14 October 2024

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By upload via www.aph.gov.au

Dear Committee Secretariat,

Inquiry: The Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 [Provisions]

Thank you for the opportunity to provide a submission to the inquiry into the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 [Provisions].

Blockchain & Digital Assets: Services + Law, b'das*l, is a crypto-specialist law firm with over nine years of experience advising on crypto matters. We act for digital currency exchanges, crypto-funds, developers, start-ups, venture capital funds, stablecoin and tokenised real world asset issuers, service entities associated with DAOs, and individuals.

We have had regard to the Senate Standing Committee for the Scrutiny of Bills, Report Snapshot, Scrutiny Digest 12 of 2024; [2024] AUSStaCSBSD 189, and commend the Committee for the requests it has made of the Attorney-General.

In addition to the matters raised by the Committee, and for the Committee's reference, we set out below a sample of legal and practical matters related to the proposed 'digital currency'/'virtual asset' amendments that are conducive to market opportunism and/or confusion.

Such matters may be better suited to the Committee receiving clarifying material from the Attorney-General, industry and AUSTRAC so that any clarifying amendments can be included in the Bill rather than as implementation guidance or other instruments.

A sample of practical matters for the Committee's attention include:

1. **Market opportunism / confusion:** One reading of the proposed 5B(4)(c) exclusion from the definition of virtual assets for loyalty or reward points is that any open/transferable loyalty or reward point token is in theory not a virtual asset, however the 4(b) exclusion from the definition of virtual assets for gaming tokens is that only gaming tokens constrained to exclusive use within an electronic game are ***not*** virtual assets. The contrast between the provisions shows that one type of token must be constrained to a closed loop system to not be a virtual asset, but another type of token does not need such constraint to not be a virtual asset.

Liability limited by a scheme approved under Professional Standards Legislation.

Realistically, the line between loyalty and rewards points and gaming tokens can be grey and thin. Moreover, many points system can operate as a closed system for a period of time and then become open.

Transitional provisions could be required in AML/CTF law and Corporations law, and that perhaps that sit more appropriately in the Corporations Act, for 'virtual-asset'-related services that may be initially exempted because they are undertaken in a closed-loop system but lose the exemption once the system becomes open.

The wording of the Bill's provisions will likely cause opportunism, and thus confusion about the reach of the proposed law and its exclusions, especially on a transition from closed to open and vice-versa.

The potential opportunism and confusion are likely compounded because of the following which are also in a state of clarification and reform:

(a) ASIC INFO Sheet 225, for which ASIC proposed to release an updated version for consultation this year;

(b) ASIC Relief Non-cash Payment Facilities Instrument 2016/211 about low-value, loyalty or reward points schemes, has a statutory sunset date of 1 April 2026; and

(c) Proposed 'digital asset platform' reform, and broader 'payments system' reform to the Corporations Act, which will extend to or impact provisions about non-cash payment facilities.

2. **High compliance cost to start-ups which inhibits innovation:** There is not a de minimis exemption or testing phase exemption available. This means start-ups must enrol with AUSTRAC as a reporting entity and meet the compliance obligations associated with the 'virtual-asset'-related designated service/s to be provided before they can start testing and prove a market need for their particular service.

   In such cases, the risk-based approach based on a reporting entity's 'nature, scale and complexity' may be insufficient to prevent start-ups from overly burdensome legislative requirements where start-ups would likely test their services with known actors.

3. **Potentially incompatible with Australia's Digital ID Act:** The Digital ID Act has just passed this year. Since the Digital ID Regulator will have the power to accredit entities to provide digital ID services, and those services include the sharing of an individual's attributes and restricted attributes, the proposed provisions in the Bill are potentially incompatible with Digital ID Act's enhanced and data-privacy preserving means of undertaking initial and ongoing customer identification procedures.

   Due to the compliance burden associated with the collection, storage and use of personal information, web3/crypto start-ups tend to opt not to collect and store personal information unless legally required. Industry practice tends towards 'Oauth

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integrations' which allow a person to 'create account' and 'sign in' using their Microsoft, Google, LinkedIn or other credentials so that the start-up removes friction at account creation and sign-up stage and is not collecting and having to store personal information and password information. Depending on the uptake of accredited digital ID service providers, and pricing, start-ups are likely to prefer use of attributes and restricted attributes shared from such providers instead of existing market providers of identify verification services.

In the oauth context, instead of having a third-party provider charge ~$9 for a biometric identity check for NFTs that will be sold for ~$50-$100, an oauth ping is limited to minimal tech processing costs. Whilst a $9 id check does not seem expensive, it would significantly impact the commercial viability of low price point, but potentially high volume, NFTs (such as unique gaming avatars that can be used in many games).

In an id attributes sharing context, it is yet to be known what an accredited provider would charge but it is assumed that tech start-ups would prefer technology native data-privacy preserving approaches. Thus, we urge the Committee to give this compatibility matter its attention during the Inquiry and to be supported primarily by the Attorney-General in gaining comfort that no incompatibility exists.

We look forward to assisting the Committee where useful, and to the output of the Committee's Inquiry.

Yours sincerely,

Joni Pirovich
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