

SENATE ECONOMICS REFERENCES COMMITTEE

INQUIRY INTO DIGITAL CURRENCIES

Attorney General's Department

**Senator Dastyari asked the following question at the hearing held in Canberra on 4 March 2015<sup>1</sup>**

“**CHAIR:** ... What we are hoping to be able to do as part of this process—and perhaps some of this is something you will take on notice and come back to us with in time as part of this process—is ideally to present a bipartisan approach and say, 'This is the best way of addressing the security concerns; this is the best way of addressing some of the taxation concerns; this is the best way of addressing some of the industry growth concerns.' I know you are doing this in other spaces in other fields and it is a bit different to do it through the economics committee, but, for us to be able to produce a whole-of-government approach on how to deal with these issues, could you take on notice some ideas and recommendations about how we would be able to address the concerns. Everything you have outlined, Mr Mossop, is all very real, but I also note that, because it is coming, I think it would be improper for us to give the government a report that is a bipartisan report and approach, saying, 'This is how we address all these issues,' and not tackle this big part of it. I know now is probably not the time to outline it. If you have some ideas and views, certainly share them now, but, if it is something that you are able to take on notice, we will certainly write to you in coming weeks about that.”

**The answer to the honourable senator's question is as follows**

As outlined in the department's submission (No. 42 of December 2014), digital currencies present a range of significant issues and security concerns. For regulatory authorities and law enforcement agencies, the immediate challenge lies in finding ways to mitigate the risks posed by the increased anonymity and geographical diffusion of decentralised digital currencies. For policymakers, the challenge is to formulate a coherent regulatory response in a rapidly developing and increasingly technologically complex space that is not subject to the supervision of a central regulatory or oversight body. The challenge for all parties going forward will be to encourage the development of digital currency in a way that fosters and utilises its beneficial aspects, while securing protection of consumers and businesses against illegal activity and minimising negative national security implications.

**Addressing the potential money laundering and terrorism financing risks posed by digital currencies**

***Regulating convertible digital currency exchangers***

There appears to be a growing international consensus that convertible digital currency exchangers—being the gateways or “on and off ramps” where digital currency activities

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<sup>1</sup> Senate Economics References Committee, Parliament of Australia, *Digital Currency* (Wednesday, 4 March 2015) 9-10.

intersect with the traditional fiat currency financial system—represent the logical starting point for developing the first stage of a coherent regulatory response to the money laundering and terrorism financing (ML/TF) risks posed by digital currencies.

In June 2014, the Financial Action Task Force (FATF) conducted a risk assessment on digital currencies, which concluded that, at least in the near-term, only *convertible* digital currencies (being those capable of being used to move value into and out of fiat currencies and the regulated financial system) were likely to present significant ML/TF risks. The risk assessment also suggested that any regulatory response should only target convertible digital currency *exchangers*, and not seek to regulate users who obtain digital currencies to purchase goods or services. This recommendation has since been reiterated in the *Guidance for a Risk-Based Approach to Virtual Currencies* paper, which was adopted and published by the FATF Plenary on 26 June 2015.<sup>2</sup>

While the Guidance paper is non-binding, it recommends that countries consider applying the FATF Recommendations to both convertible digital currency exchangers and any other types of institution that act as nodes where convertible digital currency activities intersect with the regulated financial system. This would necessitate:

- requiring convertible digital currency exchangers to conduct customer due diligence, keep transaction records, make suspicious matter reports and include the required originator and beneficiary information when conducting wire transfers
- applying registration/licencing requirements to domestic entities providing convertible digital currency exchange services between digital currencies and fiat currencies, and
- subjecting domestic entities providing convertible digital currency exchange services to adequate supervision and regulation.

The United States, Canada, China, France, Singapore and Switzerland have all recently commenced the institution of reforms along these lines, while the United Kingdom has announced its intention to follow suit.

### ***Current regulation under Australia's AML/CTF regime***

As previously noted, digital currencies remain largely outside the scope of the Australian anti-money laundering and counter-terrorism financing (AML/CTF) regime. Currently, reporting entities that provide a designated service are required to provide reports about suspicious matters, threshold transactions of \$10,000 or more, and all international funds transfer instructions (both sent and received). While these reporting obligations provide partial visibility of digital currencies' intersection with the traditional financial sector, the information obtained is likely to be narrow in scope and of only limited utility for regulatory or law enforcement purposes.

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<sup>2</sup> FATF, *Guidance for a Risk-Based Approach to Virtual Currencies*, available online at: <<http://www.fatf-gafi.org/documents/documents/guidance-rba-virtual-currencies.html>>.

The department has undertaken extensive consultation with stakeholders from both partner agencies and industry as part of the ongoing statutory review into the AML/CTF Act, which is due to be finalised shortly. From the feedback the department has received to date, there is a widespread acceptance and expectation that digital currencies should be regulated under the AML/CTF Act, though submissions differed as to both the manner and the extent to which such regulation should occur.

We emphasise that given that the statutory review of the AML/CTF Act is ongoing, the department is not in a position to pre-empt our recommendation to Government on these issues.