



March 2025

Digital Assets Team
Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001

By email: digital.assets@asic.gov.au

Dear Digital Assets Team

RE: Consultation Paper 381 - Updates to INFO 225: Digital assets

Thank you for the opportunity to provide feedback on the proposed amendments to ASIC's Information Sheet 225 Digital assets: Financial products and services (**INFO 225**). CHOICE welcome's ASIC's intention to update guidance on how our financial legislation applies to digital assets.

An increasing number of Australians are investing in cryptocurrencies and other digital assets. In March 2022, CHOICE undertook nationally a representative survey that found 12% of Australians had purchased cryptocurrency, and 11% were interested in doing so.¹ In late 2024, Treasury quoted figures that estimated 20% of Australians currently own cryptocurrency.²

A substantial amount of Australian money is now invested in digital assets. However, these digital assets remain as complex, volatile and high-risk as ever. There is a significant risk of harm to those investing in these products, particularly where investors do not have a comprehensive understanding of the market or how digital assets work. Our existing laws should be used to help address this risk and reduce poor consumer outcomes from digital assets, where possible.

While a new regulatory regime for the digital asset sector is on the agenda for the government, this should not delay ASIC from updating guidance on how existing laws apply. As stated in the consultation paper, how our financial services laws apply to digital assets and related market participants will remain relevant after a new regulatory regime for digital assets is introduced.

Our submission primarily addresses the overarching logic and reasoning underpinning the update to INFO225, and particularly question B2Q1 in Consultation Paper 381 (**CP381**).

¹ CHOICE Consumer Pulse March 2022 is based on a survey of 1,034 Australian households. Quotas were applied for representations in each age group as well as genders and location to ensure coverage in each state and territory across metropolitan and regional areas. Fieldwork was conducted from the 22nd of March to 7th of April 2022.

² https://treasury.gov.au/sites/default/files/2024-11/c2024-598501-cp_0.pdf

Question B2Q1 - if it quacks like a duck, and walks like a duck...

We agree with the principle that the same regulatory obligations should apply to digital assets that operate in the same way, or perform the same function, as traditional financial products. As CP381 states, Australia's financial services law is designed to be technology neutral and there is no good reason to exclude digital assets from these laws.

We strongly support the position proposed at paragraph 38 of CP381 - being that existing Australian Financial Services Licensee requirements, conditions and processes should apply to digital assets that are financial products, and to businesses providing financial services in relation to digital assets.

Consistent regulation meets consumer expectations

Many of the same reasons that motivate people to invest in financial products are also the motivators behind investment in digital assets. It is reasonable for consumers to expect the same protections to apply if they are buying, using or trading a product that performs in largely the same manner as a financial product. There is no good reason to distinguish between digital assets and other kinds of investments at law and we would have concerns if regulation were used to support or promote one kind of investment over another.

Where there is uncertainty in the law, ASIC should take a simple but broad and inclusive approach to setting where the financial services/product regulatory perimeter applies to digital assets. There are significant complexities to digital assets and many of these are not well understood. Consumers are unlikely to identify or understand fine differences in the law. If there is doubt about whether a digital asset is a financial product, ASIC should err on the side of assuming it is captured within the financial services law, so that consumers are afforded protection.

The complexity of digital assets means all consumers are vulnerable to significant information asymmetry and agency problems in digital assets. The regulatory regime should afford all consumers protections similar to what they receive for other complex investments.

We also support the various enforcement actions ASIC has taken on recently regarding digital assets, and urge it to continue doing so, to help provide greater certainty to the regulatory perimeter where possible.

Recommendation 1

Digital assets (and related services) that largely operate in a similar way to financial products or financial services should be regulated as financial products or services.

Recommendation 2

ASIC should apply a technology neutral approach to determining which digital assets and related services should be treated as financial products or financial services.

Impact of regulation on industry not unreasonable

ASIC should not be dissuaded by industry concerns about the burden of regulation. Being subject to licensing and regulation by our financial services laws should not harm or hamper innovation that promotes good consumer outcomes. Rather, it should support this kind of innovation.

Other key statistics from CHOICE's 2022 nationally representative survey

In 2022, CHOICE conducted nationally representative research with specific questions looking at crypto currency. A few years have passed since this research was conducted, but we share it with ASIC now in case it assists with current work.

The key findings³ were:

- As noted earlier, in March 2022 12% of Australians had purchased cryptocurrency in the past year, and 11% were interested in doing so. 76% had no interest in buying it in the previous 12 months.
- Over half of respondents (52%) do not know if it is true or false that cryptocurrency trading has consumer protections similar to trading on the stock market.
- Knowledge of consumer protections when trading cryptocurrency varies greatly depending on the level of interest in crypto trading:
 - Of people who had purchased cryptocurrency in the past 12 months, 30% of people thought it was true that cryptocurrency trading has consumer protections similar to trading on the stock market. 1 in 5 (19%) of this group said they did not know.
 - Among those without any interest in crypto, over half (58%) did not know about the level of consumer protection.
 - Only slightly fewer (52%) of those that are interested but have not yet purchased cryptocurrency also selected they did not know.
- Half (51%) of consumers believe cryptocurrency trading should have consumer protections similar to trading on the stock market, though only 11% did not think cryptocurrency should have these protections (38% were uncertain - based on CHOICE's experience, this is a relatively large proportion of people who are uncertain).
- Half (50%) of all those that had purchased crypto currency indicated they view their purchase in cryptocurrency as a long term investment and 2 in 5 (40%) see it as a diversification of their portfolio.
- Those who were interested in trading cryptocurrency but have not bought in the last 12 months are those most likely to indicate they want to see consumer protections similar to trading on the stock market. Two thirds of this group (67%) say they want to see this, compared to just over half (53%) of those that have bought cryptocurrency in the last 12 months.

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Further information

Thank you for considering our submission. To discuss this further, please contact Rosie Thomas, Director of Campaigns and Communications at CHOICE, at [REDACTED]

Yours sincerely,

Rosie Thomas
Director, Campaigns and Communications
CHOICE