

Tuesday, 18 March 2025

Digital Assets Team
Australian Securities and Investment Commission
Melbourne VIC 3001
By email only: digital.assets@asic.gov.au

Dear ASIC

Updates to INFO 225 Digital Assets: Financial products and services

Thank you for the opportunity to respond to this consultation. We provide the following commentary on the proposed updates to Information Sheet 225 (**INFO 225**).

About Consumer Action

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy, and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians, and our advocacy supports a just marketplace for all Australians

Through our frontline work on the National Debt Helpline and consumer legal advice lines, we see firsthand the devastation that unregulated products including cryptocurrencies and digital assets (**crypto**) can have on ordinary Australians. We observe widespread harm connected with the use of crypto, such as crypto exchanges, wallets and currency being used to facilitate high value investment scams, leaving victims without retirement savings or a financial buffer. In addition to financial crimes, the anonymity of crypto has also meant it is used to fund and facilitate the most abhorrent forms of international crime. In a previous submission to Treasury,¹ we put forward the suggestion that regulating crypto could give it legitimacy, a "halo effect" leading more people to consequently fall victim to a financial crime. We urged Government to seriously consider banning crypto or at least regulating it as strongly as possible, for example, like gambling.

Government has instead determined regulate digital asset exchanges under the financial services regime. Therefore, broadly, we are supportive of ASIC's intention to provide further clarity around the application of essential consumer protections to cryptocurrencies that are already financial products and services.

¹ [Token crypto mapping consultation paper and the need for adequate protections and safeguards - Consumer Action Law Centre](#)

Products that mirror the same essential attributes as financial products should be regulated to ensure consumers are adequately protected from harm. Recognising that like products cause like harm and should be equally regulated often takes far too long – we are finally seeing buy now, pay later regulated as credit, some ten years after it first emerged in the Australian market.

Regulating crypto assets and exchanges is essential to combating scams

Consumer Action is supportive of the Government's intent to regulate crypto exchanges under the financial services licensing regime² and *strongly* supports ASIC clarifying existing regulations in the interim. We understand that ASIC's guidance will have limited overlap with intended legislative reform, limiting the impact of a changing regulatory landscape on relevant entities.³ We appreciate that ASIC is acting to provide further guidance and ensure a fairer, safer marketplace in the interim period. AFSJs confer important consumer protections like the requirement to adequately manage conflicts of interest, provide services honestly, efficiently and fairly, and have internal and external dispute resolution processes.

We witness significant financial harm perpetrated by scammers through crypto assets and exchanges. They are commonly perpetrated through some of the largest, most reputable exchanges, whose compliance with AML/CTF obligations is highly questionable.⁴

In 2023, amidst spiralling scam losses in the billions made up mostly by investment scams, Australia's major banks stepped in to mitigate the risks to their customers. Their decisive action was to limit transfers to crypto exchanges because of the high concentration of scam losses associated with transfers to crypto.⁵ Today, most large and medium-sized banks have policies and systems blocking many transfers to crypto exchanges.⁶ The 2023 blocks focused on the risk posed by notorious crypto exchange Binance. It is generally acknowledged that imposing blocks on transfers to crypto exchanges has been the turning point for Australia's scam losses, as outlined in the ACCC's Targeting Scams report 2023:⁷

"Bank action on cryptocurrency exchanges

AFCX data from the end of the 2022–23 financial year indicated nearly half of all scam losses were processed through cryptocurrency exchanges.¹⁵ From mid-2023, Westpac, CBA, NAB and ANZ and other banks have taken steps to limit transactions to 'high risk' cryptocurrency exchanges. This has likely reduced both direct scam payments particularly for investment scams, as well as reduced the incentives for some criminals to operate in Australia as transferring financial crime proceeds becomes more difficult."

² [Regulating digital asset platforms | Treasury.gov.au](https://www.treasury.gov.au/consultations-and-regulation/consultations/2023/regulating-digital-asset-platforms)

³ [Fostering an innovative, safe and secure digital asset industry | Treasury Ministers](https://www.treasury.gov.au/consultations-and-regulation/consultations/2023/fostering-an-innovative-safe-and-secure-digital-asset-industry)

⁴ [AUSTRAC warns cryptocurrency exchanges over money laundering suspicions](https://www.austrac.gov.au/news-and-media/news-releases/2023/austrac-warns-cryptocurrency-exchanges-over-money-laundering-suspicions)

⁵ <https://www.theguardian.com/business/2023/may/18/westpac-bans-transfers-to-worlds-largest-crypto-exchange-binance>

⁶ For example, <https://www.commbank.com.au/support/security/cryptocurrency-payments.html>, <https://www.anz.com.au/plus/support/profile-security/fraud-and-scams/restrictions-on-payments-to-crypto-exchanges/>, <https://www.nab.com.au/about-us/security/cryptocurrency-transaction-changes>, all accessed 14 March 2025.

⁷ ACCC (2024) 'Targeting Scams, Report of the National Anti-Scams Centre on scams activity 2023' available at: <https://www.accc.gov.au/system/files/targeting-scams-report-activity-2023.pdf>.

In contrast, the proposed guidance and regulation of crypto legitimises transactions to Binance and all exchanges. We anticipate that Banks might therefore reduce their customer protections surrounding transfers to crypto exchanges, and scam losses may increase as a result.

While the Australian Banking Association's Scam Safe Accord committed to limiting high-risk payment channels including digital currency exchanges,⁸ this commitment is listed as 'at your bank's discretion'. We continue to answer calls from consumers whose money has been spirited outside of the banking system through crypto.

Polly was referred to the National Debt Helpline in November 2024 after reporting a scam to Scamwatch. She was guided by a scammer posing as a financial adviser to transfer nearly \$3,500 over three days from her bank account into Bitcoin and another digital wallet. Polly thought she could earn money to send to her family overseas.

On the third day, the same day as Polly made most of the transfers, she realised it was a scam and contacted her bank. Polly's bank was one of the "Big Four". They told her they couldn't help as she had authorised the transaction.

The transfers occurred a year since the Scams Safe Accord committed the major banks to limiting high-risk payment channels including crypto exchanges.

The wholly speculative and potentially lucrative nature of cryptocurrencies is a major drawback for people in financial difficulty or with low financial literacy, resulting in harm through scam losses to those who can least afford it. To mitigate this risk, steps to make the sector safer by strengthening regulation of crypto that acts like a financial product will give consumers and the banking sector confidence in how to interface with the digital currency economy. It may also promote innovation, consumer confidence, and market integrity, ensuring Australians keep up with the global digital currency economy.

Crypto is proliferating while regulation lags behind

Industry surveys suggest that as many as 31% of Australians own digital currency, and one in five of those are investing \$500 or more each month.⁹ With the United States actively pushing digital currencies to the mainstream by establishing a digital currency reserve and with crypto-based exchange traded funds available in Australia, we should expect this number to keep rising.

The crypto sector is actively expanding and legitimising their presence in Australia through sport sponsorship. While we have a major debate about addressing the harms of gambling by limiting its presence in sports, we are permitting a similarly harmful product to take its space. Crypto.com, which has put its name on a major arena in Los Angeles, is also a major partner of the AFL and AFLW competitions.¹⁰ At least three AFL clubs and one NRL club have digital exchange platforms as sponsorship partners.¹¹ Without regulation, digital currencies marry the

⁸ [Keeping Australia Scam Safe - Australian Banking Association](#)

⁹ [Australian Independent Reserve Cryptocurrency Index 2025.](#)

¹⁰ [AFL 'corrupting the sport' through deal with cryptocurrency trading company, says Tim Costello | AFL | The Guardian](#)

¹¹ [Western Bulldogs Football Club | CoinSpot; Swyftx Invest In The Lions; Sydney Swans extend partnership with leading crypto exchange Independent Reserve; Melbourne Storm sign new crypto partnership | Storm](#)

speculative risk of gambling with the veneer of a financial product's respectability, but with virtually no consumer protections.

Responses to particular questions

B1Q1 Stablecoins are prima facie financial products and it is appropriate for ASIC to make clear that they are regulated. However it is unclear whether ASIC's list of features being linked to AUD would exclude those linked to foreign currency. It is far more likely for widely adopted stablecoins to be pegged to USD, the Euro or GBP and therefore this fact should also be clarified.

B1Q2 It is unclear the time period that it may take for an AFSL to be approved for products and services proposed to be captured by ASIC's approach to crypto regulation. If there is a protracted period, the opportunity for consumer harm may be significant. Therefore, any regulatory relief provided in the form of a no-action letter to organisations applying for an AFSL should, in addition to requiring AFCA membership, also require appropriate financial resources and/or professional indemnity insurance to meet any compensation orders.

B1Q3 Yes, it should be contingent on lodging an AFS licence application.

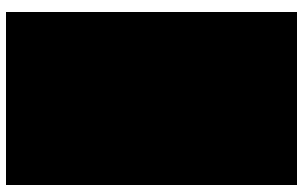
B1Q4 Yes, the deadline should be prompt.

B2Q1 Yes, the same regulatory obligations should apply. Consumer protections are non-negotiable and if not applied evenly, would lead to perverse outcomes for investors in like-for-like products.

Please contact [REDACTED] if you would like to discuss this further.

Yours faithfully

CONSUMER ACTION LAW CENTRE



Stephanie Tonkin
CEO

