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Australian  
**Charities** and  
**Not-for-profits**  
Commission

26 May 2022

Director, Crypto Policy Unit  
Financial System Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Via email: [crypto@treasury.gov.au](mailto:crypto@treasury.gov.au)

Our reference: ACNC SUB2022/07

**ACNC submission – Crypto Assets Secondary Service Providers: Licensing and Custody Requirements Consultation Paper**

1. The Australian Charities and Not-for-profits Commission (**ACNC**) welcomes the opportunity to comment on the Crypto Assets Secondary Service Providers (**CASSPRs**): Licensing and Custody Requirements Consultation Paper (**the Consultation Paper**).

**About the ACNC and the charity sector**

2. The ACNC is the national regulator of charities established by the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (**ACNC Act**). The objects of the ACNC Act are to:
  - a. maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector; and
  - b. support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector; and
  - c. promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.

**The ACNC's interest in the regulation of crypto assets**

3. The ACNC has limited comments to make in respect of the Consultation Paper at this time. However, we expect that crypto asset regulation may become a growing concern for charities as they increasingly consider receiving, managing, and reporting on, crypto assets.



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4. The ACNC is aware that peak sector bodies in the United States<sup>1</sup> and United Kingdom<sup>2</sup> have advised charities to avoid crypto assets due to the risks and volatility. However, a growing number of donors may be looking to donate crypto assets, and several charities are already accepting crypto assets as donations.
5. The ACNC Governance Standards require charities to take reasonable steps to ensure their responsible persons manage charity finances responsibly. Charities must also ensure that any assets they hold are used to advance a charitable purpose, or a purpose which is incidental to a charitable purpose.
6. The Consultation Paper states, at page 5, that:

*“the primary risk associated with CASSPrs is the potential loss of a consumer’s assets or balance ... through use of a provider’s facilities”.*

7. This risk is at the centre of the ACNC’s interest in crypto regulation. In line with the objects of the ACNC Act, our priority is to ensure crypto assets are managed properly and transparently by charities, but that the associated regulations should not impose an unreasonable administrative burden on charities.

## Responses to specific questions

### Question 4 (single definition of crypto assets)

8. The ACNC agrees that applying a single definition of ‘crypto asset’ across all Australian regulatory frameworks is appropriate. Most charities are small and volunteer-run, and often require support to navigate and understand their legal and reporting requirements. The application of different Commonwealth, state, and territory frameworks compounds this, and adds to the administrative burden for charities. Any simplification and harmonisation of the various frameworks will generally be beneficial to charities.

### Questions 6 and 7 (policy objectives of the proposed framework)

9. The ACNC agrees with the proposed policy objectives, noting that there is a clear public benefit in shielding charities, as far as possible, from risk whenever they may be a user of CASSPrs. Charities may be vulnerable to criminals who own or control CASSPrs and would benefit from regulatory certainty, so they are reasonably equipped to identify and avoid unsound CASSPrs.

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<sup>1</sup> ‘What Your Nonprofit Needs to Know About Cryptocurrency Donations’, National Council of Nonprofits ([What Your Nonprofit Needs to Know About Cryptocurrency Donations | National Council of Nonprofits](#))

<sup>2</sup> ‘Crypto-philanthropists: Friend or Foe to Charities?’, Civil Society ([Crypto-philanthropists: Friend or foe to charities? \(civilsociety.co.uk\)](#))

**Questions 15-18; 25-27 (financial services regime or industry self-regulation)**

10. The ACNC prefers a regulatory regime that will ensure crypto assets, where they are charity assets, are sufficiently protected from misuse, and available to charities when required to apply towards charitable purposes. Regardless of what form the regulatory regime takes, the ACNC would discourage carving out charities and charity assets from the regime and the protections available under it.

**Appendix 1 (existing frameworks)**

11. The ACNC understands that the table in Appendix 1 is not intended to be a comprehensive summary of the entire regulatory framework as it relates to crypto assets. Nonetheless, the ACNC notes that charities legislation may also form part of that framework.
12. Where crypto assets that are financial products are held by, or donated to, a registered charity, charities legislation contains a strict obligation that those assets will only be applied towards a charitable purpose or a purpose that is incidental or ancillary to a charitable purpose. Those assets will also need to be managed by the charity's responsible persons consistently with the ACNC Governance Standards and External Conduct Standards.
13. The ACNC does not administer any tax concessions. However, charity registration is generally a precondition to accessing tax concessions administered by the Australian Taxation Office. Therefore, charities legislation may have an indirect, but meaningful, bearing on the tax treatment that applies to crypto assets held by, or donated to, charities.

**Next steps**

14. If you have queries about this submission please contact Mitchell Tucker, Policy Officer on (03) 8632 4662 or at [mitch.tucker@acnc.gov.au](mailto:mitch.tucker@acnc.gov.au).

**The Hon Dr Gary Johns**  
Commissioner  
Australian Charities and Not-for-profits Commission