

RE: Submission on ASIC’s Oversight of Crypto-Asset AFSL Regime – Retrospective Accountability and Consumer Protection

I am writing to make a formal submission to ASIC regarding the forthcoming Australian Financial Services Licence (AFSL) regime for crypto-asset service providers, as announced by Treasury and expected to take effect by June 2026.

2. Background and Regulatory Context

Despite this, numerous offshore-based exchanges have marketed and provided high-leverage derivative and futures trading to Australian retail investors without holding an AFSL or complying with s912A general obligations (competence, honesty, efficiency, and fairness).

3. Issue – Unaddressed Consumer Harm from Unlicensed Conduct

Because these entities were not licensed, affected consumers had no access to AFCA, compensation, or recourse under the Corporations Act. As a result, there is a significant regulatory justice gap that risks undermining the integrity of the new AFSL regime if left unaddressed.

ASIC's role in assessing AFSL applications under s913B of the Corporations Act and enforcing licensee obligations under s912A provides a strong framework for ensuring that entities demonstrate both forward-looking compliance and retrospective accountability.

I respectfully recommend ASIC adopt the following principles when evaluating AFSL applications from crypto-asset providers:

1. Historical Conduct Review

Require applicants to disclose all past operations involving Australian clients, including any provision of financial products or services that would have required an AFSL under existing law.

2. Consumer Loss and Complaint Disclosure

Mandate that applicants declare unresolved consumer complaints or known losses arising from prior unlicensed activities in Australia, including derivative or leveraged product trading.

3. Fit and Proper Person Test (s913B)

Incorporate historical conduct into the “fit and proper person” assessment, including prior breaches of s912A, s1041H (misleading or deceptive conduct), and ASIC Act consumer provisions.

4. Remediation Requirement

Before granting an AFSL, require entities to demonstrate genuine remediation — for example, by refunding affected clients, establishing compensation funds, or cooperating with AFCA once membership is mandatory.

5. Transparency and Enforcement Consistency

Publish a public register of crypto AFSL applicants and their remediation status, similar to the approach used in the credit and managed investment sectors.

5. Legislative Alignment

These recommendations are consistent with the legislative intent of:

- Corporations Act 2001 (Cth) – s912A (licensee obligations), s913B (fit and proper test), s1041H (prohibition on misleading or deceptive conduct);
- ASIC Act 2001 (Cth) – s12DA (consumer protection); and
- ASIC INFO 255 – clarifying that crypto-assets offering financial product features are already within the AFSL perimeter.

ASIC’s enforcement and licensing powers provide ample authority to ensure that entities cannot use the forthcoming AFSL regime as a “clean slate” to erase past misconduct.

6. Summary

ASIC’s leadership in shaping and enforcing the crypto AFSL regime will be critical to restoring trust in Australia’s digital asset markets. Ensuring that historical misconduct and consumer harm are addressed prior to licensing will uphold the objectives of market integrity, investor protection, and fair competition.

I urge ASIC to integrate retrospective accountability measures into the AFSL assessment process and to make remediation of past unlicensed conduct a prerequisite for licence approval.

I appreciate ASIC’s consideration of this submission and welcome the opportunity to provide further evidence or case examples to assist in this process.

Regards,

