

Cryptic coin offerings

What is misleading or deceptive conduct in relation to an ICO or crypto-asset?

Australian laws and regulations that prohibit misleading or deceptive conduct may apply even if an interest in an ICO or crypto-asset is issued, traded or sold offshore. It is a serious breach of Australian law to engage in misleading or deceptive conduct.

Care should be taken to ensure promotional communications about a crypto-asset or ICO do not mislead or deceive potential consumers and do not contain false information.

ICOs and crypto-assets that are not financial products

For ICOs and crypto-assets that are not financial products, the same prohibitions against misleading or deceptive conduct apply under the Australian Consumer Law.

Conduct that may be misleading or deceptive to consumers can include:

- stating or conveying the impression that the ICO or crypto-assets (such as coins or tokens) offered are not a financial product if that is not the case
- stating or conveying the impression that a crypto-asset trading platform does not quote or trade financial products if that is not the case
- using social media to generate the appearance of a greater level of public interest in an ICO or crypto-asset
- undertaking or arranging for a group to engage in trading strategies to generate the appearance of a greater level of buying and selling activity for an ICO or crypto-asset
- failing to disclose adequate information about the ICO or crypto-asset, or
- suggesting that the ICO or crypto-asset is a regulated product or the regulator has approved the ICO or crypto-asset if that is not the case.

ICOs and crypto-assets that are financial products

For ICOs and crypto-assets that are financial products, the ASIC Act and the Corporations Act include prohibitions against misleading or deceptive conduct.

Past performance information should be accompanied by a warning that past performance is not indicative of future performance. Forecasts about the future performance of a financial product should be based on reasonable assumptions and should also state that the forecasts are not guaranteed to occur.

Warnings, disclaimers and qualifications should not be inconsistent with other content in an advertisement, including any headline claims. Warnings, disclaimers and qualifications should have sufficient prominence to effectively convey key information to a reasonable member of the audience on first viewing the advertisement. Consumers should not need to go to another website (or other page of the website) or document to correct a misleading impression.

Advertisements should be capable of being clearly understood by the audience that might reasonably be expected to see the advertisements. Advertisements should not state or imply that a product is suitable for types of consumers unless the promoter has assessed that the product is suitable for that class. Advertisements for complex products that are only appropriate for a limited group of people should not be targeted at a wider audience.

ASIC has been delegated powers from the ACCC to, in coordination with the ACCC, respond to potentially misleading or deceptive conduct relating to crypto-assets which affect Australian consumers.