



# FUTURE POLICY RECOMMENDATIONS

## Shaping Digital Asset Regulation in Australia

MARCH 2024

REVIEWED BY



### DEVELOPED IN PARTNERSHIP WITH:



Caleb & Brown



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# Overview

On 21 February 2024, experts from the blockchain and digital asset industry, including both local and international participants, gathered in Sydney across four specialised roundtables. These discussions focused on fit-for-purpose future policy and regulatory initiatives for Australia, across the following themes:

- Consumer Protection and Market Integrity;
- Custody and Asset Management;
- Taxation; and
- Fostering Innovation.

From each of these roundtables, consensus-based recommendations emerged, designed to be both practical and achievable. This paper is the synthesis of those roundtables, ensuring the recommendations are not only clear, but also readily implementable by legislators and policy makers.

This submission represents the culmination of the concerted efforts of each roundtable, consolidating their insights into a unified proposal to support and inform the Australian Government in its decision-making.

As HK, Singapore, Europe, the UAE, and the UK are all actively implementing new legislation to drive digital asset innovation across financial and other markets, Australia has lagged. Without clear regulation, Australia loses leadership in financial markets, and risks capital flight and job losses overseas, in a market set to be worth \$3 trillion in global trade value by 2030. Australians have rapidly embraced this technology, with 23% of our population having owned crypto; the 8th highest adoption rate in the world.

## Key Recommendations

<b>Market Integrity</b>	Resolve Debanking	Crypto Specific AFSL	Cross-Border Information Sharing	Token Taxonomy	
<b>Consumer Protection</b>	DCE / Bank Data Sharing	Dispute Resolution Framework	Scams Mandatory Industry Code	Consumer Education	
<b>Custody</b>	Defined Digital Asset Facility	Confine to Positive Control	Pragmatic Insurance Requirements	Net Tangible Asset Equivalency	Segregate Australian Customer Funds and Security
<b>Taxation</b>	Simplify Crypto-Asset Tax Treatment	Crypto-Asset Derivation	Introduce Specific Crypto CGT Events	Review "Digital Currency" Definition	Standardised DCE Transaction Reporting
<b>Innovation</b>	Consistency and Equivalency	Flexibility	Clarity and Certainty	Collaboration and Education	Safe Harbour and Sandboxes

# About Blockchain Australia

Blockchain Australia is the peak industry body representing Australian businesses and business professionals participating in the digital economy through blockchain technology. Blockchain Australia encourages the responsible adoption of blockchain technology by the government and industry sectors across Australia as a means to drive innovation and create jobs in Australia.

The Blockchain Australia membership base consists of 125+ leading cryptocurrency and blockchain-centric businesses and 100+ individuals across multiple verticals, including:

- Accounting and Taxation
- Artificial Intelligence
- Art
- Banking
- Building & Construction
- Cyber Security
- Development
- Digital ID
- Education
- Energy and Resources
- Entertainment
- Gaming
- Health and Wellbeing
- Insurance
- Investment
- Legal
- Professional Services
- Recruitment
- Real Estate
- Risk and Compliance
- Supply Chain
- Venture Capital



## A message from Michael Bacina Chair, Blockchain Australia

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Blockchain Australia has always stood as the peak industry body representing a growing and diverse industry, which will touch most, if not all, aspects of the digital economy as it unfolds.

We are most grateful to the generosity of our contributing members for their time and expertise in shaping this submission. We also thank the successive Australian Governments for their consultations over the past 10 years to gather industry views on the best technologically neutral approach to protect consumers, reduce harms and preserve and promote innovation.

We welcome the opportunity to proactively contribute to blockchain policy so that Australians might have safe and affordable access to a broad range of innovative products while keeping the benefits of the jobs and innovations of Australian web3 businesses in Australia.



Michael Bacina  
Chair, Blockchain Australia



**“** *Australians deserve safe and affordable access to a broad range of digital asset products and services.* **”**

# A message from Simon Callaghan CEO, Blockchain Australia

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I am delighted to present the Blockchain Australia Future Policy Recommendations, synthesised from the Blockchain Australia Policy Forum held in Sydney during February 2024. This is a culmination of the collective efforts of industry stakeholders and Blockchain Australia members.

This document reflects our commitment to proactive policy development, prioritising innovation alongside consumer protection and market integrity. We extend our sincere appreciation to all contributors for their invaluable insights and dedication to advancing the blockchain and digital asset industry.

Together, we are forging a path toward a regulatory framework that fosters innovation while ensuring transparency and trust. As we move forward, we remain committed in our mission to shape policies that propel the industry forward, maintaining the highest standards of governance and accountability.

In 2024, our 10th Anniversary, the Blockchain Australia Future Policy Recommendations affirm our commitment, as the industry voice, to our vision of Now, Next & Beyond.



**Simon Callaghan**  
CEO, Blockchain Australia



# Consumer Protection & Market Integrity Recommendations

Hosted by John Bassilios at Hall & Wilcox

RECOMMENDATIONS	DESCRIPTION
<p><b>Resolve Debanking via a Risk Management Framework for Banking Access</b></p>	<p>The current approach lacks a standardised framework for assessing and managing the risks associated with dealing with digital currency exchanges (DCEs) and blockchain businesses. This inconsistency in risk management hinders banking access for these entities, leading to potential debanking and stifling the growth of the digital asset sector.</p> <p>This remains an ongoing problem despite the 2022 Council of Financial Regulators policy response recommendations, and the 2021 Senate Select Committee on Australia as a Technology and Financial Centre recommendations.</p> <p>Blockchain Australia recommendations:</p> <ol style="list-style-type: none"> <li>1. Develop a standardised framework to manage perceived risks associated with blockchain and digital assets, similar to the approach in Hong Kong. This could include a standardised questionnaire for banks to assess the risk of dealing with DCEs and blockchain businesses, facilitating a more uniform approach to banking access.               <ol style="list-style-type: none"> <li>a. While a standardised questionnaire could be provided to help assess the risks, it is critical that each business is assessed on its own merits in terms of any inherent risks, and any residual risks after adopting risk mitigation tools.</li> <li>b. A standardised questionnaire should not be used to justify a whole of industry risk assessment.</li> </ol> </li> <li>2. Establish ongoing management protocols for the relationship between banks and DCEs, focusing on payment reversals, chargebacks, and distinguishing between scams and fraud.</li> <li>3. Implement clear guidelines and a dispute resolution mechanism for clawback or chargeback requests, ensuring a balanced approach to liability among banks, consumers, and DCEs.</li> </ol>

# Consumer Protection & Market Integrity

## Recommendations cont.

RECOMMENDATIONS	DETAILS
<p><b>Crypto-Specific Australian Financial Services License (AFSL)</b></p>	<p>The current regulatory framework does not provide clear standards tailored to the unique characteristics and risks of digital asset businesses, leading to regulatory ambiguity and potential consumer harm.</p> <p>Blockchain Australia recommendations:</p> <ol style="list-style-type: none"> <li>1. Introduce crypto-specific authorisations to set clear regulatory standards for digital asset businesses, enhancing consumer protection and industry legitimacy.</li> <li>2. Ensure the crypto-specific AFSL authorisations addresses the unique risks associated with digital assets, including custody, trading practices, and consumer education.</li> </ol>
<p><b>Cross-Border Information Sharing</b></p>	<p>The increasing complexity of the digital asset landscape, including cross-border exchanges and the blending of financial and non-financial products like NFTs, necessitates enhanced information sharing and regulatory clarity to maintain market integrity and prevent manipulation.</p> <p>Blockchain Australia recommendation:</p> <ol style="list-style-type: none"> <li>1. Advocate for ASIC's allowance of information sharing between DCEs, including cross-border exchanges, to uphold market integrity. This includes clarity on the treatment of tokens not purchased on exchanges and strategies to prevent market manipulation, especially in a landscape where the distinction between financial and non-financial products, such as NFTs, remains unclear.</li> </ol>



# Consumer Protection & Market Integrity Recommendations cont.

RECOMMENDATIONS	DETAILS
<p><b>Information Sharing and Scam Mitigation</b></p>	<p>The lack of coordinated information sharing between banks, DCEs, and regulatory bodies hampers effective scam mitigation and consumer protection efforts.</p> <p>Blockchain Australia recommendations:</p> <ol style="list-style-type: none"> <li>1. Enable bi-directional information sharing between banks, DCEs, and regulatory bodies to improve scam detection and resolution.</li> <li>2. Develop an industry standard, possibly coordinated by Blockchain Australia, for educating consumers on scam risks and safe digital asset practices.</li> <li>3. Extend data sharing initiatives to include government bodies like the ACCC and ACMA, allowing for a more comprehensive understanding and response to scam activities.</li> <li>4. Engage with analytics software companies to enhance scam prevention efforts through advanced data analysis and information sharing and transaction monitoring to actively alert and prevent scams from being funded. Driving collaboration across not just Australian organisations but harnessing the power of Global information to combat scams. Using analytics software to baseline, monitor and report on the effectiveness of scam prevention.</li> </ol>
<p><b>Clear Token Taxonomy and Regulatory Framework</b></p>	<p>The diversity of digital assets, from cryptocurrencies to NFTs, poses challenges in regulatory classification and treatment, impacting both market integrity and consumer protection. The Australian Government should leverage existing international taxonomies, such as the Bank for International Settlements.</p> <p>Blockchain Australia recommendation:</p> <ol style="list-style-type: none"> <li>1. Establish a clear token taxonomy to differentiate between various digital assets, including clarification between financial and non-financial tokens. The taxonomy should guide the regulatory framework, ensuring it's broad enough to encompass different terminologies (DCE, virtual asset, crypto asset, etc.) and specific enough to address distinct pricing mechanisms and the delineation between DCEs and digital assets.</li> </ol>

# Consumer Protection & Market Integrity

## Recommendations cont.

RECOMMENDATIONS	DETAILS
<p><b>Framework for Dispute Resolution</b></p>	<p>Disputes between consumers and DCEs or related services are inevitable, and a clear, standardised process for resolution is essential to maintaining consumer trust and market stability.</p> <p>Blockchain Australia recommendations:</p> <ol style="list-style-type: none"> <li>1. Develop standardised minimum requirements for internal dispute resolution processes within DCEs and related services.</li> <li>2. Establish a fit-for-purpose external dispute resolution scheme, ensuring adequate resources for existing bodies like AFCA or the creation of new external dispute resolution mechanisms tailored to the digital asset sector.</li> </ol>
<p><b>Comprehensive Consumer Education Programs</b></p>	<p>Consumers face significant risks and complexities when engaging with digital assets, necessitating comprehensive and accessible education on their rights, risks, and safe practices.</p> <p>Blockchain Australia recommendations:</p> <ol style="list-style-type: none"> <li>1. Launch broad educational initiatives, beyond scam awareness, to empower consumers with knowledge about digital assets.</li> <li>2. Ensure all relevant parties, including government, industry bodies, and businesses, endorse and contribute to a central hub of standardised, accurate educational materials.</li> <li>3. Engage with Higher Education and VET providers to ensure degree, diploma, and certificate curriculum aligns with knowledge and skills need of industry and community</li> </ol>

# Consumer Protection & Market Integrity Recommendations cont.

## RECOMMENDATIONS    DETAILS

### **Inclusion Within the Proposed Scams Code Framework**

The consultation paper released by Treasury in November 2023 on Scams – Mandatory Industry Codes indicated that the current scope would not cover DCEs, but this aspect would be considered at a later time. The rapid evolution and unique risks within the digital asset sector necessitate immediate inclusion to ensure comprehensive consumer protection.

Blockchain Australia recommendation:

1. Expedited inclusion of DCEs and related providers in the Scams – Mandatory Industry Codes to ensure that the digital asset sector is adequately represented and that the coverage is fit-for-purpose, providing comprehensive protection against scams and fraud within this rapidly evolving industry.

nb The Blockchain Australia Digital Assets Working Group published "Litepaper – Real-World Asset Tokenisation," in conjunction with these recommendations, focused upon capital markets.

For detailed reference of the litepaper, please see Blockchain Australia's [Submissions page](https://blockchainaustralia.org/submissions) (<https://blockchainaustralia.org/submissions>).



# Custody & Asset Management Recommendations

Hosted by Michael Bacina at Piper Alderman

RECOMMENDATIONS	DESCRIPTION
<p><b>Defined Digital Asset Facilities</b></p>	<p>To ensure a clear and focused regulatory framework, the definition of Digital Asset Facilities (DAF) should be confined to exchange and broker entities directly involved in the custody and trading of digital assets. This approach targets the core areas of centralised custody and exchange functions, where the risk to consumers has historically been most evident.</p> <p>Blockchain Australia recommendation:</p> <ol style="list-style-type: none"> <li>1. The definition of what is a DAF and falls within the regulations should be confined to businesses involved in offering custody and trading in digital assets as part of a DCE business. More specifically, regulation should focus on core centralised custody and exchange functions noting the established risk of consumer harm which has been demonstrated by previous exchange failures. This is consistent with a risk based approach recognising that additional areas may be appropriate for future regulation.</li> </ol> <p>For example, the proposed regulation should not extend to digital asset services such as decentralised exchanges operating in a 'fully decentralised' manner. Fully decentralised crypto-asset services are excluded from the scope of Europe's Market in Crypto-Assets Regulation.</p> <p>In this regard, it is also important to remember that there is a wide range of applications for blockchain technology, not all of which involve financial use cases. There is a risk of stifling innovation in these areas by inadvertently regulating them within the financial services framework. A risk-based approach will help mitigate the proven risks of consumer harm involving centralised intermediaries and that sufficient regulatory resources are available to administer the regime, whilst leaving the door open to further reforms in future.</p>

# Custody & Asset Management Recommendations cont.

RECOMMENDATIONS	DETAILS
<p><b>Confine to Positive Control</b></p>	<p>The definition of control informing custody should be narrowly defined to ensure it only encompasses entities with positive control over consumer assets. This definition aims to mitigate risks associated with centralised custody functions while excluding activities that do not involve direct control over assets.</p> <p>Blockchain Australia recommendation:</p> <ol style="list-style-type: none"> <li>1. The definition of “control” should be confined to positive control, that is the ability to transfer or misappropriate customer assets. The touchstone should be whether a person has the ability to deal with or transfer another’s assets without their consent. The definition should not extend to negative control, recognising that there are a wide range of persons who can potentially block a customer’s ability to transfer assets, such as telecommunication networks, cloud servers, custodians or multi-signatory or smart contract based arrangements.</li> </ol> <p>This approach would appropriately confine the proposed regime to core centralised custody functions which involve well recognised risk of consumer harms. Non-core activities such as deploying upgradeable smart contracts, multi-signatory arrangements, bridges and infrastructure providers such as validators, sequencers or provers would fall outside scope. In this regard, it will be important to ensure clear definitions and regulatory guidance as to the intended scope of the regulatory regime and the application of the incidental exemption to activities which are not within scope.</p>

# Custody & Asset Management Recommendations cont.

RECOMMENDATIONS	DETAILS
<b>Pragmatic Insurance Requirements</b>	<p>Due to the challenges in obtaining insurance for digital asset custodians, a flexible approach to insurance requirements is necessary.</p> <p>Blockchain Australia recommendation:</p> <ol style="list-style-type: none"><li>1. A flexible approach to insurance requirements is preferred to allow for insurance or other alternative approaches as the market develops. Such alternatives may include provision for a bond, cash deposit, or graduated levels of insurance.</li></ol> <p>Consideration should be given to making adjustments to RG126 (Compensation and insurance arrangements for AFS Licensees) to accommodate custody of digital assets.</p>

# Custody & Asset Management Recommendations cont.

RECOMMENDATIONS	DETAILS
<p><b>Net Tangible Asset Equivalency</b></p>	<p>Reflecting on digital asset market upheavals, an aligned Net Tangible Asset (NTA) equivalency is proposed to harmonise with AFSL standards, considering the unique needs of digital asset custodians.</p> <p>Blockchain Australia recommendations:</p> <ol style="list-style-type: none"> <li>1. A figure which is appropriate compared to other AFSL licensees and the likely level of assets or funds required for orderly wind down, noting real world evidence of the costs involved in the Digital Surge and FTX matters (which did not exceed AUD\$1M). A broader range of assets should be recognised as sufficient to meet NTA requirements (including stablecoins or other equivalents if banking is not available).</li> <li>2. Adopt a more flexible NTA requirement for DAFs akin to the incidental custody authorisation available to issuers of managed investment schemes and other platform products. This would allow DAFs not primarily in the custody business to have a reduced NTA requirement of \$150K (or some other appropriate amount) if:</li> </ol> <p>This will engender greater consistency between the financial requirements for DAFs and other financial products where custody is provided incidentally to another financial service. This will mitigate regulatory arbitrage opportunities and ensure that crypto products and services aren't designed to avoid certain regulatory requirements over others. It also ensures that DAFs aren't subject to overly burdensome capital requirements as compared to traditional financial products.</p> <p>Re-evaluate the NTA framework for DAFs to ensure greater consistency with the incidental custody rules applied to other financial products. This is particularly important given that DAFs are required to hold \$5M NTA or 0.5% of assets in custody, where the custody is outsourced. Once a DAF holds \$1B of assets, the 0.5% calculation is equal to \$5M and the impact of outsourcing custody is negated from an NTA perspective.</p>

# Custody & Asset Management Recommendations cont.

RECOMMENDATIONS	DETAILS
<p><b>Segregate Australian Customer Funds &amp; Security Requirements</b></p>	<p>The dynamic nature of digital assets and the rapid pace of technological innovation present unique challenges in ensuring the security and integrity of digital assets. Establishing a flexible and effective custody framework is imperative to adapt to these changes and safeguard customer assets.</p> <p>Blockchain Australia recommendation:</p> <ol style="list-style-type: none"> <li>1. In establishing a framework for safe custody of digital assets, a principles based approach is to be preferred to prescriptive requirements which may be superseded by technology or not fit for purpose. Responsibility for implementing processes consistent with these principles should rest at the level of the Responsible Manager.</li> </ol> <p>Consideration should be given to making adjustments to RG133 (Funds Management and Custodial Services) to accommodate custody of digital assets.</p> <p>Omnibus on-chain wallets or accounts should be permitted with segregation at accounting level. There should also be flexibility in application of technology solutions and to enable use of sub-custodians provided that the right frameworks are in place to identify Australian customer assets, keep company and customer funds separate, and segregation of Australian entity customers' separate from those of the global parent or affiliates.</p> <p>Responsible Managers should be obliged to:</p> <ol style="list-style-type: none"> <li>1. Identify assets against aggregate customer liabilities;</li> <li>2. Verify their existence on the blockchain (not just on a ledger); and,</li> <li>3. Should hold a role in transaction approval processes (e.g. maintain negative control over transactions above major thresholds to avoid misappropriation or application of Australian customer assets within global groups).</li> </ol>



# Custody & Asset Management Recommendations cont.

## RECOMMENDATIONS    DETAILS

### Recognising Existing Regulation

In the evolving digital asset ecosystem, ensuring a harmonious interplay between new custody regulations and existing legal frameworks is crucial. Maintaining consumer protection without duplicating regulatory efforts is key to a balanced and effective regulatory approach.

Blockchain Australia recommendation:

1. In establishing a fit for purpose regime, existing legal protections and consumer remedies will still apply and are available for regulators to address consumer harms including whether the digital asset custody regime does not apply (e.g. anti-fraud, anti-money laundering and counter-terrorism financing laws, and misleading and deceptive conduct).



# Taxation Recommendations

Hosted by Mark Bailey at Hall Chadwick

RECOMMENDATIONS	DESCRIPTION
<p><b>Simplifying the Tax Treatment and/or Compliance Burdens When Dealing With Crypto Assets</b></p>	<p>The current legal nature of crypto assets has not been confirmed by Australian courts. This has resulted in assumptions about how crypto assets are legally transferred and when taxing points may arise.</p> <p>Extensive anecdotal evidence from industry members indicates that:</p> <ul style="list-style-type: none"> <li>• It is unclear how taxation laws apply to crypto assets because the legal nature of crypto assets has not been judicially confirmed. This includes the nature of any proprietary rights, the legal explanation of how crypto assets are conveyed to third parties, and the obligations by third parties generally when an entity holds crypto assets.</li> <li>• The existing guidance from the Australian Taxation Office (ATO) is not adequate to educate crypto asset holders on their taxation obligations.</li> <li>• There are more compliance burdens in dealing with crypto assets than other asset classes.</li> <li>• There is a significant lack of education of the tax implications of dealing in crypto assets. With respect to self-managed superannuation funds (SMSFs), even though crypto assets are used like money, contributing amounts to SMSFs can carry criminal consequences.</li> </ul> <p>Blockchain Australia recommendations:</p> <ol style="list-style-type: none"> <li>1. Confirm the Proprietary Status of Crypto Assets: Confirm the legal status of crypto assets as property, including the extent of obligations owed by third parties, to properly apply the taxation laws.</li> <li>2. Clear Tax Classification: Define specific tax classifications for different crypto asset activities (e.g., staking, mining, DeFi interactions) to reduce the complexity of determining tax events.</li> <li>3. De Minimis Exemption: Introduce a de minimis exemption threshold for small transactions to simplify compliance for casual or minor users.</li> <li>4. Standardised Data Reporting for Exchanges: Mandate a standardised data reporting format for digital currency exchanges to provide to the ATO and users, ensuring consistent and automatic reporting capabilities.</li> </ol>

# Taxation Recommendations cont.

RECOMMENDATIONS	DETAILS
<p><b>Derivation of Crypto Assets</b></p>	<p>Under the current law, an entity who receives a crypto asset as ordinary income “derives” the asset when it is earned or received. However, the unique and varied nature of crypto asset transactions, such as those involving DeFi protocols or mining, challenges the traditional understanding of “derivation” under Australian tax law. This ambiguity leads to uncertainty regarding the timing of income recognition and the applicable tax obligations.</p> <p>Blockchain Australia recommendations:</p> <ol style="list-style-type: none"> <li>1.Codify Derivation: Introduce new measures that disregard the artificial derivation and realisation of crypto asset receipts until the crypto holder actively withdraws the crypto asset into their possession.</li> <li>2.Update Tax Rulings: Issue updated tax rulings or determinations that reflect the unique aspects of crypto asset transactions, focusing on the derivation of assets.</li> <li>3.Specific Guidance for DeFi: Provide specific guidance on the tax treatment of DeFi activities, recognising the unique nature of these transactions.</li> </ol>
<p><b>Introduce Crypto-Specific CGT Event(s)</b></p>	<p>It is currently unclear which CGT event occurs when an entity disposes of a crypto asset, leading to confusion and inconsistency in reporting and tax obligations.</p> <p>Blockchain Australia recommendations:</p> <ol style="list-style-type: none"> <li>1.New CGT Events: Introduce new, crypto-specific CGT events to capture unique crypto transactions such as token swaps, transfers to and from digital currency exchanges, smart contract interactions (token upgrades and migrations), and hard forks.</li> <li>2.Rollover Relief Provisions: Implement rollover relief provisions for crypto-to-crypto transactions that do not result in immediate realisation of gains.</li> <li>3.Clarification on Personal Use Asset: Clarify the treatment of crypto assets as personal use assets, providing clear thresholds and examples.</li> </ol>

# Taxation Recommendations cont.

RECOMMENDATIONS	DETAILS
<p><b>Review of “Digital Currency” Definition for the Purposes of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act).</b></p>	<p>The ever evolving landscape of digital currencies, including the emergence of stablecoins, tokens, and DeFi instruments, challenges the adequacy of the current "digital currency" definition.</p> <p>Arguably, the meaning of “digital currency” does not apply to crypto assets that leverage a transaction-based blockchain between the “thing” that is traded is not the underlying digital units but the “transaction output”.</p> <p>Blockchain Australia recommendations:</p> <ol style="list-style-type: none"> <li>1.Revised Definition: Recognise the meaning of “digital currency” in the context of crypto assets. This may require introducing amendments that refine the current definition to reflect that the “thing” traded is not the “digital units” but the “transaction output”</li> <li>2.Broader Definition: Broaden the definition of “digital currency” to encompass a wider range of crypto assets, including wrapped tokens (which derive their value from an original token), stablecoins, and DeFi instruments.</li> <li>3.Technology Neutrality: Ensure the definition remains technology-neutral to accommodate future developments in blockchain and digital assets.</li> <li>4.Alignment with International Definitions: Align the definition of digital currency with international standards and definitions to ensure consistency for multinational entities.</li> </ol>

# Taxation Recommendations cont.

RECOMMENDATIONS	DETAILS
<p><b>Standardised Transaction Reporting for Digital Currency Exchanges</b></p> <p>nb The Blockchain Australia Tax Working Group sought to include past recommendations from the "Open Letter – Tax Working Group of Blockchain Australia," published on 22 September 2023, in this current submission. The letter was addressed to key bodies, including the Board of Taxation and the Australian Taxation Office.</p> <p>For detailed reference of those recommendations, please see Blockchain Australia's <a href="https://blockchainaustralia.org/submissions">Submissions page</a> (<a href="https://blockchainaustralia.org/submissions">https://blockchainaustralia.org/submissions</a>).</p>	<p>Inconsistent transaction reporting by DCEs complicates tax reporting and leads to increased taxpayer non-compliance.</p> <p>Common transaction reporting issues include:</p> <ul style="list-style-type: none"> <li>• Restrictions placed on the taxpayers ability to access historical transaction records.</li> <li>• Transactions being excluded from records.</li> <li>• Lack of sufficient detail describing a transaction to aid in accurate classification for tax purposes.</li> <li>• Inaccuracy in reported numbers.</li> <li>• Absence of a running balance and / or point in time holding statement of balances.</li> </ul> <p>For a detailed consideration of issues see <a href="#">CTDS by Sylla</a>.</p> <p>The variability in reporting formats increases compliance costs, introduces errors in tax reporting, and leads to an increased willingness among taxpayers to under report assessable income.</p> <p>Blockchain Australia recommendations:</p> <ol style="list-style-type: none"> <li>1. Reporting Standards: Define standard reporting requirements for DCEs, including the type of information and frequency of reporting.</li> <li>2. Real-Time Reporting Capabilities: Encourage or mandate exchanges to develop real-time reporting capabilities that are available to both users and the ATO, for improved compliance monitoring.</li> <li>3. Data Privacy and Security: Establish strict guidelines on data privacy and security for transaction reporting to protect user information.</li> </ol>



# Fostering Innovation Recommendations

Hosted by Paul Derham at Mercari

The Fostering Innovation roundtable's objective was to develop comprehensive recommendations for a regulatory framework that effectively balances innovation with consumer protection. The focus was to craft adaptable, forward-looking policies that support industry growth, while ensuring robust standards for security, compliance, and market integrity.

Australia's corporations and financial services legislation is the product of, amongst other things, an attempt to create detailed and broadly scoped, but flexible legislation which is technology neutral and thus partly future-proofed. Where its flexibility and scope reach a limit and entirely new regulation is required, Government is, understandably, typically minded to 'bolt' further specification onto the existing legislation, rather than implement wholesale reform or create something standalone and truly bespoke.

This practice has continued for many years, and for many years it has made sense. However, in recent years, unforeseen evolutions and innovations in markets and technologies have created unique regulatory concerns which simply cannot be effectively regulated by making minor tweaks to, or bolting complementary items onto, the existing omnibus of legislation. Attempts to do so have stifled and will, if left unchecked, continue to stifle innovation.

Something bespoke and deeply considered is now required if innovation is to be truly encouraged. Recommendations as to how this may be crafted are outlined below. They focus on suggesting overarching 'tenets' of new legislation.

# Fostering Innovation Recommendations

RECOMMENDATIONS	DESCRIPTION
<p><b>Consistency &amp; Equivalency</b></p>	<p><b><i>Take care with language</i></b></p> <p>Lawmakers should avoid creating new terminology and use language consistent with that used by industry and globally. They should benchmark language against established and well-accepted international literature and protocols, such as the ISDA framework (where applicable to traditional finance concepts), IOSCO, FATF, FSB and various respective DLT standards (e.g. ERC) where appropriate. This is necessary in order to allow clear and consistent interpretation and application of regulation.</p> <p><b><i>Acknowledge and consider extraterritorial regulation</i></b></p> <p>While blockchain is distributed, blockchain projects are often built using different technology and teams that are often not truly ‘borderless, and need to be locally hosted or provided. Some stacks or offerings must, unavoidably, be comprised of a hybrid mix of local and offshore components. Countries may require some elements of the offering to be hosted within their borders.</p> <p>Lawmakers should therefore consider, and where possible, expressly recognise, elements of international regulation. This will be the only way to facilitate each jurisdiction’s desire to keep certain things in-country whilst creating coherent regulation that can be applied with certainty to hybrid businesses. Examples exist in relation to regulation dealing with identification, privacy, fund passporting and UCITS.(E.g. ID, privacy, fund passporting, UCITS).</p> <p>When considering what is to be mandated to be performed ‘in country’, regard should be had to the distinction between where the entity is domiciled or registered, where the ‘work’ is actually done, the nominated jurisdiction of the facility itself, and where the users are located.</p>

# Fostering Innovation

## Recommendations cont.

RECOMMENDATIONS	DESCRIPTION
<p><b>Consistency &amp; Equivalency cont.</b></p>	<p>An example of a business which would benefit from regulation taking these matters into account is an Australian provider of digital asset services that uses a third party custodian with a head office in New York, signatories who control the private key spread across four other countries, and an exchange and infrastructure located in Australia. Regulation written in isolation without regard to the above matters would make the functioning of such a business unduly complex (if possible at all).</p> <p><b><i>Maintain the corporate veil</i></b></p> <p>Lawmakers should not impose more personal liability on directors or owners of Australian companies than already exists, simply by virtue of the industry they are in or technology they use. This would run contrary to the expressed ‘technology neutral’ intent, as well as, of course, a deep and long-lived body of corporations law relating to the sanctity of the ‘corporate veil’.</p> <p><b><i>Seriously consider the Australian Law Reform Commission (ALRC) recommendations, particularly the use of scoping orders</i></b></p> <p>Government should consider the ALRC’s proposed legislative framework, in particular the use of a scoping order or equivalent mechanism which could facilitate flexibility for new technologies or markets and to allow defined terms to change over time. This would assist implementation of the other recommendations made below. The proposed changes are significant from a drafting perspective, but the benefits could be profound.</p>



# Fostering Innovation

## Recommendations cont.

RECOMMENDATIONS	DESCRIPTION
<p><b>Flexibility</b></p>	<p><b><i>Adopt a ‘similar risk, similar activity, specialised regulation and same outcome’ approach</i></b></p> <p>This policy approach should be paramount and underpin new or amended regulation.</p> <p>The framework needs to be flexible to deal with emerging technologies which develop more quickly than other regulated markets (e.g. semi-fungible tokens quickly evolved from non-fungible tokens and bring with them unique regulatory considerations). See the above recommendation regarding the ALRC’s proposed framework involving scoping orders.</p> <p>The framework also needs to include review mechanisms to facilitate the above.</p> <p><b><i>Real ability to obtain regulator rulings or comfort</i></b></p> <p>Regulation of new and emerging technologies or markets should give power to a regulator or a specialist task force to hand down the equivalent of an ATO ruling or ‘comfort from regulator’ determination within a prescribed response timeframe.</p> <p>This is proposed because the existing pre-emptive relief structure is opaque, expensive and very time-consuming.</p>

# Fostering Innovation Recommendations cont.

RECOMMENDATIONS	DESCRIPTION
<p><b>Clarity &amp; Certainty</b></p>	<p><b><i>Include worked examples in legislation and regulatory guides</i></b></p> <p>Explanatory memoranda for new legislation should include worked examples about how the law is intended to apply. Similarly, regulatory Guides should include worked examples to show how ASIC intends regulation to apply, and should include:</p> <ul style="list-style-type: none"> <li>• regulatory guidance should highlight any key rights, features or attributes that may result in a token meeting the various financial product definitions. Examples of these would be highly instructive; and</li> <li>• which activities constitute regulated financial services and which activities don't, and why.</li> </ul> <p>For example, ASIC has acknowledged in a Senate Submission and in various Court Documents that Bitcoin is not a financial product.</p> <p><b><i>Language and flexible legislative format</i></b></p> <p>Also see the above points regarding equivalent language and the ALRC's recommendations as to scoping orders, which remain relevant to this issue as well.</p>



# Fostering Innovation

## Recommendations cont.

RECOMMENDATIONS	DESCRIPTION
<p><b>Collaboration</b></p>	<p>The establishment of an effective and transparent public-private regulatory-interest working group will benefit all stakeholders including the Government.</p> <p>A prime example of how this can be done well, in our view, is the Fintel Alliance.</p> <p>Collaboration is already happening to a limited extent. Currently, Blockchain Australia is involved in the Digital Finance Advisory Panel, in coordinated communication with regulators.</p> <p>The workings of a public-private industry-regulatory committee or task force should be transparent, with minutes public and published with sufficient time for regulators and lawmakers to consider and react to them. Agendas should be published well in advance so that industry bodies like Blockchain Australia can collect feedback from constituents and present it at regular formalised committee meetings.</p> <p>The mandate of any such committee or task force should include:</p> <ul style="list-style-type: none"> <li>• real-time information sharing pursuant to agreed protocols; and</li> <li>• reviewing existing and new law and its effectiveness (consistent with our comments as to flexibility made earlier in the submission).</li> </ul>



# Fostering Innovation Recommendations cont.

RECOMMENDATIONS	DESCRIPTION
<p><b>Safe Harbour &amp; Sandboxes</b></p>	<p>If the Government does clarify what is and is not a financial product or service, it should permit a ‘safe harbour’ for businesses that have previously treated a digital asset or service contrary to the clarification.</p> <p>We are strongly in favour of a robust sandbox framework which could solve a number of industry dilemmas, including by allowing:</p> <ul style="list-style-type: none"> <li>• innovative technology or product testing with limited liability, irrespective of licence status of the applicant; and</li> <li>• testing across multiple jurisdictions (note there are existing proposed versions of this – see here: <a href="#">Singapore, Japan, U.K., Swiss Regulators Partner to Advance Asset Tokenization Pilots</a> (coindesk.com)).</li> </ul> <p>The existing enhanced regulatory sandbox framework is a good start, however:</p> <ul style="list-style-type: none"> <li>• the restrictions around novelty stifle innovation – e.g. where a company wants to use an existing technology in a novel way, or where the regulator forms a view that the technology is not adequately novel;</li> <li>• there are limitations on what products related to derivatives, non-cash payment facilities or managed investment schemes can be used within the enhanced regulatory sandbox;</li> <li>• there are restrictive limitations on marketing and promotional activities. We understand these are imposed intentionally, but submit that the risks can be managed with disclosure and conduct obligations to allow testing with real customers);</li> <li>• there is no equivalency access to the sandbox regimes or equivalents of other countries; and</li> <li>• there is no graduated pathway to exit the sandbox with regulatory compliance certainty e.g. a provisional or restricted licence like a restricted ADI, use of a limited safe harbour, or acknowledgement of time in the sandbox as ‘organisational competency’ for the purposes of licensing. A transition period of 12–18 months (as flagged in Treasury’s Regulating Digital Asset Platforms consultation paper) to obtain an AFSL may be insufficient. Given that there are payment systems reforms underway which also suggest a number of payment service providers are also likely to be applying for an AFSL, we need to be mindful that ASIC has the time and capacity to be able to address both tranches of applicants.</li> </ul>

# Fostering Innovation Recommendations cont.

RECOMMENDATIONS	DESCRIPTION
<p><b>Education and Awareness</b></p>	<p>We recommend there should be increased investment by the Government in collaboration with industry and professional associations, along with Treasury’s Crypto Task Force to provide educational programs and awareness campaigns to lawmakers, regulators and the public which are designed to increase understanding of blockchain technology and its potential benefits to all stakeholders. This will help overcome misconceptions and improve receptivity.</p> <p>Industry and professional associations should be involved, at least in consultation, with the setting of minimum educational standards for regulated entities under the proposed legislative framework.</p>



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