



Australian Government

AUSTRAC

Senate Economics Legislation
Committee

Inquiry into the Digital Assets
(Market Regulation) Bill 2023

May 2023

AUSTRAC submission

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Outline of submission

The Australian Transaction Reports and Analysis Centre (AUSTRAC) welcomes the opportunity to make a submission to the Senate Economics Legislation Committee's Inquiry into the Digital Assets (Market Regulation) Bill 2023. This submission is consistent with our other submissions in response to Treasury's 2022 consultation paper *Crypto asset secondary service providers: Licensing and custody requirements* and more recently, Treasury's consultation on token mapping in March 2023.

AUSTRAC's submission provides broader context related to financial crime risks and global anti-money laundering and counter-terrorism financing (AML/CTF) standards, for the Committee's consideration.

The submission is in two parts:

- Part 1 provides an overview of AUSTRAC and AUSTRAC's regulation of digital currency exchange (DCE) providers under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act)
- Part 2 addresses the international policy context for applying AML/CTF measures to the businesses providing services related to digital assets.

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Part 1: Overview

About AUSTRAC

AUSTRAC is Australia's financial intelligence unit (FIU) and AML/CTF regulator. As Australia's FIU, AUSTRAC provides financial transaction data and actionable financial intelligence to law enforcement, national security, human services and revenue agencies (AUSTRAC's partner agencies), as well as international counterparts. Partner agencies use this information to assist them to detect, prevent and disrupt money laundering and terrorism financing (ML/TF) and other serious crime.

As a regulator, AUSTRAC oversees the compliance of more than 17,000 Australian businesses with the AML/CTF Act and associated Rules. AUSTRAC's regulated population ('reporting entities') includes a broad range of businesses from across the financial services, gambling, bullion, remittance and DCE sectors. These businesses range from major banks and casinos to single-operator businesses, but all must comply with applicable obligations in the AML/CTF Act, and implement effective AML/CTF systems and controls to identify and mitigate ML/TF risk.

AUSTRAC uses our knowledge of reporting entities, industry trends and ML/TF risks to direct our regulatory efforts towards vulnerabilities and high-risk entities, which increases resilience to criminal abuse in the financial sector. Our regulatory work and engagement with reporting entities improves the volume and value of financial intelligence provided to us, and subsequently disseminated to our partner agencies.

AUSTRAC may take enforcement action against a reporting entity for serious and/or systemic non-compliance with the AML/CTF Act. In instances where reporting entities fail to meet their obligations, well-targeted and proportionate enforcement action can benefit reporting entities and the wider community, by contributing to the broader integrity of the financial system.

AUSTRAC regulation of DCE providers

Australia's AML/CTF regime adopts a risk and principles-based approach to regulation, recognising that regulated businesses are best placed to identify, mitigate and manage their ML/TF risk.

Businesses that provide a 'designated service' listed in section 6 of the AML/CTF Act are reporting entities and have certain regulatory obligations.

The designated service relevant to the DCE sector is item 50A¹ in Table 1 of section 6 of the AML/CTF Act. Item 50A is the service of exchanging digital currency for money (whether Australian or not) or exchanging money (whether Australian or not) for digital currency, where the exchange is provided in the course of carrying on a DCE business.

Like all reporting entities, item 50A DCE providers must:

¹ Designated service item 50A focuses on the fiat-digital currency on and off ramps, i.e. the exchange of fiat currency for digital currency (i.e. crypto asset) and vice versa.

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- enrol with AUSTRAC
- establish and maintain an AML/CTF program to help identify, mitigate and manage the ML/TF risks the business faces
- conduct initial and ongoing customer due diligence
- report certain transactions to AUSTRAC, including suspicious matters and threshold transactions, and submit compliance reports
- keep records.

DCE providers must also register with AUSTRAC before providing DCE services. Failure to do so is a criminal offence. Registration is intended to reduce the risk that criminals and their associates enter the DCE provider sector, and the key consideration is whether registering the person would involve a significant ML/TF or other serious crime risk.

AML/CTF obligations for DCE providers operating in Australia commenced on 3 April 2018.

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Part 2: International AML/CTF context

Australia is a founding member of the Financial Action Task Force (FATF)², the global AML/CTF standard-setting body. The Attorney-General's Department leads Australia's engagement with FATF. As a FATF member, Australia is committed to implementing the FATF Recommendations and is publicly reviewed for compliance with, and the effective implementation of, FATF's international best practice standards (FATF Standards).

A range of escalating consequences can be applied where a country fails to effectively comply with and implement the FATF Standards. This can include a public statement, formal monitoring and revocation of FATF membership. Serious shortcomings in FATF compliance can affect a country's economy, increasing the cost of doing business with the country, reducing foreign investment, and making it more difficult for businesses to engage with the global financial system.

FATF Recommendation 15 in relation to virtual assets and virtual asset service providers

Australia implemented AML/CTF obligations for DCE providers before FATF adopted global standards for regulating the sector.

In 2019 FATF amended its standards to require countries to apply AML/CTF regulation to five categories of services. These services are set out in FATF's definition of 'virtual asset service provider' (VASP), which is the international equivalent of 'digital currency exchange' under the AML/CTF Act.

Virtual asset service provider (VASP) means any natural or legal person who is not covered elsewhere under the FATF Recommendations, and as a business conducts one or more of the following activities or operations for or on behalf of another natural or legal person:

- i. exchange between virtual assets and fiat currencies
- ii. exchange between one or more forms of virtual assets
- iii. transfers of virtual assets
- iv. safekeeping or administration of virtual assets or instruments enabling control over virtual assets
- v. participation in and provision of financial services related to an issuer's offer and/or sale of a virtual asset.

Australia currently regulates the first activity listed—the exchange between virtual assets and fiat currencies—for AML/CTF purposes. AUSTRAC registration requirements, and other AML/CTF measures, do not currently apply to the remaining activities in the FATF definition, unless they incidentally involve the exchange between virtual assets and fiat currency.

² Refer to the [FATF website \(https://www.fatf-gafi.org/\)](https://www.fatf-gafi.org/) and the [FATF Recommendations](#).

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FATF VASP licensing/registration requirements

FATF requires that VASPs undertaking any of the five activities in FATF's definition be licensed or registered by a competent authority that takes measures to prevent criminals and their associates from owning, controlling or managing a VASP.

- VASPs are expected to be supervised or monitored by a competent authority, which should conduct risk-based supervision or monitoring.
- Supervisors are expected to have powers to impose a range of disciplinary and financial sanctions, including the power to withdraw, restrict or suspend the VASP's licence or registration, where applicable.

FATF does not require that VASPs be subject to a bespoke AML/CTF licensing or registration regime. A licensing framework that applied to a broader range of financial services providers, including VASPs, would be sufficient if it achieves the purpose of keeping criminals out of the sector (e.g. through fitness and propriety checks).