

Thomson Geer

Lawyers

Advice | Transactions | Disputes

Inquiry into the Corporations Amendment (Digital Assets Framework) Bill 2025

Submission

Liam Hennessy, Partner

6 February 2026

Overview

1. Thomson Geer is a major Australian corporate law firm, recognised as a leader in the Australian market for clients' most challenging, and business-critical mandates.
2. Occupying the highest echelon of quality and service amongst Australian law firms, we act for global and domestic companies, governments and institutions on their most complex and sensitive mandates. With more than 800 people, including over 155 partners, operating out of our offices in Sydney, Melbourne, Brisbane, Perth, Adelaide and Canberra, we are one of the 10 largest firms operating in Australia.
3. Liam Hennessy, Partner is a financial services regulatory lawyer, who advises globally leading clients in relation to financial services product, licensing, governance and compliance matters. His practice serves domestic and international clients on their most complex, and challenging mandates and his experience spans periods working in London, Sydney, Melbourne and Brisbane at major law firms. He leads a team of highly experienced, and capable lawyers.
4. He is an Adjunct Professor of Law (Griffith) where he teaches financial services law, is undertaking his PhD (tokenisation of financial products), has a Masters in Law from Sydney University (advanced corporate governance) and works closely with policymakers, regulators and media. He sits on various policy groups, is a contributing author for looseleaves in LexisNexis & Thomson Reuters, was an expert reader for the Australian Law Reform Commission on its inquiry into financial services legislation, and has given evidence multiple times to Parliament on financial services reform.

Framing the issue

5. It is important to acknowledge Parliament's, Treasury's and ASIC's work. It is meaningful, substantive and grapples with the difficult issues rather than sidestepping them. Regulators, businesses and consumers are in its debt.
6. We have contributed to answering Treasury's questions, and making additional specific points, in the Digital Economy Council of Australia's and Law Council of Australia's submissions to Treasury on the consultation drafts. Our submission on the DAP / TCP reforms applies equally to the Payments Licensing Reforms (which focus on stablecoins), and focuses on two consequential ideas to assist Australia in implementing a world-beating regime.
7. Soon Australia will have 3 new financial products, and ancillary infrastructure.¹ Australia is not a scale market in digital assets relative to the US or EU, but our regulatory credibility and institutional depth are internationally known. If our digital assets framework is structurally open & interoperable, Australia can outcompete in APAC. We all – policymakers, regulators, businesses & consumers – stand to benefit from creating a better Australian market than our sovereign competitors (with the greatest respect to them, in their attempts to do the same).
8. We can do that in one of two ways. Refining the proposed law; or, experimenting with governance to assist all those who will be key users and beneficiaries of the law. Past a certain point, which we have come close to reaching with the draft legislation, the former becomes a Sisyphean task given the intrinsic complexity, and innovation. The latter recognises that behind the laws are individuals' judgments – regulators, and businesses - and seeks to assist them, for Australia's economic competitive benefit.

1.1 Idea 1: Governance

9. Given the (necessary) legislative complexity, global cross-linkages, broad market and delegated powers to ASIC / the Minister, there is broad scope for judgment. Not on core issues i.e. what is in or out of being a financial product, which the legislation covers, but on the relativities e.g. what trading & execution model make it market-making, or requiring a markets license / CS facility? What administrative issuer functions should not amount to 'control' (and therefore custody) for a token?

10. Hard cases make bad law (and equate to time / cost), so we ideally need to mitigate interpretive risk. Australia should establish a Digital Markets Panel (**DMP**) within the *Corporations Act 2001* to provide authoritative interpretational clarity for the hard tasks. Functioning like a quasi-Takeovers Panel, it:
 - a) **should not** arbitrate disputes, opine on what is already clear in the law (that's Parliament's responsibility) or curtail/displace ASIC's regulatory & enforcement functions; and
 - b) **should** provide specialist guidance on standards, exercises of discretionary power, and areas of uncertainty in the market.
11. We envisage this body, comprised of regulators, market participants, legal & compliance advisers and – importantly - blockchain developers, as being a feature of the national architecture, which expertly supports the Australian ecosystem on the grey areas. The alternative is the courts, with the time / cost imposed on ASIC and market participants to obtain clarity. And then, incidentally, in the context of broader disputes. For a global, highly innovative industry we can offer something better.
12. If this idea's time has come – we've been advocating it for years – it could prove an effective forum for regulators & businesses to work together through innovation, complexity and consumer protection. Given the proximity with tokenised stored value, the DMP's remit should extend to coordination with the Payments System Modernisation framework.
13. Treasury, in its public response to the consultations on the DAP / TCP reforms dated 2 February 2026, stated in part:

"Some stakeholders proposed creating a dedicated expert advisory panel, or repurposing ASIC's Digital Finance Advisory Panel, to support interpretation of the framework. While the Government recognises that such a panel could provide valuable non-binding input on novel intersections of technology and law, establishing a standing body is outside the scope of these reforms. This stakeholder feedback has also been provided to ASIC for consideration."
14. ASIC does not, of its own, have the power to create this body in the form recommended. Parliament does, and we ask that it give this concept consideration for Australia's mutual benefit. For more detail, including draft amendments to the legislation, see **Annexure A**.

Idea 2: Globalisation

15. Australia represents a small share of global exchange turnover, so participation by major global operators will partly depend on regulatory efficiency. If localisation requirements exceed those in Singapore or Hong Kong, leading firms may rationalise Australia out of their network, resulting in a quality-flight. We have seen that very recently with one multi-national exchange (Gemini). We do not want that for our attraction of capital, or local consumers.
16. The flashpoints are custody and trading & execution models, which are devolved to ASIC's secondary legislative powers (ss 912BE, 912BF). There are also broad Ministerial declaratory powers (s 767B), which can give rise to licensing conflicts e.g. where a financial market/clearing and settlement facility is enforced for exchanges relying on central limit order book models. Unless they support global liquidity & custody structures, the rules risk over-localising a highly global market.
17. A hyper-global new market requires a globally-minded response. We can do this through:
 - a) leveraging existing cooperation frameworks with regulators to underpin an equivalence and recognition mechanism, allowing ASIC to declare by legislative instrument a sufficiently robust foreign licence or regime is "equivalent", consistent with IOSCO / FSB standards; and
 - b) giving the DMP a role – though not an overriding power - in guiding / interpreting key standards and exercises of ASIC / Ministerial power

18. We note the Member for Wentworth's statement on 4 February 2026 (Hansard, Page 62) in connection with the debate on the DAP / TCP reforms, with strong approval:

'That said, there are opportunities for the government to do more to foster the innovation and growth of our digital asset sector. One way would be to grant ASIC the power to recognise digital currency regulatory arrangements of foreign countries, like the UK and US, as being equivalent to ours. This would open a huge door to those markets for Australian digital currency exchanges and coin issuers. It will also significantly improve the efficiency and reduce the cost of digital currency transactions in and out of Australia.'

Conclusion

19. The Productivity Commission noted our living standards depend on national productivity, and identified harnessing digital technology as a key idea to shape our future. Regulating digital assets more effectively than our global peers has immense potential for the financial services sector, and increasing efficiency and decreasing cost in transactions.
20. With minor, but critical, tweaks to the (overarchingly positive) new legislation we can create an interoperable, credible, innovation-positive jurisdiction that attracts both institutions and investors, and protects Australian consumers. One that will assist our regulators, and institutions to grapple with evolving complexity well.
21. Thank you for your consideration, and for the tangible effort in creating the *Treasury Laws Amendment Bill 2025: Digital asset, and tokenised custody, platforms*. Please do not hesitate to contact me on [REDACTED] if you wish us to elaborate on any aspect of our submission, including through attendance at any hearing(s).

Annexure A - Digital Markets Panel

Legal Structure

1. Insert a short enabling Division into Chapter 7 of the *Corporations Act* (or the Treasury Laws Amendment Bill) establishing the Digital Markets Panel (**DMP**) along the terms set out below.
2. The Minister appoints members for fixed terms from legal, financial market, custody and (critically) technology & developer backgrounds. This includes, with a percentage limit, from key regulators.
3. The Panel issues advisory and interpretational determinations, published as legislative instruments or declared “binding interpretations” under regulation.
4. ASIC, the Minister and licensees would be required to (only) *have regard to* DMP determinations in administering, enforcing or complying with the Corporations Act.
5. Decisions are reviewable on questions of law only, preserving ASIC’s operational and enforcement discretion.

Purpose and Powers

6. The DMP would provide clarity, not adjudication. Its core function would be to selectively interpret and advise on areas of regulatory uncertainty that materially affect the market, including:
 - The scope of key statutory concepts (e.g. “possession”, “control”, etc).
 - The boundary between DAPs, TCPs and financial markets/clearing facilities.
 - The meaning of ASIC standards for asset-holding, transactional and settlement functions.
 - The application of the regime to cross-border custodial and liquidity structures.
7. The DMP would not resolve disputes, limit ASIC’s enforcement function or alter the concept which are clearly set out in legislation. Its role is reserved for areas of key criticality.
8. Referrals could be made by the Minister, ASIC or industry participants. Determinations would form part of a public Digital Markets Handbook, updated annually and potentially incorporated by ASIC into regulatory guidance. During the transitional phase, the DMP should be consulted on ASIC’s standards.

Value to the Framework

- **Predictability:** Provides early, authoritative guidance on interpretational issues without requiring litigation or formal enforcement. This reduces time, and cost.
- **Efficiency:** Frees ASIC from non-core definitional disputes, allowing it to focus on supervision and enforcement. It can be empowered to really identify, and shut down the bad actors.
- **Consistency:** Ensures uniform interpretation of DAP/TCP concepts across Treasury, RBA, ASIC and APRA.
- **Implementation simplicity:** Can be legislated in short sections without structural changes to ASIC’s powers. We have done this already below, which might be used as a draft base.
- **Recognition:** we need to create a primary role for developers, and operations professionals upon whom the entire industry is based. Not *for* them, but *with* them.

Proposed additions

New Division 7.12A – Digital Markets Panel

912X Establishment of the Digital Markets Panel

- (1) *There is established by this Act a body to be known as the Digital Markets Panel (“the Panel”).*
- (2) *The Panel consists of:*
 - (a) *a Chair; and*
 - (b) *not fewer than 5 nor more than 15 other members, each appointed by the Minister for a term not exceeding three years.*
- (3) *Members must collectively have substantial demonstrable experience in one or more of the following:*
 - (a) *financial markets, payment systems or market infrastructure;*
 - (b) *digital assets, tokenisation, custody or distributed-ledger technologies;*
 - (c) *financial services law, corporate governance, risk and or compliance;*
 - (d) *prudential supervision, payments system oversight or settlement systems; or*
 - (e) *economics, consumer protection, or regulatory policy.*
- (4) *Officers or employees of ASIC, APRA, AUSTRAC or the RBA may not comprise more than 25% of the sitting members of the Panel at any one time.*

912[X] Functions of the Panel

- (1) *The functions of the Panel are to:*
 - (a) *provide interpretational guidance and advice to the Minister, ASIC, APRA, AUSTRAC and the RBA on the operation of this Chapter and any related provisions in the Payment Systems (Regulation) Act 1998 and Payment Systems and Digital Assets (Modernisation) Act 2025;*
 - (b) *issue public determinations clarifying the interpretation or application of this Act to activities involving digital asset platforms, tokenised custody platforms, tokenised payment facilities, Tokenised SVF arrangements and related activities;*
 - (c) *maintain a Digital Markets Handbook containing those determinations and advisory opinions;*
 - (d) *advise on equivalence and recognition mechanisms for overseas regimes that meet comparable regulatory outcomes under internationally accepted standards (including IOSCO, FSB, CPMI and FATF principles);*
 - (e) *provide guidance to regulators on transitional licensing, interoperability, and cross-border supervisory cooperation for digital asset and payment-system operators; and*
 - (f) *report annually to the Minister and ASIC on emerging issues, international developments and market innovations relevant to this Chapter, and publish public extracts of such guidance.*
- (2) *In performing its functions, the Panel may consult with:*
 - (a) *industry, consumer groups and professional associations;*
 - (b) *Australian regulators and any designated overseas authority; and*
 - (c) *any other person the Panel considers appropriate.*
- (3) *The Panel may publish advisory opinions or recommend that the Minister make regulations or rules for the purposes of this Act or any Act relating to payment systems, tokenised custody or digital assets.*
- (4) *ASIC, the Minister, or the RBA must consult with, and have due regard to, the views of the Panel prior to:*
 - (a) *issuing or varying standards for asset-holding, transactional, settlement or custodial requirements under ss 912BE or 912BF; or*
 - (b) *making or varying any regulation or declaration under ss 767B–768C (designation of markets or clearing and settlement facilities) or under the Payment Systems Modernisation Framework.*

912[X] Effect of Panel Determinations

(1) A determination or opinion of the Panel made under section 912[X] is a legislative instrument for the purposes of the Legislation Act 2003.

(2) ASIC, APRA, AUSTRAC, the RBA and all AFS licensees must have due regard to any current determination that is relevant to their functions, powers or obligations under this Act or the Payment Systems (Regulation) Act 1998.

(3) A determination may be declared, within the instrument, to be binding to the extent specified but must not substantively limit or affect ASIC's or the RBA's enforcement or supervisory powers.

(4) A court or tribunal may have regard to a Panel determination or advisory opinion as persuasive authority in interpreting this Act or any related payments legislation.

(5) The Panel must ensure that all determinations, advisory opinions and reasons are published on a publicly accessible website maintained by the Treasury.

912[X] Procedure and Referral Mechanism

(1) The following bodies may refer a question to the Panel:

- (a) the Minister;
- (b) ASIC;
- (c) APRA;
- (d) AUSTRAC;
- (e) the RBA;
- (f) the ACCC (where the matter relates to market access or competition in digital markets); or
- (g) any person or class of persons prescribed by regulations.

(2) The Panel may, on its own initiative, issue a draft determination or advisory opinion where it considers that regulatory or interpretational uncertainty exists.

(3) The Panel must publish all draft determinations for public consultation for a period of not less than 30 days, and must publish final reasons for each determination or opinion.

(4) The Panel must, at least once every thirty-six months, conduct a compliance and implementation review of ASIC, APRA and RBA rules issued under ss 912BE–912BF or under the Payment Systems Modernisation Framework to identify opportunities for simplification, enhancement or equivalence recognition.

912[X] Secretariat and Administrative Arrangements

(1) The Panel is supported by a Secretariat located within the Treasury portfolio.

(2) The Panel's expenses are to be met from appropriations made for the purposes of this Act.

(3) The Panel may engage consultants, advisers or secondees from Commonwealth agencies or international organisations.

(4) Panel members are remunerated in accordance with the Remuneration Tribunal Act 1973.

912[X] Consumer and Market Guidance.

(1) The Panel may, after consultation with ASIC and the ACCC, issue public consumer guidance notes on digital asset and payment-system risks, disclosure expectations, and industry conduct standards.

(2) Such guidance is intended to complement, not replace, obligations under Chapter 7, the National Consumer Credit Protection Act 2009 (Cth), Australian Consumer Law and the ePayments Code.

(3) The Panel must monitor interoperability between digital asset consumer protections and payment-system safeguards and make recommendations for regulatory alignment where necessary.

912[X] Consequential and Transitional Provisions

(1) Amend section 912[X] by inserting:

“(aa) have due regard to any relevant determination, advisory opinion or guidance note issued by the Digital Markets Panel.”

(2) Amend section 912[X] by adding:

“(e) the extent to which the asset-holding standard is consistent with any advisory opinion or equivalence declaration of the Digital Markets Panel.”

(3) Insert in Part [X] (Review of Decisions):

“A person aggrieved by a determination of the Digital Markets Panel may apply to the Federal Court for review on a question of law only, within 60 days of publication.”

(4) Add a new section to the Payment Systems (Regulation) Act 1998:

“In exercising powers under this Act, the Reserve Bank of Australia must have due regard to any relevant determination or opinion of the Digital Markets Panel under the Corporations Act 2001 where the matter concerns tokenised stored value facilities or other digital assets.”

(5) Insert transitional note:

“Prior to commencement, ASIC and the RBA must consult the Digital Markets Panel on all proposed

standards and regulations under the digital asset platforms and payment systems modernisation reforms.”

Sydney

Sixty Martin Place | Level 14, 60 Martin Place | Sydney NSW 2000
T +61 2 8248 5800 | F +61 2 8248 5899

Melbourne

Level 23, Rialto South Tower, 525 Collins Street | Melbourne VIC 3000
T +61 3 8080 3500 | F +61 3 8080 3599

Brisbane

One Eagle – Waterfront Brisbane | Level 28, 1 Eagle Street | Brisbane QLD 4000
T +61 7 3338 7500 | F +61 7 3338 7599

Perth

Level 29, Central Park Tower, 152-158 St Georges Terrace | Perth WA 6000
T +61 8 9404 9100 | F +61 8 9300 1338

Adelaide

Level 7, 19 Gouger Street | Adelaide SA 5000
T +61 8 8236 1300 | F +61 8 8232 1961

Canberra

Level 9, Civic Quarter, 68 Northbourne Avenue | Canberra ACT 2601
T +61 2 8248 5800 | F +61 2 8248 5899