



Committee Secretariat  
Senate Standing Committees on Economics  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Dear Committee Secretariat,

### **Submission on Digital Assets (Market Regulation) Bill 2023**

Thank you for the opportunity to provide a submission on the Digital Assets (Market Regulation) Bill 2023 (the “Bill”).

#### **Background to this Submission**

Zero Hash Australia Pty Ltd (“Zero Hash Australia”) is a wholly owned subsidiary of Zero Hash Holdings Ltd. (“Zero Hash”), which is based in the United States. The company was founded in Chicago, the United States, in 2017. The major investors include Point72 Ventures, Bain Capital Ventures and NYCA.

Zero Hash is a business-to-business (B2B2C) embedded infrastructure platform that allows businesses to embed digital assets within their product offering with low technical lift. Zero Hash, through its affiliates, enables financial institutions, stockbrokers, payment groups, as well as non-financial brands, to offer digital asset buy, sell, deposit, and withdraw functionalities, as well as custody, crypto-backed rewards, and round-ups programs to their customers.

Zero Hash offers a “fully disclosed” B2B2C business model where, through its partners’ front-end platforms (“Platforms”), Zero Hash enters a direct contractual relationship with the end consumer and handles the trading, settlement and custody for their crypto transactions. Zero Hash’s Platform partners do not need to build or maintain a crypto infrastructure because their end customers use their Platforms only to digitally transmit information and instructions to Zero Hash for the management of their Zero Hash account.

In the United States, Zero Hash’s subsidiary, Zero Hash LLC, is a FinCEN-registered Money Service Business, as well as a licensed Money Transmitter that can operate in 51 U.S. jurisdictions. Zero Hash entities also hold two virtual currency licenses from New York Department of Financial Services (“NYDFS”) (a/k/a the “BitLicense”).

In 2022, Zero Hash began its comprehensive international strategy. Zero Hash particularly values the fintech-friendly regulatory environment as well as the deep technology talent pool in Australia and plans to make Australia its APAC base. Zero Hash Australia is registered as a

Digital Currency exchange with AUSTRAC and has signed two service agreements with Australian stockbrokers, with a number in the pipeline.

## Comments on the Bill

### I. The Proposed Legislation Eliminates a B2B2C Services Model.

Zero Hash currently offers 65+ assets in the U.S. and would like to make a similar offering in Australia. Under the proposed bill, to offer all 65 assets to the customers in Australia, it appears that Zero Hash Australia would be required to obtain 3 different licenses: (1) AFLS license for the assets defined as financial products under Corporation Act; (2) a Digital Asset Exchange license (for exchanging the assets which are not included as a financial product within the Corporations Act); and (3) Digital Asset Custody license. In addition, Zero Hash Australia's institutional customers **would also** be required to become licensed, effectively eliminating the incentive for these institutional customers to enter into a B2B2C arrangement or even to enter the crypto market at all.

Applying for and maintaining the proposed crypto licenses would impose significant costs and demand significant effort for small operators and new entrants, especially companies like Zero Hash Australia's Platforms that do not specialise in cryptocurrency, but only offer Zero Hash's crypto service to their customers as one product out of many other non-crypto services. Moreover, many of our Platforms partners are already regulated entities and would be subject to oversight through their pre-existing licenses in addition to the regulatory oversight that Zero Hash Australia would be subject to under this law. Considering that the regulators would already have oversight through the B2B2C providers, such as Zero Hash Australia, we recommend that you consider an exemption on the Digital Asset Exchange license and Digital Asset Custody license for entities like our Platform partners, that offer front-end technology platforms, that enter a fully disclosed model and are powered by licensed providers, that offer the regulated services to end-customers. Indeed, this partnership model is common with other regulated financial services products.

### II. Uncertainty in Classification of Assets

At present, certain digital assets are deemed financial products, requiring a company to have AFLS license to offer those assets, whereas other digital assets have no license requirement at present and would require a Digital Asset Exchange license under this Act to be offered. There is little guidance as to whether a particular digital asset is characterized as a financial product. As a result, Digital Asset Exchanges must obtain legal opinions regarding the characterization of the particular assets, which is an uncertain and expensive process, often resulting in differing legal opinions. We recommend including a legislative provision requiring the regulator to stipulate which assets shall be considered financial products. This would eliminate the regulatory uncertainty, promoting efficiency in the industry and transparency for business and customers.

### III. Implementation Timeline of the Bill

The proposed bill would commence six months after royal assent, with a transition period of three months. We believe that the transition timeframe is insufficient for the following reasons:

- The bill creates a fundamental legislative change to a highly complex and technical industry that has currently limited regulation. The industry requires time to adjust to the new regulation and to prepare license applications and obtain licensure.
- Given the global nature of the crypto service business, many Digital Currency Exchange (“DCE”) service providers operate across multiple jurisdictions. In order to meet the new requirements proposed in the bill, such as the capital requirements, DCE service providers will be required to make significant operational and financial changes that may require detailed business plan changes in other jurisdictions as well.

We recommend an implementation timeframe of 18 months to allow DCEs sufficient time to complete their license applications and to make necessary operational and financial adjustments to meet the proposed bill’s requirements.

In addition to the transition period, an exemption regime (or “grandfathering”) should also be considered for DCE service providers who currently operate in Australia. Such exemption should be valid till the license application is approved, rejected, or withdrawn. It would also be beneficial for the list of exempted entities to be made public, to ensure consumers have a ready reference as to which entities are covered under the exemption regime to minimise disruptions to consumers during the transition to a licensing regime.

We appreciate the opportunity to provide feedback on the bill and hope to work cooperatively to develop a regulatory framework as the cryptocurrency industry matures in Australia.

Sincerely,

Edward Woodford  
CEO  
Zero Hash Australia Pty Ltd