

# Crypto Council for Innovation

Oct 31, 2022

Senator Andrew Bragg  
Liberal Senator for New South Wales  
PO Box 6100  
Senate  
Parliament House  
Canberra ACT 2600

*Re: The Digital Assets (Market Regulation) Bill 2022*

Dear Senator Bragg:

The Crypto Council for Innovation (“CCI”) submits this letter in response to the The Digital Assets (Market Regulation) Bill 2022.<sup>1</sup> CCI appreciates the opportunity to share its information, expertise, and views on this vital issue with your team. Digital assets represent one of the most significant innovations in finance—and beyond—in many years, with the potential to alter ownership structures, commercial applications, cross-border payments, transaction processing and settlement, access to capital, investment opportunities, and much more. These developments contribute to equitable growth and financial inclusion, as well as investor and consumer choice and security. The regulation of this space, therefore, is an important question for policymakers.

## SUMMARY

As we discuss in more detail below, cryptocurrencies and blockchain applications more generally are significant and evolving technological innovations with many use cases developed under a variety of business models. These innovations have the potential to bring increased transparency, security, efficiency, and inclusion not only to financial services, but to other sectors as well. As your team considers what legislation and regulation are appropriate to promote responsible innovation in cryptocurrencies and other digital assets, CCI respectfully submits that the policies should be guided by key principles, including:

- Legislation and regulation should be tailored to address the unique characteristics of digital assets – and carefully consider the nuances within the space.
- Legislation should take a strategic and forward-looking approach.

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<sup>1</sup> <https://www.andrewbragg.com/digital-assets-market-regulation-bill-2022>

- Legislation and regulation should create a level playing field for all who want to be in the industry.
- Legislation and regulation should promote responsible innovation while putting in place appropriate protections for consumers and investors.
- Legislation should take a deliberate and thoughtful approach to definitions and categorization.

The following letter provides our thinking on these principles, followed by policy and regulatory considerations for each. We note that these principles are high-level and may be applied to this or any future legislation.

Crypto and blockchain technology will be core to the digital economy for any sovereign jurisdiction regardless of geographic regions and political affiliations. Getting policies and regulation right at this stage will be key to ensuring that the potential of the technology is realized.

The space is moving quickly and in many exciting directions. The Crypto Council for Innovation hopes to be a resource to policymakers and regulators to navigate this evolving space.

## ABOUT CCI

CCI is an alliance of crypto industry leaders with a mission to communicate the benefits of crypto and demonstrate its transformational promise. CCI members include some of the leading global companies and investors operating in the crypto industry, including Andreessen Horowitz, Block (formerly Square), Coinbase, Electric Capital, Fidelity Digital Assets, FTX.US Gemini, Paradigm, and Ribbit Capital. CCI members span the crypto ecosystem and share the goal of encouraging the responsible global regulation of crypto to unlock economic potential, improve lives, foster financial inclusion, protect national security, and disrupt illicit activity.

## DISCUSSION

### **I. Legislation and regulation should be tailored to address the unique characteristics of digital assets – and carefully consider the nuances within the space.**

Digital assets represent a once-in-a-generation opportunity to realize benefits such as trust, immutability, and resilience arising from recording transactions on a distributed network. Accordingly, any legislation or regulation of cryptocurrencies should be tailored to address the unique characteristics of cryptocurrencies.

A challenge is to understand when a financial innovation is sufficiently like a previous activity that it can be safely and appropriately regulated within existing statutory authority merely by expanding existing regulation to cover it, and when a financial innovation is sufficiently different that it requires a new, or largely new, approach. CCI respectfully submits

that digital assets activities tend to be sufficiently different in their characteristics, risks, and benefits that a new approach will often be warranted.

Crypto and blockchain technology are underpinned by fundamentally new operational, technical, and business models. This fundamentally new innovation has opened a new model for peer-to-peer value exchange in the digital economy. Though the first use case was financial, the innovation found in the Bitcoin white paper<sup>2</sup> has opened a world of possibilities. Conversations about central bank digital currencies (CBDCs),<sup>3</sup> digital art and non-fungible tokens (NFTs),<sup>4</sup> digital identity,<sup>5</sup> and decentralized finance<sup>6</sup> would not be possible without this fundamental transformation.

One reason that this is important is that certain legacy regulatory frameworks may be ill-suited for addressing the unique characteristics of cryptocurrencies. “Shoe-horning” cryptocurrencies into legacy regulatory frameworks may create unanticipated risks and prevent Cryptocurrencies from providing a medium of exchange that can reduce transaction costs, including fees, time, transfer limits, vulnerability to abusive practices. Cryptocurrencies can also improve access to financial services.

### ***Policy and regulatory considerations***

#### Scope

Given the wide range of use cases and applications covered within the digital assets space, legislation should be appropriately tailored. As we have seen with proposals from the European Union, Financial Stability Board, and the United States Congress, it may be appropriate to have separate legislation and considerations for crypto, stablecoins, and central bank digital currencies (CBDCs), given the differences in their uses and technical underpinnings. Even within certain categories, such as stablecoins, a recognition of sub-categories may be necessary.

This bill aims to tackle both stablecoins and the digital yuan, among other aspects of crypto and blockchain technology. While both topics are important, combining their legislation may not allow for the nuance that is necessary to address such different and quickly-evolving spaces. We recommend the digital yuan be treated separately.

#### Licensing

Many financial regulations have historically been based on an entities-based approach requiring licensing or chartering of a legal entity to conduct permissible financial activities. An entities-based approach, however, is less suited to blockchain-based financial services and products, which are more distributed than traditional finance and may have no specific entity with unilateral control of the financial product or service.

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<sup>2</sup> <https://bitcoin.org/bitcoin.pdf>

<sup>3</sup> <https://www.bis.org/publ/bppdf/bispap125.htm>

<sup>4</sup> <https://time.com/5947720/nft-art/>

<sup>5</sup> <https://www.coindesk.com/podcasts/coindesk-money-reimagined/getting-internet-identity-right-30-years-on/>

<sup>6</sup> <https://www.weforum.org/whitepapers/decentralized-finance-defi-policy-maker-toolkit>

A licensing regime may not be suitable for many crypto products and services. Rather it may be more fruitful to identify who are the key parties involved with the provision of the crypto asset-related product or service. These key parties, such as the development team, blockchain infrastructure, banks, token holders, validators, etc., may not have unilateral control over the service or product, but they can provide important information about the roles they play in the provision of the service or product.

Finally, a licensing regime may not be suitable for all crypto-related financial services or products because in the near future a large portion of the global financial system will be running on blockchain technologies. Crypto will be mainstream and will not be considered a category apart from traditional financial services. Thus, a separate licensing regime for crypto asset-related entities may not be a future-proof approach to regulation. Regulating and enforcing all crypto assets under existing securities law may cause inadvertent harm to the overall digital asset ecosystem and Australia's innovation competitiveness as it compares to other regional jurisdictions in Asia and abroad.

A study of regional licensing regimes and crypto asset classification research as guidance may be useful, as well as exploring collaboration opportunities with jurisdictional partners and regulatory counterparts. Where applicable, CCI will be honored to facilitate such conversations within our network and connections with global policy makers.

## **II. Legislation should take a strategic and forward-looking approach.**

Given the nascency of the crypto and digital assets space, there is a great deal of activity and developments are moving very quickly. As such, policies should take a strategic and forward-looking approach. In addition to considering the nuances in the space, as discussed, it is important that policy is not driven by news cycles. A proactive approach will set countries apart in this emerging space. For policymakers, it will be critical to consider which innovations and applications are a priority and legislate accordingly.

### ***Policy and regulatory considerations***

#### Tailored approaches

Australia may choose to learn from the examples of other countries that have worked towards tailored approaches for various use cases and applications. For example:

1. Monetary Authority of Singapore - Guidelines on Provision of Digital Payment Token Services to the Public<sup>7</sup>
2. FINMA (Switzerland) - Utility and Payment tokens classification and guidelines<sup>8</sup>

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<https://www.mas.gov.sg/regulation/guidelines/ps-g02-guidelines-on-provision-of-digital-payment-token-services-to-the-public>

<sup>8</sup> <https://www.finma.ch/en/documentation/dossier/dossier-fintech/entwicklungen-im-bereich-fintech/>

## Global alignment

This cross-jurisdictional information-sharing and learning is also critical to ensure that there are consistent rules of the road across the world. Gaps in legislation or regulation may lead to regulatory arbitrage. At the same time, vastly different regimes from country to country may mean that service providers are not able to scale and serve customers around the world.

### **III. Legislation and regulation should create a level playing field for all who want to be in the industry.**

CCI believes that consumers and investors should have a chance to choose the responsible innovations that work best for them. Currently, many different types of businesses engage in digital assets activities through a variety of business models and product offerings. Although some product offerings may share some characteristics with legacy products, the government should carefully consider the full range of characteristics of the offerings, rather than allow one or a few characteristics to drive a conclusion that they may be offered only by entities permitted to offer similar legacy products. For example, if a product has some characteristics in common with products offered by banks, that should not mean that only banks should be permitted to offer these products. Any legislation or regulation should create a level playing field for all who want to be responsible innovators in the industry, rather than artificially or unnecessarily constraining which entities may participate.

### **IV. Legislation and regulation should promote responsible innovation while putting in place appropriate protections for consumers and investors.**

Any new legislation and regulation of the industry should promote responsible innovation, rather than curtail, restrict, or preclude it. At the same time, it is important to put in place appropriate protections for consumers and investors. CCI strongly supports both of these goals so that consumers, businesses, and investors can receive the full benefits of cryptocurrencies and the technologies that support them, while being appropriately informed of and protected from the risks. CCI agrees that we should work towards consumers having proper disclosures, appropriate safeguarding controls and measures, protections and a clear process for when something goes wrong.

## ***Policy and regulatory considerations***

### Parsable disclosures

At the end of the day, consumer protection is about ensuring that average consumers can make informed decisions within a set of choices that work for them. Information should be

presented in a manner that doesn't require a law degree or technical background to understand. Specifically, we support the creation of a meaningful and practical disclosure regime that includes information regarding material risks and conflicts of interest. Fair communication and advertising standards will also give investors and consumers transparency into financial tools and products and the entities which may be facilitating them.

**V. Legislation should take a deliberate and thoughtful approach to definitions and categorization.**

Given the diversity in the space, definitions will matter. Whether and how a service can operate will be determined by its categorization. As such, getting this right at the outset is of critical importance. This includes capturing the diversity of decisions around economic incentives, governance, and technology.. Moreover, a dedicated effort will carefully consider both the policy and regulatory implications – including who should regulate a given project and why – as well as technical standards and how this plays into the classification of assets and technical projects.

***Policy and regulatory considerations***

Definitions

We appreciate the efforts to provide clarity on definitions. However, the bill leaves unclear precise definitions of how digital assets can and should be classified – a question that we are seeing playing out globally. We have followed Australia's efforts towards "token mapping," which could prove to be an essential step before assigning regulators and classifying various crypto projects.<sup>9</sup> Classifying some tokens and not others may be problematic down the road for those that are not expressly enumerated. To date, regulation by enforcement or reactive regulation has not worked well, with significant implications for consumers.

Studies

Around the world, policymakers have recognized that there are some aspects of digital assets that may be challenging to legislate or categorize at this moment in time. As such, they have commissioned studies on these areas to ensure that legislation does not inadvertently stifle innovation. For example, the European Union's Markets in Crypto Assets (MiCA) Regulation commissions studies on decentralized finance (DeFi) and non-fungible tokens (NFTs), which will be used to inform future legislation. These may be used as critical policy-making tools in addition to efforts like the token mapping exercise.

Stablecoin categorization

We also recommend evaluating stablecoin licensing requirements based on different characteristics and underlying mechanics of stablecoin issuance. Not all stablecoins are designed equally, and varying design decisions can affect factors like volatility, liquidity, and

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<sup>9</sup> <https://www.coindesk.com/policy/2022/08/22/australia-to-use-token-mapping-as-framework-for-crypto-regulation/>

accountability. There are four primary stablecoin types (fiat-backed, crypto-backed, commodity-backed, and algorithmic) and each may require different considerations.

CCI believes fiat-backed payment tokens, whether they be CBDCs or private stablecoins, can power the ecosystem, and must be treated as cash-equivalent under laws, regulation and accounting. These payment tokens should be backed 1:1, be secure, and have sufficient risk management practices. Consumers and investors should have the right to redemption.

## CONCLUSION

In conclusion, cryptocurrencies and blockchain applications have already delivered and promise further to deliver great benefits to consumers, investors, businesses, and the economy as a whole. As Australia considers how to promote responsible innovation in this area, we hope your team will be guided by the key principles outlined above. So guided, CCI is confident that responsible innovators in this field will continue to create products and services that leverage the inherent strengths of blockchain technology and bring the benefits of transparency, security, and efficiency to a range of users and sectors.

Sincerely,

/s/ Linda Jeng  
Linda Jeng  
Chief Global Regulatory Officer & General Counsel  
Crypto Council for Innovation



Sheila Warren  
Chief Executive Officer  
Crypto Council for Innovation