



COVERSHEET

Minister	Hon Andrew Bayly	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Government Responses to inquiries by the Finance and Expenditure Committee into cryptocurrencies and banks' processes and consumer protection for scams	Date to be published	By 10 April 2024

List of documents that have been proactively released

Date	Title	Author
February 2024	Government responses to inquiries by the Finance and Expenditure Committee into cryptocurrencies and banks' processes and consumer protections for scams	Office of Minister of Commerce and Consumer Affairs
22 February 2024	Government responses to inquiries by the Finance and Expenditure Committee into cryptocurrencies and banks' processes and consumer protections for scams LEG-24-MIN-0014 Minute	Cabinet Office

Information redacted

NO

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

In Confidence

Office of the Minister of Commerce and Consumer Affairs

Cabinet Legislation Committee

Government responses to inquiries by the Finance and Expenditure Committee into cryptocurrencies and banks' processes and consumer protections for scams

Proposal

- 1 This paper seeks Cabinet's approval of the Government responses to two reports of the Finance and Expenditure Committee (the Committee) entitled:
 - 1.1 *Inquiry into the current and future nature, impact, and risks of cryptocurrencies* (Cryptocurrency Inquiry); and
 - 1.2 *Briefing on banks' processes and consumer protections for scams* (Scams Inquiry).

Executive Summary

- 2 In August 2023, the Committee reported back to the House of Representatives (the House) on the Cryptocurrency Inquiry and the Scam Inquiry. The Government must respond to these inquiries and present the responses to the House by 1 March 2024. As Minister of Commerce and Consumer Affairs, I am responsible for seeking Cabinet approval and presenting the responses to the House.
- 3 The Cryptocurrency Inquiry centres around the view that New Zealand should take a more proactive and innovation-friendly approach to digital assets and blockchain (including cryptocurrencies). It makes 22 recommendations related to the development of digital assets and blockchain in New Zealand. I propose that the Government response indicates that the Government wishes to support industry growth and will continue to proactively consider the recommendations made in the Inquiry. I also propose the response notes that the Government will monitor international developments and take an evidence-based approach to regulation.
- 4 The Scams Inquiry found that banks' processes should be strengthened to protect New Zealand consumers against scams. It makes three recommendations to achieve this, focused on industry action. I propose that the Government response to the Scams Inquiry signals a need for stronger banking processes and consumer protections against scams to ensure New Zealand stays up to date with international best practice and to avoid eroding trust in our banking sector.

Background

Cryptocurrency Inquiry

- 5 In June 2021, the Committee launched the Cryptocurrency Inquiry. The Committee reported back to the House in August 2023 with 22 recommendations related to the development of digital assets in New Zealand (including cryptocurrencies). The Inquiry was based on public and government submissions and advice prepared by independent advisers appointed to the Committee.
- 6 The Committee advised that the primary purpose of the Cryptocurrency Inquiry is to facilitate more public debate and to prompt further consideration and work by the Government to ensure New Zealand is well placed to adapt to the opportunities, challenges, and risks associated with digital assets.
- 7 'Digital assets' is a broad term that includes anything that is uniquely identifiable and is stored digitally. The final Inquiry report uses the term 'digital assets' to describe cryptocurrencies and other assets that are secured and supported by blockchain technology, such as non-fungible tokens (NFTs).

Scams Inquiry

- 8 The Committee launched the Scams Inquiry in 2022 following several high-profile cases of digital and online scams which led to victims losing millions of dollars. The Committee was concerned about the impact these scams have on victims' lives and wanted to understand how banking processes in New Zealand could better protect consumers.
- 9 The Committee met between 4 May 2022 and 16 August 2023 and received evidence from the Banking Ombudsman Scheme, the Council of Financial Regulators, and the Interagency Fraud Working Group. It also received information from the Parliamentary Library.
- 10 The Committee reported back to the House in August 2023 with three recommendations on how banks' processes could be strengthened to protect consumers against scams.

The Committee's findings on the Cryptocurrency Inquiry

- 11 The primary theme of the Cryptocurrency Inquiry centres around the view that New Zealand should take a more proactive and innovation-friendly approach to digital assets and blockchain (including cryptocurrencies). It notes that the current 'wait and see' approach could risk New Zealand missing out on the benefits of development in the digital asset industry.
- 12 The Cryptocurrency Inquiry also focuses on promoting more collaboration across government agencies and between government and industry. It notes that a more structured approach to collaboration is needed in order to contribute to a better environment for innovation.

- 13 The Committee recommended that the Government take note of and consider the 22 recommendations made by its independent advisors. Key recommendations are summarised below.
- 13.1 *Regulation of digital assets:* the Inquiry recommends that the Government should adopt policy settings to encourage developments in digital assets and blockchain in New Zealand. However, it does not recommend adopting a fully integrated regulatory system, and instead suggests more consistent and informed guidance from government agencies on how existing legislation and regulatory rules apply in the digital asset space. It also recommends adding a defined class of digital assets which are used for investment purposes as a new category of “financial advice product” to bring them into the regulated financial advice and client money–client property services regimes.
 - 13.2 *Industry support and development:* the Inquiry recommends initiatives to facilitate more collaboration across government agencies and between government and industry. This includes a recommendation to create a cross-agency working group to lead the government’s work with industry to develop policy for digital assets in New Zealand.
 - 13.3 *Immigration:* the Inquiry recommends that the Government direct Immigration New Zealand and related departments, in consultation with industry, to continue to expand the skills shortages list to include persons with skills in the areas of digital assets and blockchain.
 - 13.4 *Education:* the Inquiry recommends the development of digital asset and blockchain training and educational resources for tertiary and secondary educational institutions, as well as for government and industry.
 - 13.5 *Taxation:* the Inquiry recommends that Inland Revenue explore, in consultation with the digital assets industry in New Zealand, whether tax incentives for digital assets service providers are necessary or appropriate.
 - 13.6 *Anti-money laundering and countering financing of terrorism:* the Inquiry recommends that ongoing amendments to the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (and associated regulations) balances combatting genuine money-laundering and terrorism financing risks against the threats to innovation and industry of overly strict rules.
 - 13.7 *Access to banking services:* the Inquiry recommends that the Reserve Bank of New Zealand (RBNZ) develop a scheme to address due diligence requirements of banks to ensure organisations dealing with digital assets can access banking services. It also recommends that the Government ensure that organisations who have been improperly de-banked can access banking services.

- 13.8 *Central bank digital currency*: the Inquiry recommends that RBNZ continue with design work on its central bank digital currency.

Comment on the Committee's findings and recommendations on the Cryptocurrency Inquiry

- 14 There are many economic benefits of digital assets, blockchain and related technologies for greater competition and innovation in financial services, and the wider economy. Digital assets may also offer significant opportunities for the technology sector, which is New Zealand's second-largest exporter.
- 15 Digital assets are well established in many different contexts around the world, and their potential applications can be extensive. For example, blockchain technology can support anti-money laundering efforts by supplying a decentralised and secure method for monitoring transactions and recording audit trails of suspicious transactions. It is important that New Zealand actively supports growth of the digital asset industry, or it risks missing out on opportunities.
- 16 I am aware that digital assets can pose risks to market integrity and individual investors, and cryptocurrency has been an enabler of ransomware and some other transnational crime and scams. The recent volatility in global cryptocurrency markets has demonstrated in particular the market and investment risks of cryptocurrencies. This has led to an increased international focus on the need for a coordinated global regulatory approach and supervisory frameworks for digital and crypto assets.
- 17 I also note that the International Organization of Securities Commissions and Financial Action Task Force have made policy recommendations to all jurisdictions to apply securities and anti-money laundering/counter-financing of terrorism laws to digital assets and digital asset service providers on a "same activities, same risks, same regulatory outcomes" basis. There is a risk of regulatory arbitrage if New Zealand does not keep in step with these major digital asset regulatory developments.
- 18 I therefore consider that the Government's approach to digital assets should support industry development, whilst continuing to consider appropriate policy to manage these risks. This is the approach being taken by the United Kingdom and Australia. I recommend that the response notes that the Government will continue to monitor international developments and to take an evidence-based approach to regulation.
- 19 Many of the Cryptocurrency Inquiry recommendations are long-term in nature and relate to a range of Ministerial portfolios, including Finance, Education, Justice, Internal Affairs and Revenue. Rather than responding to each of the Inquiry recommendations now, I propose that the Government provide a general response to the Inquiry as a whole, and continue to proactively consider the recommendations raised in the Inquiry report.
- 20 A copy of the proposed Government response to the Cryptocurrency Inquiry is attached at Appendix 1.

The Committee's findings on the Scams Inquiry

- 21 The Committee found that banks' processes should be strengthened to protect New Zealand consumers against scams and made three recommendations to Government:
- 21.1 New Zealand adopt a system similar to the United Kingdom's Confirmation of Payee scheme as part of the move to open banking;
 - 21.2 the Government urge the New Zealand Banking Association to update its Code of Banking Practice to offer further measures that help protect consumers from scams and fraudulent activity; and
 - 21.3 A voluntary compensation or reimbursement scheme be investigated for the New Zealand setting, similar to the one operating in the United Kingdom.

Comment on the Committee's findings and recommendations on the Scams Inquiry

- 22 There has been a steady increase in the prevalence and sophistication of scams and fraud which has led to the loss of millions, with some victims losing their entire life savings. The latest estimate from 11 of New Zealand's largest financial institutions is that just under \$200 million was lost to scams in the last year, with most of these going unreported. The financial and emotional impact on the victims of these scams is significant. More broadly, scams reduce New Zealanders' trust and confidence in the financial services system and in transacting online.
- 23 I agree with the Committee's conclusion that bank processes in New Zealand should be strengthened to protect New Zealand consumers from scams. The proposed Government response agrees with each of the three recommendations.
- 24 Regarding recommendation 1, I note that the banking sector's adoption of a confirmation of payee system can proceed in tandem with the move to open banking. The New Zealand Banking Association (the Banking Association) has announced that its members will establish a confirmation of payee system. I have talked to the banking sector and expect them to make good progress towards implementation of this system in 2024. This is encouraging, and I have asked my officials to work closely with the banking industry to offer support, monitor progress and ensure timely implementation. A confirmation of payee system is not a silver bullet, but it is an essential element in the toolbox to combat online scams and fraud. The Commonwealth Bank of Australia reported in November 2023 that its confirmation of payee system has prevented scam payments of about \$38 million and mistaken payments of about \$100 million since its launch in March 2023.
- 25 The Banking Association has also announced a range of other measures to increase consumer protections on scams. While I commend the sector for

their efforts, these initiatives do not cover the Committee's second and third recommendations.

- 26 Therefore, I propose to write an open letter to the banking industry setting out the Government's expectations of the sector with respect to responding to scams and fraud. This includes a speedy implementation of the announced confirmation of payee system, updating the Code of Banking Practice and adopting a voluntary reimbursement scheme. If the Banking Association does not make progress on these recommendations, I will consider options for government intervention to provide these protections to New Zealand consumers.
- 27 Finally, I note that the responsibility for addressing scams and fraud sits across several Ministerial portfolios as it is an issue that relates to national security, digital transformation, privacy, law enforcement and consumer protection. The banking industry is one of the key players in the response because the majority of scams and fraud now involve the transfer of funds to a scammer's account. I intend to take a whole-of-system approach to collaborate across these sectors to ensure a coordinated response to implementing the recommendations.
- 28 A copy of the proposed Government response to the Scams Inquiry is attached at Appendix 2.

Timing of the Government responses

- 29 The Government responses to the Cryptocurrency Inquiry and the Scams Inquiry must be presented to the House by 1 March 2024.

Consultation

- 30 The Treasury, Ministry of Education, Ministry of Justice, Department of Internal Affairs, Inland Revenue, New Zealand Police, Reserve Bank of New Zealand, Serious Fraud Office, Financial Markets Authority, and the Commerce Commission have been consulted on the recommendations and the proposed Government response. The Department of Prime Minister and Cabinet has been informed.

Financial Implications

- 31 There are no financial implications for the proposals in this paper.
- 32 Any future decisions made in relation to specific recommendations that have financial implications will be raised through those decision-making processes.

Publicity

- 33 The Government responses to the Cryptocurrency Inquiry and the Scams Inquiry will be published on the Ministry of Business, Innovation and Employment's website after they have been presented to the House.

Proactive Release

- 34 Consistent with the Government's proactive release policy, I intend to release this paper within 30 business days from the date that Cabinet considers this paper.

Recommendations

The Minister for Commerce and Consumer Affairs recommends that the Cabinet Legislation Committee:

- 35 **note** that on 17 August 2023 the Finance and Expenditure Committee presented two reports to the House entitled *Inquiry into the current and future nature, impact, and risks of cryptocurrencies* and *Briefing on banks' processes and consumer protections from scams*;
- 36 **note** that the Government needs to respond to the reports and that the responses must be presented to the House by 1 March 2024;
- 37 **invite** the Minister of Commerce and Consumer Affairs to present the Government responses to the House in accordance with Standing Order 256;

Inquiry into the current and future nature, impact, and risks of cryptocurrencies

- 38 **note** the submission of the Minister of Commerce and Consumer Affairs that the Government response to the *Inquiry into the current and future nature, impact, and risks of cryptocurrencies* indicates that Government wishes to support industry growth and will continue to proactively consider matters raised in the Inquiry, while also monitoring market developments.
- 39 **approve** the Government response to the report of the Finance and Expenditure Committee entitled *Inquiry into the future nature, impact, and risks of cryptocurrencies*;

Briefing on banks' processes and consumer protections from scams

- 40 **note** the submission of the Minister of Commerce and Consumer Affairs that the Government response to the *Briefing on banks' processes and consumer protections from scams* signal a need for stronger banking processes and consumer protections against scams;
- 41 **approve** the Government response to the report entitled *Briefing on banks' processes and consumer protections from scams*.

Authorised for lodgement

Hon Andrew Bayly,

Minister of Commerce and Consumer Affairs

Appendix 1: Proposed Government response to the Inquiry into the current and future nature, impact, and risks of cryptocurrencies

Appendix 2: Proposed Government response to the Briefing on banks' processes and consumer protections for scams