

Digital Economy Council of Australia

Submission to Senate Economics Legislation Committee

23rd February 2026

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

About DECA

As the peak industry body for Australia’s blockchain, digital asset, AI, and Web3 sectors, the Digital Economy Council of Australia (DECA) champions responsible innovation. We collaborate closely with government bodies and regulators to establish frameworks that ensure Australia remains a globally competitive leader in the digital economy. DECA gratefully acknowledges the valuable insights provided by our members in shaping this response.

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1. Issue: Terminology, Definitions, and the Regulatory Perimeter

Key Point

The Bill's definition of a "digital token" under Section 761GB is overly broad and inclusive without limitation, which could inadvertently capture intellectual property, structured datasets, or trained AI model weights. Furthermore, the terminology diverges from globally recognised terms like "virtual asset" currently used by AUSTRAC, creating a risk of misalignment between domestic regulators and international partners. The definition of "factual control" used to establish "possession" also creates ambiguity for modern security architectures, such as Multi-Party Computation, where a private key is split and no single party possesses the unilateral capacity to transfer an asset. Additionally, defining "possession" in this manner risks pre-empting ongoing judicial consideration of whether cryptocurrencies are choses in action or choses in possession. Finally, defining a Digital Asset Platform as a facility that "possesses on trust" introduces legal uncertainty, given that not all exchange holdings inherently constitute a trust relationship.

Response

To resolve these ambiguities, Treasury should replace the word "possession" with "held" and establish specific criteria outlining exactly how assets should be held, avoiding confusion with traditional property law concepts. The legislation must explicitly clarify that an entity does not exercise factual control unless it can unilaterally initiate and complete a transfer of the asset. Moreover, the terminology should align with the AML/CTF Amendment Act 2024 by adopting "virtual asset" as the overarching umbrella term. The phrase "possesses on trust" should similarly be replaced with "holds for or on behalf of" to better reflect commercial realities. A legislative note should also be added to section 86 to clearly disclaim any intention of pre-empting judicial classification of digital assets.

Commentary

Implementing clear terminology is essential for achieving interoperability between the new DAP framework and existing AML/CTF obligations. By providing precise regulatory guidance on the thresholds for control, the Government can ensure that modern custody models are regulated appropriately without imposing an unintended, burdensome licensing regime on pure technology infrastructure providers.

2. Issue: Capital and Financial Adequacy Standards

Key Point

Section 912BE of the Bill empowers ASIC to establish financial adequacy standards without defining statutory limits or imposing mandatory consultation requirements. Without a strict proportionality requirement, ASIC could impose high capital thresholds designed for large, traditional custodians, effectively excluding smaller firms from the market and harming competition.

Response

The legislation should introduce a proportionality requirement obliging ASIC to consider the scale, complexity, and systemic importance of each licensee when setting these standards. Public consultation and a rigorous cost-benefit analysis must be mandatory before any financial-adequacy rules are formally imposed. Additionally, ASIC should be required to coordinate with APRA and AUSTRAC to prevent overlapping and duplicative oversight.

Commentary

While providing ASIC with flexible rule-making powers reflects sound policy intent, unchecked powers could create prudential-style obligations that are inconsistent with the Bill's underlying objectives of fostering competition and innovation. International frameworks successfully apply tiered capital requirements to ensure that regulatory compliance remains viable for start-ups while protecting consumers.¹

¹ For context, the UK's Financial Conduct Authority (FCA) and Singapore's Monetary Authority of Singapore (MAS) under the Payment Services Act apply graduated tiers of capital requirements based heavily on operational volume and systemic risk to protect start-ups from prohibitive financial hurdles.

3. Issue: Global Interoperability, Cross-Border Operations, and Jurisdiction

Key Point

The proposed Bill does not adequately accommodate global exchange models where Australian subsidiaries naturally rely on offshore parent entities or third parties for liquidity and infrastructure. There is a material risk that ASIC's standard-setting powers could be used to impose functional localisation requirements, forcing platforms to hold assets solely within Australia. Conversely, local subsidiaries of global exchanges frequently disclaim their role in maintaining wallets, which leads to them refusing to submit to the jurisdiction of Australian courts during critical asset tracing and recovery processes.

Response

To preserve global interoperability, the legislation should introduce an equivalence and recognition mechanism allowing ASIC to declare a sufficiently robust foreign licence or regime as "equivalent" if it remains consistent with applicable IOSCO or Financial Stability Board standards. The framework must explicitly ensure that ASIC's standards cannot prohibit licensed operators from utilizing compliant overseas custodial arrangements. Simultaneously, the law should oblige foreign bodies exercising custody by arrangement with an AFSL holder to maintain proper registration and submit to the non exclusive jurisdiction of Australian courts for asset tracing, recovery, and enforcement proceedings.

Commentary

Forcing localisation restricts Australian access to deep global liquidity pools and best-in-class international custody, fragmenting the market and driving up costs for local consumers. If local requirements ultimately exceed those found in competitor jurisdictions like Singapore or Hong Kong, leading multinational firms may rationalise Australia out of their network entirely.

4. Issue: Client Assets, Statutory Trust, and the 'Debanking' Reality

Key Point

The Draft Bill does not include a bespoke statutory trust for digital assets, creating a risk of weakened client protection during corporate insolvency. Relying on the legislative phrase "as trustee or bailee" is legally problematic because traditional bailment principles may not apply neatly to intangible digital assets. Additionally, some centralised exchanges operate on a total title transfer model where users merely obtain a chose in action, which may inadvertently exclude these platforms from the DAP definition entirely. Furthermore, current client money rules are fundamentally ill-suited because they require funds to be held with an Authorised Deposit-taking Institution, completely ignoring the severe and ongoing debanking issues faced by the digital asset sector.

Response

The Government must insert a bespoke statutory trust mechanism for client money and client property directly into the primary legislation to ensure absolute insolvency protection. The client money rules should be carefully modified to explicitly capture assets held in a Tokenised Custody Platform and permit digital asset businesses to hold client monies in alternative ways, such as via competing stored value facilities or as stablecoins in segregated digital wallets. Changes to the DAP definition should also explicitly capture platforms operating on the title transfer model to prevent regulatory arbitrage. Finally, dealing in client assets without express, prominent consent should be strictly prohibited as a minimum legislative standard.

Commentary

Without robust statutory trust protection, client assets remain exposed to operator insolvency risk. Applying IOSCO's Cryptoassets Recommendation 13 would provide a clear pathway for regulating exchanges using the title transfer model by imposing specific measures on legal and beneficial ownership. Furthermore, stablecoins should be fully protected in insolvency scenarios and should not automatically be treated as client money where fully segregated and verifiably backed.

5. Issue: Financial Markets and Clearing and Settlement Facility Exemption

Key Point

The existing financial markets and Clearing and Settlement (CS) Facilities licensing regimes are not fit for purpose for digital assets markets because they were designed without contemplating blockchain mechanics like atomic settlement. Applying these traditional, heavy-handed regimes to digital asset platforms introduces unworkable compliance burdens. Crucially, under the section 765A(1) exemption, a facility cannot be classified as a DAP or TCP if it is already a financial market or CS Facility, creating a perverse outcome where the platform would be fully exempt from the very asset-holding and custody rules the Bill seeks to introduce.

Response

Digital asset exchanges and Tokenised Custody Platforms should be explicitly excluded from traditional "financial market" and "CS Facility" licensing regimes. Instead, they should be regulated under the dedicated DAP/TCP regime, relying on its specific asset-holding standards and tailored trading rules.

Commentary

Traditional CS Facilities exist primarily to mitigate counterparty risk during multi-day settlement delays, but atomic settlement on-chain makes partial transactions technically impossible, effectively eliminating this specific risk natively. Applying traditional regimes will likely force exchanges to move offshore, severely limiting the ability for domestic TCP operators to successfully tokenise Australian financial products.

6. Issue: Licensing and Authorisation Framework Sequencing

Key Point

The Draft Bill overlays new DAP and TCP authorisations on top of existing AFSL categories without providing a clear sequencing mechanism, which creates a significant risk of duplicative licensing. It remains unclear whether platforms must hold both the new DAP/TCP authorisations and their existing custody permissions simultaneously.

Response

Treasury should confirm that current AFSL holders are not required to hold separate, duplicative custodial authorisations, ensuring that ASIC's standards act as a single, unified custody framework. Furthermore, Treasury should carefully coordinate the sequencing of these changes with forthcoming payments and stablecoin reforms and publish a comprehensive licensing matrix for clarity.

Commentary

A coherent, easily navigable licensing structure is essential to prevent double regulation and reduce compliance costs. Internationally, regulators publish detailed licensing matrices showing cross-regime equivalence, providing a proven model to guide market entry and compliance.²

7. Issue: Exemptions and Infrastructure

Key Point

The proposed exemptions for self-custody, staking, and public infrastructure are drafted too narrowly and risk inadvertently capturing non-custodial services. Uncertainty also remains over whether intermediated staking exemptions extend to non-reward benefits or to tokenised representations issued directly by TCPs.

² Similarly, MAS and the FCA have successfully deployed detailed licensing matrices to show cross-regime equivalents for foreign-operated platforms and established financial firms looking to enter the digital asset space.

Response

The exemption for intermediated staking under Section 912BH should be expanded to include non-reward operational benefits, and the legislation must confirm that TCPs may issue liquid staking tokens. Treasury should clarify that wallet tooling, recovery services, and multi-party computation arrangements that cannot unilaterally move assets fall outside the regulatory perimeter entirely. Finally, a clear negative list should be provided to exclude infrastructure services like node operation, indexing, and data analytics.

Commentary

Overly broad legislative drafting stifles technological innovation and discourages the adoption of secure-by-design infrastructure models. Proportionate record-keeping obligations should apply to exempt providers rather than full licensing, aligning with global frameworks that deliberately distinguish technical service provision from regulated custody.

8. Issue: Supervision and Ministerial Powers

Key Point

Sections 912BH to 912BI of the Bill grant the Minister broad discretionary powers to declare or prohibit digital asset activities without defined statutory criteria or procedural safeguards. ASIC also gains open-ended authority under section 912BE without any mandatory public consultation requirements.

Response

The legislation must introduce statutory guardrails requiring the Minister to explicitly consider competition, innovation, and systemic risk before making any designations. ASIC's standard-setting power should similarly require mandatory public consultation and proportional application that is calibrated to the licensee's scale. Clear

accountability mechanisms must be established allowing for independent review or merits appeal of these decisions.

Commentary

Rule making powers exercised without statutory guardrails create policy uncertainty. Procedural safeguards, similar to those found in section 798G(2)(b) of the Corporations Act, should apply to ensure a balanced regulatory environment.

9. Issue: Transitional Pathways and Implementation

Key Point

The proposed transition period following Royal Assent may be highly inadequate given ASIC's known resourcing constraints and the expected high volume of AFSL applications from the sector.

Response

The Government should introduce a formal "application in good faith" model that permits continued business operation once a complete licensing application has been formally lodged. ASIC should also be required to publish a list of the entities holding an "application pending" status to provide consumers with a clear reference of which entities are legally operating under the exemption regime. Transitional equivalence must be ensured for existing AFSL custodians to prevent unnecessary friction.

Commentary

A well-sequenced and realistic transition period is critical to avoid sudden market disruption. Publishing an "application pending" registry better secures business continuity and protects consumer choice during the handover period.

10. Issue: Establishment of a Digital Markets Panel (DMP)

Key Point

Given the immense legislative complexity, the global cross-linkages of the industry, and the broad delegated powers granted to regulators, there is significant scope for interpretive friction regarding standards and exercises of discretionary power.

Response

Treasury should establish a statutory Digital Markets Panel within the Corporations Act 2001 to provide authoritative interpretational clarity. Operating similarly to the existing Takeovers Panel, it would issue advisory and interpretational determinations, acting as a specialist guide on standards and uncertainty in the market without arbitrating disputes or displacing ASIC's core regulatory and enforcement functions.

Commentary

Establishing this panel would prevent hard cases from making bad law and spare ASIC from resource-draining definitional fights. The Panel could provide an incredibly effective forum for regulators and developers to work through complexity collaboratively, keeping Australia internationally competitive without forcing the industry into the courts just to obtain basic clarity.