for any consideration on the Bill include:

- Future regulation and laws being consistent in approach and terminology with other key global jurisdictions and existing Australian regulations and laws
- Acknowledgement of existing AFSL license regimes and obligations
- Consistency in licensing outcomes and regulations across AFSLs and any other license framework
- Licensing requirements recognising the different roles that AFSLs and CASSPrs fulfil in trading, settlement, and safekeeping of assets.

ACSA agrees that the policy objectives for regulating digital asset exchanges and custodians are sound. Legal and regulatory certainty is critically important for institutional investors and service providers to enable market confidence and deliver appropriate foundations for consumer protection.

ACSA believes digital asset categorisation remains a primary priority. The recent token mapping exercise should be used to inform Treasury and the Senate on any regulation for digital exchanges and custodians licensing. Token mapping should be based on the nature of and unique characteristics of a particular digital asset. There could be unintended consequences from a broad catch all definition of digital assets and therefore exclusions or tests are required.

ACSA believes the definition of digital assets should be defined consistently by all Australian regulatory regimes and would support ASIC working with other regulators such as the Australian Prudential Regulation Authority (APRA), the Australian Transaction Reports and Analysis Centre (AUSTRAC) and the Australia Taxation Office (ATO) on a common approach. While there is no one global standard, ACSA also support a principle of global harmonisation of the classification of digital assets.

ACSA agree in the recognition of the different roles catered for in the Bill for Exchanges, Custody Service providers and issuers of stable coins. These roles are analogous to traditional roles, as appropriate, in a similar way to existing Australian Financial Services Licensing (AFSL) regimes.

Efficient market operations for traditional financial products have resulted in ACSA members being contracted to provide a range of ancillary services such as investment process outsourcing, fund accounting, valuation and unit pricing services which are not directly related to trading, settlement, asset protection or safekeeping activities of a custodian. It is important that such asset "administration

services” not be caught in regulation by virtue of the fact that they may include ancillary services for digital assets and remain consistent in regulatory form with traditional financial products.

Care in drafting regulatory responses to crypto assets is recommended to ensure that providers also operating with traditional financial products are not subject to multiple regulatory regimes, differential obligations, and further those financial institutions with existing licenses should not be at a competitive disadvantage to new licensees.

ACSA believes consideration should be given to applying custody obligations consistently with comparable traditional financial products. Regulations and laws must recognise institutional investment requirements and concepts such as trusts, nominee and omnibus holdings, bankruptcy remoteness and limited liabilities for custodians.

ACSA does not support domestic custody location requirements as this would hinder the ability to achieve scale and Australian markets to maintain international competitiveness. Whilst ACSA supports licensing obligations that support the global nature of crypto and digital, it is recognised that Australian licensing obligations should remain consistent with the approaches that apply to other foreign recognised license regulations and guidelines.

Finally, ACSA believes regulations and laws should ensure obligations are appropriate to the role of custodians including exclusions for custodians monitoring in areas such as investment product suitability and detection of scams as examples.

Thank you again for the opportunity to participate in this inquiry. Please contact me if you have any comments about this submission.

Yours sincerely

David Travers
Chief Executive office
Australian Custodial Services Association

About ACSA

www.acsa.com.au

Custodians provide a range of institutional services, with clients typically favouring a bundled approach to custody and investment administration. Solutions may include traditional custody and safekeeping, investment administration, foreign exchange, securities lending, tax and financial reporting, investment analytics (risk, compliance, and performance reporting), investment operations middle office outsourcing and ancillary banking services.

These services represent key investment back-office functions – often representing the client’s asset book of record and essential source data in relation to the investments they hold.

The key sectors supported by ACSA members include large superannuation funds and investment managers, as well as other domestic and international institutions.

ACSA works with peer associations, regulators, and other market participants on a pre-competitive basis to encourage standards, promote consistency, market reform and operating efficiency.

Note: The views expressed in this letter are prepared by ACSA for the purposes of consideration by Treasury in response to Crypto asset secondary service providers: Licensing and custody requirements and should not be relied upon for any other purpose. The comments in this letter do not comprise financial, legal or taxation advice and should not be regarded as the views of any particular member of ACSA.