Australian Government
The Treasury

Senate Committee on Economics

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

11 March 2026

Contents

Introduction

The Department of the Treasury welcomes the invitation by the Economics Legislation Committee (Committee) to make this submission to the inquiry into the *Corporations Amendment (Digital Asset Framework) Bill 2025* (Bill). This submission provides evidence on the Bill which provides context to the recommendations and issues raised in the stakeholder submissions to the Committee.

This submission addresses the recommendations and issues raised by stakeholders by categorising them into the following sections:

- definitions and regulatory perimeter;
- client asset protections and debanking;
- interaction with financial market and clearing and settlement facility regimes;
- Ministerial and ASIC powers;
- global interoperability;
- transitional arrangements;
- public digital token infrastructure, staking and other exemptions; and
- other issues.

Stakeholder issues and recommendations

Background

In preparing this submission, Treasury has reviewed the 11 stakeholder submissions that have been published by the Committee.

The Committee's inquiry also follows earlier consultation on the Bill. From 25 September to 24 October 2025, Treasury conducted public consultation on the exposure draft of the Bill and accompanying explanatory materials. Engagement included written submissions and extensive direct consultation. Around 300 participants attended Treasury facilitated sessions and 59 written submissions were received. Non-confidential submissions are published on the Treasury website.

Amendments were made to the exposure draft of the Bill and explanatory memorandum to address stakeholder feedback on the exposure draft Bill. In February 2026, Treasury published its summary of consultation outcomes on the exposure draft of the Bill. This summarises stakeholder feedback, key themes that emerged from the consultation, and the Government's response.

Definitions & regulatory perimeter

Definition of digital token

Submissions to the Committee considered that the Bill's definition of "digital token" is overly broad and could unintentionally capture a wide range of electronic records beyond those that are intended, such as intellectual property, structured datasets and trained AI model weights. Stakeholders also recommended replacing "digital token" with "virtual asset", which is the Financial Action Task Force definition used by the Australian and international anti-money laundering and counter-terrorism financing (AML/CTF) regimes.

These changes are not recommended. The Explanatory Memorandum explains at paragraphs 1.41 – 1.65 that a "digital token" is an electronic record that one or more persons are capable of factually controlling (with flexibility to prescribe inclusions/exclusions in regulations), and the framework intentionally distinguishes between the token (the electronic record capable of factual control) and any rights, benefits or interests that may be attached to, or evidenced by, possession of that token. Stakeholders made similar comments during exposure draft consultation. This was addressed by narrowing the definition of digital token in the Bill to its current form.

Concern that the definition could capture intellectual property rights is addressed by the distinction the Bill draws: intellectual property is a legal right and is not itself a digital token. However, a digital token (for example, a non-fungible token) may be used to evidence or confer rights relating to intellectual property. This is an intended and technology neutral outcome.[1] The legislative notes in section 761GB(3) of the Corporations Act, as inserted by item 1 of Schedule 1 of the Bill, also provide examples of when an electronic record is and is not a digital token.

[1] See Corporations Amendment (Digital Assets Framework) Bill 2025, Explanatory Memorandum, paragraph [1.11] – [1.12].

As explained in Treasury's summary of consultation outcomes,[2] after consideration of whether to adopt "virtual asset", the Government considered that maintaining the proposed definition, as amended, is the most balanced and appropriate approach to achieve the desired outcomes. While definitions used in an AML/CTF context may appear simpler, incorporating them into Chapter 7 would create substantial downstream complexity, including overlaps with existing financial product concepts, reduced technology neutrality, greater scope for regulatory arbitrage, and the need for ongoing maintenance of exclusions. By contrast, the adopted definition provides a more coherent and adaptable basis that aligns with domestic and international legal work on digital tokens and the broader impacts of tokenisation on capital markets.

Definition of factual control and possession

Stakeholders welcomed the change from "control" in the exposure draft of the Bill to "factual control" in the Bill to determine when an electronic record is a digital token and when a person possesses a digital token. Several submissions considered that the definition of factual control and possession could be read too broadly and may create uncertainty in relation to Multi-Party Computation (MPC) arrangements. These arrangements involve factual control of a digital token being exercised jointly between two or more parties, where no single party can unilaterally exercise factual control themselves. Stakeholders suggested that the definition of possession may cause technology providers or security/verification participants that jointly exercise factual control with digital asset platform (DAP) or tokenised custody platform (TCP) operators to be jointly possessing those digital tokens. Recommendations included amending the definition of possession so a person is not taken to jointly possess a digital token unless they can unilaterally initiate and complete a transfer without another person's cooperation and including additional exclusions or safe harbours for non-custodial infrastructure and other security models. A small number of submissions also made comments about using the term "possession" for digital tokens and suggested either replacing "possess" with "hold" or including clarifying legislative notes.

Treasury considers that the definitions of factual control and possession in the Bill achieve the intended policy outcome and do not require amendment. More than mere possession of a digital token is required to enliven the DAP or TCP definitions; the digital tokens must be possessed *for or on behalf of another person.* Uncertainty about MPC arrangements should be considered in future amendments to the *Corporations Regulations 2001* (Cth) (Corporations Regulations) in connection with the Bill.

As explained in paragraph 1.60 of the explanatory memorandum to the Bill (Explanatory Memorandum), the factual control test considers whether a person has *in fact* the means to control an electronic record in the manner described. This includes a person that factually controls a digital token because they know the private key to the public address containing the digital token (or in the case of an MPC arrangement, two or more persons each have a piece or "shard" of a private key). A person possesses a digital token where they factually control it, subject to exceptions.[3] It follows that parties exercising joint factual control over a digital token (such as a DAP operator and its technology provider under an MPC arrangement) would also be jointly possessing that digital token. The Explanatory Memorandum sets out examples of joint factual control and joint possession at Examples

[2] Treasury, Summary of consultation outcomes: Corporations Amendment (Digital Assets Framework) Bill 2025, <https://storage.googleapis.com/files-au-treasury/treasury/p/prj37f059c66284c24051948/page/c2025_701519_outcomes.pdf>.

[3] Section 86(3) of the Corporations Act, as inserted by item 30 of Schedule 1 of the Bill provides that a person does not (jointly) possess a digital token if the person needs the express cooperation of another person to do so, and that other person can unilaterally exercise factual control.

1.12 – 1.17 (Example 1.12 being analogous to an MPC arrangement involving 2 persons). This is also consistent with international approaches.[4] However, there are circumstances in which a person should not be taken to be possessing a digital token, even if they exercise factual control (jointly or otherwise). The Bill recognises this through a regulation making power to prescribe circumstances in which a person either does or does not possess a digital token.[5] As explained in the Explanatory Memorandum at paragraphs 1.71 – 1.73, the framework is designed to be flexible in response to different methods of possession.

In this context, it follows that whether the technology provider would be issuing a DAP depends on whether it is jointly possessing the digital tokens *for or on behalf of* another person. Depending on the facts, the legal structure of the DAP, and the nature of the legal relationships between the DAP operator, technology provider and client, the technology provider may not be possessing the digital tokens for or on behalf of another person and therefore would not be issuing a DAP. From this perspective, it would not be consistent with the policy intent of the reforms that where one of the parties to an MPC arrangement with a DAP operator is a mere technology provider, that the technology provider would be issuing a DAP. To remain consistent with policy intent, it may be more appropriate to address issues around MPC arrangements through a targeted exemption in the Corporations Regulations rather than by modifying the definition of possession in the Bill. This will be considered in related regulations for the Bill.

Submissions also included a recommendation to amend the definition of possession so that a person is taken to not be possessing a digital token unless they have the technical ability to unilaterally transfer a digital token. This approach would be inconsistent with policy intent, and would create material avoidance risks—most notably, by enabling entities to structure around the regime by splitting factual control across parties while still collectively exercising joint factual control.

In relation to submissions that suggested replacing "possess" with "hold" we note the following. As explained in paragraphs 1.48 – 1.69 of the Explanatory Memorandum and the legislative notes included in section 761GB of the Bill, digital tokens are electronic records that can be controlled in the same way that a physical object can be possessed.[6] Under the Corporations Act, "hold" is generally used with reference to a person's legal or equitable rights or interests.[7] This distinction is important because digital tokens are the medium by which rights may be recorded, similarly to how a bearer bond may be recorded on paper.[8] The use of possession allows the framework to distinguish a person's relationship with a digital token they possess, from any rights they hold (whether because they possess the digital token or under a separate arrangement). This distinction would be lost if "possess" was replaced with "hold", and the desired policy outcomes of the reforms would not be achieved.

Definition of digital asset platform and tokenised custody platform

Submissions included comments that it may be unclear whether digital asset exchanges which take full title of digital tokens and provide clients with a chose in action representing their right to receive

[4] For example, see UNIDROIT Principles on Digital Assets and Private Law, Section III: Control and Transfer, Principle 6, paragraph 6.11; see section 12-105 of the 2022 Amendments to the US Uniform Commercial Code.

[5] Section 86(3) of the Corporations Act, as inserted by item 30 of Schedule 1 of the Bill.

[6] See Corporations Amendment (Digital Assets Framework) Bill 2025, Explanatory Memorandum, paragraph [1.52].

[7] Section 9 (definition of "holder") of the Corporations Act.

[8] See Corporations Amendment (Digital Assets Framework) Bill 2025, Explanatory Memorandum, paragraph [1.11] – [1.12].

equivalent tokens would meet the definition of a DAP. Paragraphs 1.84 – 1.86 of the Explanatory Memorandum explain the intended scope. Specifically, the definition is drafted to capture digital asset exchanges which take full title of digital tokens, but allow a client to instruct the operator to deal in the digital tokens in the same way that it would if the operator possessed those digital tokens on trust for the client, while not impacting traditional securities lending and collateral arrangements that involve total title transfer of assets. Treasury considers that the DAP definition has the appropriate scope, while not impacting these structures, which are heavily relied upon in traditional financial markets.

Submissions suggested that "non-custodial infrastructure" could be captured by the DAP definition. Several recommendations were put forward to address this. They included amending the definition of DAP and TCP to clarify that a person is not issuing a DAP or TCP if they hold administrative, governance or security powers that do not result in the person possessing digital tokens. Stakeholders also recommended including targeted safe harbours for blockchain infrastructure and considering a fit for purpose registration regime for infrastructure.

In relation to the first recommendation, possession of digital tokens is a prerequisite for the DAP and TCP definitions to apply. Consistent with policy intent, if a person does not possess digital tokens (or holds assets in the case of a TCP) through a facility, then the relevant facility should not meet the DAP and TCP definitions.[9] In relation to the second recommendation, the public digital token infrastructure, staking and wrapped token exemptions in the Bill cover certain types of blockchain and "non-custodial" infrastructure. The scope and policy intent of the exemptions are explained in detail in paragraphs 1.193 – 1.221 and 1.331 – 1.389 of the Explanatory Memorandum and are discussed further below. In our view, a separate registration regime for "non-custodial" infrastructure is not necessary.

TCP safe harbour from managed investment scheme regime

Submissions noted that it may be unclear whether the requirement that all underlying assets of a TCP belong to the same asset class is referring to the facility as a whole or the individual tokens created by its operator and suggested an amendment to address this. This is a requirement of the exemption from the managed investment scheme definition for a TCP in subparagraph 9(md)(iv) of the *Corporations Act 2001* (Cth) (Corporations Act), as inserted by item 27 of Schedule 1 of the Bill.[10] The suggested amendment is not necessary in our view as this question is best resolved through guidance and consideration by the regulator of specific applications.

Issuing a DAP or TCP and providing a custodial or depository service

A submission suggested that it is unclear whether platforms must hold both the new DAP and TCP authorisations and existing custodial or depository services authorisations simultaneously. Treasury was requested to confirm that current AFSL holders are not required to hold separate, duplicative custodial authorisations once the framework under the Bill commences. Paragraphs 1.145 – 1.149 of the Explanatory Memorandum explain that item 8 of Schedule 1 of the Bill amends subsection 766E(3) of the Corporations Act so that a person dealing in a DAP or TCP, or possessing digital tokens under such a platform, is not providing a custodial or depository service, and therefore does not require the

[9] See Corporations Amendment (Digital Assets Framework) Bill 2025, Explanatory Memorandum, paragraph [1.79] – [1.83].

[10] See Corporations Amendment (Digital Assets Framework) Bill 2025, Explanatory Memorandum, paragraph [1.118] and [1.122] – [1.123].

requisite authorisation. A DAP or TCP operator that holds financial products that are not in digital token form will be providing a custodial or depository service and therefore will require an authorisation to provide this service, subject to any exemptions.

Extension of existing custodial or depository services and other exemptions to persons providing financial services in relation to DAPs and TCPs are matters that we expect would be addressed in related regulations for the Bill.

Comments were also made in relation to circumstances where a platform may be required to comply with both DAP or TCP asset-holding minimum standards and other custodial minimum standards. However, this is not a circumstance that is unique to DAPs or TCPs. It is intended that ASIC will address this appropriately in the minimum standards, and any overlap is something ASIC would consider during its consultation.

Client asset protections and debanking

Imposing a statutory trust for underlying assets

Stakeholders recommended that the Bill be amended to require underlying assets of DAPs and TCPs be held in a statutory trust. Stakeholders reasoned that this would provide greater certainty in relation to the protection of client assets during an insolvency. The current framework requires custodians to hold assets on trust under minimum standards set by ASIC, rather than under a statutory trust. It is intended that ASIC will impose asset-holding minimum standards on DAP and TCP operators, consistent with how it currently imposes obligations on other custodians.

Imposing a statutory trust would be inconsistent with this policy intent, as well as current practice for how custodians are currently regulated and required to hold assets. This would raise particular concerns in the case where custodians will be issuing a DAP and multiple minimum standards may overlap (as discussed above).

Restricting use of client assets without express consent

Stakeholders noted the risk of DAP or TCP operators using client assets for their own benefit without client consent. Stakeholders recommended a prohibition on DAP and TCP operators from dealing in client assets without the client's express consent be inserted into the Bill.

It is not necessary to include this prohibition in the Bill, as it is intended that ASIC will address this appropriately in the minimum standards it sets (for example, this is considered in the existing minimum standards for custodial or depository service providers imposed by ASIC).[11] Further, in addition to breaching any obligations under ASIC's minimum standards, not using client assets in accordance with client instructions would mean that the managed investment scheme safe harbour,[12] and the custodial staking arrangement exemption, could not be relied upon by the operator.

[11] Section 912AAE of the Corporations Act, as inserted by paragraph 4 of the ASIC Corporations (Custody Standards for Providers of Custodial and Depository Services) Instrument 2024/17.

[12] See items 27, 56-59 and 61 of Schedule 1 of the Bill; see Corporations Amendment (Digital Assets Framework) Bill 2025, Explanatory Memorandum, paragraphs [1.119] and [1.377].

Disclosure about underlying assets

Submissions noted difficulties that digital asset operators have providing disclosure in relation to digital tokens that either do not have disclosure documents available, or do not have an issuer that would generally provide disclosure documents. If the digital token is a financial product, then obligations to provide a product disclosure statement (PDS) may be difficult to comply with. There are currently no obligations to provide disclosure if the digital token is not a financial product. Under subsection 1020R(3) of the Corporations Act, as inserted by item 50 of Schedule 1 of the Bill, regulations may be made for the purposes of disclosure requirements relating to acquisitions of digital tokens that are not financial products and are prescribed in the regulations for this purpose. As explained by paragraph 1.276 of the Explanatory Memorandum, this is intended to be a future regulation-making power rather than being anticipated to be used immediately. It provides the Government with the ability to develop and implement tailored disclosure requirements as the digital asset market evolves. This ensures the disclosure requirements remain up-to-date with a rapidly evolving and dynamic market and provides a flexible approach to safeguard and future-proof the requirements.

The wrapped token, staking and public digital token infrastructure exemptions may also assist with this issue by exempting some digital tokens or arrangements which would not have issuers from being financial products or managed investment schemes.

Further, as explained at paragraph 1.298 of the Explanatory Memorandum, the Bill also does not amend the application of the existing design and distribution requirements for financial products acquired by a retail client through a DAP or TCP. Under the existing requirements, when the issue or sale of a financial product does not require a product disclosure statement or target market determination, distributors are not subject to the design and distribution obligations (noting other obligations may apply to the distribution).

Client money and debanking

Submissions noted that the current client money rules may not be appropriate for DAP and TCP operators. This is because the requirement to hold client money in a trust account with an ADI is difficult to meet because some digital asset businesses encounter barriers to accessing banking services.

This was expressly addressed through amendments to section 912BE of the Corporations Act, as inserted by item 37 of Schedule 1 of the Bill, to require that when ASIC makes the asset-holding minimum standards, it is reasonably satisfied that the proposed standards provide different options to hold money for clients to assist DAP and TCP operators mitigate the impacts of debanking.[13] This change was made in response to similar suggestions received during the exposure draft consultation.

ASIC being able to impose minimum standards “similar to other standards” was also commented on in submissions. However, this drafting was removed after the exposure draft consultation and is not included in the Bill.

Relevantly, as discussed below in relation to ASIC’s minimum standard rule making powers, ASIC’s minimum standards are subject to consultation requirements, sunsetting, and parliamentary scrutiny through the disallowance process, in accordance with the *Legislation Act 2003* (Cth).

[13] See section 912BE(2)(c) of the Corporations Act, as inserted by item 37of Schedule 1 of the Bill.

Interaction with financial market and clearing and settlement facility regimes

Exempting DAPs and TCPs from the financial markets and clearing and settlement regimes

Submissions suggested that the financial markets and clearing and settlement facility licensing regimes may not be fit for purpose or suitable for digital asset markets due to unique attributes of the technology. Comments included that the application of these regimes to digital asset businesses will limit the venues available to trade tokenised products and cause businesses to restructure or move offshore. To address these issues, submissions recommended that DAPs and TCPs be exempt from the financial market and clearing and settlement regimes entirely.

As explained in Treasury's summary of consultation outcomes, existing market and clearing and settlement licensing frameworks remain essential for market integrity and financial stability, and DAPs will only require a licence where they meet current statutory tests. A blanket exemption would undermine technology neutrality and heighten arbitrage risks.

ASIC is currently considering whether changes are required to tailor its application of the financial markets licence and clearing & settlement facility licence regimes to digital asset related markets to account for the differences in the technology. This has been considered with other technology changes over time. The ministerial powers also allow targeted and flexible application of these frameworks in a way that complements the Minister's existing role in granting licences for these activities.

Submissions also suggested that the interaction between the Bill's framework and the existing financial markets and clearing and settlement facility regimes may result in perverse outcomes. As explained in Treasury's summary of consultation outcomes, additional drafting notes were included in the Bill to address similar comments made during exposure draft consultation. The legislative notes inserted at the end of subsections 767A(1) and 768A(1) of the Corporations Act, as inserted by items 11 and 16 of Schedule 1 of the Bill, respectively, and paragraphs 1.111 – 1.118 of the Explanatory Memorandum explain the interaction between the regimes.

Ministerial and ASIC powers

Ministerial declaration powers

Submissions considered that sections 912BH to 912BI of the Corporations Act, as inserted by item 37 of Schedule 1 of the Bill, grant the Minister broad discretionary powers to declare or prohibit digital asset activities without defined statutory criteria or procedural safeguards. It was requested that the Bill introduce statutory guardrails requiring the Minister to explicitly consider competition, innovation and systemic risk before making any declarations.

Section 912BI of the Corporations Act, as inserted by item 37 of Schedule 1 of the Bill, already includes these safeguards.[14] It requires that, in considering whether to make a declaration under subsection 912BH(1) or (3), the Minister must have regard to the likely effect on the Australian economy, and on

[14] See Note 4 in section 912BH(4) of the Corporations Act, as inserted by item 37 of Schedule 1 of the Bill.

the efficiency, integrity, and stability of the Australian financial system; any impact on the provision of DAPs or TCPs; the likely regulatory impact; whether the conduct or financial products have resulted, or will or are likely to result, in significant consumer detriment; any other advice received by the Minister; or other matters that the Minister considers relevant.

Submissions also made comments about the discretion of the Minister to declare a DAP structured as a financial market or clearing and settlement facility, but where the digital token being traded or settled is not a financial product, to be a financial market or clearing and settlement facility (as applicable).[15] Stakeholders requested that safeguards be included to limit the Minister's power, such as consultation requirements. Paragraphs 1.304 and 1.330 of the Explanatory Memorandum explain that the legislative instruments through which the Minister exercises these powers are already subject to consultation requirements, sunsetting, and parliamentary scrutiny through the disallowance process, in accordance with the *Legislation Act 2003* (Cth).[16] This was also explained in Treasury's summary of consultation outcomes.[17]

A submission recommended that the Committee ensures that the Bill explicitly maintains a clear boundary so that broker-model platforms are not inadvertently declared or regulated as markets. The Bill already includes this clear boundary. Under section 767B of the Corporations Act, as inserted by item 14 of Schedule 1 of the Bill, the Minister's power to declare a platform to be a financial market is only limited to those that are structured as markets. Platforms structured to be exempt from being a financial market (such as through a broker-model) are out of scope of the power. This is explained in paragraph 1.305 of the Explanatory Memorandum.

ASIC minimum standard rule making powers

Submissions suggested that ASIC's powers to make minimum standards are too broad, and should be subject to safeguards, proportionality requirements and consultation requirements.

Like ministerial declaration legislative instruments, ASIC's minimum standards are subject to consultation requirements,[18] sunsetting, and parliamentary scrutiny through the disallowance process, in accordance with the *Legislation Act 2003* (Cth), and is subject to the Office of Impact Analysis processes. Further, as a matter of market practice, ASIC consults on legislative instruments that have more than a minor or machinery impact.

Imposing an obligation on ASIC to consult on instruments related to only DAPs and TCPs would be inconsistent with how it consults on other instruments. Additionally, under paragraphs 912BE(2)(a) and 912BF(3)(a) of the Corporations Act, as inserted by item 37 of Schedule 1 of the Bill, ASIC must be reasonably satisfied that a proposed minimum standard it makes is adequate, effective and appropriate for all DAPs and TCPs, including by being reasonably proportionate for differences in the size, scale and nature of such platforms.[19]

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[15] Sections 767B and 768B of the Corporations Act, as inserted by items 14 and 19 of Schedule 1 of the Bill (respectively).

[16] See Corporations Amendment (Digital Assets Framework) Bill 2025, Explanatory Memorandum, paragraphs [1.304] and [1.330].

[17] Treasury, Summary of consultation outcomes: Corporations Amendment (Digital Assets Framework) Bill 2025, <https://storage.googleapis.com/files-au-treasury/treasury/p/prj37f059c66284c24051948/page/c2025_701519_outcomes.pdf>.

[18] See section 17 of the *Legislation Act 2003* (Cth).

[19] See sections 912BE(2)(a) and 912BF(3)(a) of the Corporations Act, as inserted by item 37 of Schedule 1 of the Bill.

Global interoperability

Recognition of foreign licensing regimes

Stakeholders recommended empowering ASIC to provide passporting relief where a person is already regulated under a foreign licensing regime that it considers to be "equivalent" to the Australian framework for DAPs/TCPs.

It would not be appropriate to legislate on this in the Bill as this would impact on the regulation of financial service licensees more broadly. The current financial services licensing regime already contains a process for foreign financial service providers from 'equivalent' jurisdictions.[20] This has been subject to a number of reviews over the last few years.

We also note that Schedule 2 of the *Treasury Laws Amendment (Genetic Testing Protections in Life Insurance and Other Measures) Bill 2025,* which is currently before Parliament, proposes to amend the Corporations Act to include foreign financial service provider exemptions relevant to wholesale providers.

Access to global liquidity and asset localisation

Submissions suggested that ASIC's powers to make minimum standards could allow it to require DAP or TCP operators to hold underlying assets in Australia which would fragment or prevent access to global liquidity. To address this, stakeholders recommended that legislative guardrails be introduced, and have sought assurance that ASIC's minimum standards cannot prohibit access to global liquidity pools from overseas entities.

In relation to global liquidity access, paragraph 912BF(3)(c) of the Corporations Act, as inserted by item 37 of Schedule 1 of the Bill, expressly prohibits ASIC from making minimum standards that prevent DAP or TCP operators from sourcing liquidity from platforms operating outside of Australia, whether or not they hold a licence under the Corporations Act.

In relation to asset localisation requirements, consistent with how the AFS licensing regime applies to custodians currently, the Bill does not require underlying assets of DAPs or TCPs to be held in Australia and provides ASIC with flexibility to manage this under minimum standards.

As noted above, the minimum standards are subject to consultation requirements, sunsetting, and parliamentary scrutiny through the disallowance process, in accordance with the *Legislation Act 2003* (Cth), as well as to the Office of Impact Analysis processes.

Transitional arrangements

Good faith licensing applications

Several stakeholders recommended that the transitional arrangements in the Bill should be amended to adopt a "good faith" model, where licensing applicants are permitted to continue operating their business once applications have been lodged with ASIC.

[20] See ASIC Regulatory Guide 176: Foreign financial service providers.

Under the Bill's transitional arrangements, if during the first 6 months following commencement of the Bill's framework, a person applies to ASIC for an AFS licence or a licence variation to authorise the provision of services in relation to a DAP or TCP, then the framework does not apply to them in relation to the provision of the service until the day after the day ASIC makes a decision in response to the application. This is explained in paragraphs 1.403 – 1.405 of the Explanatory Memorandum.

Public digital token infrastructure, staking and other exemptions

Public digital token infrastructure

A stakeholder provided views in relation to the "no critical participant" limb of the public digital token infrastructure definition.[21] This limb requires the protocols that apply to infrastructure not be reliant on any participant having a role so critical that the transmitting, processing or recording electronic records through infrastructure cannot occur without the participant. The stakeholder noted that this may cause certain types of infrastructure that do rely on a critical participant to transmit, process, or record digital tokens, but who may not have factual control over those digital tokens, to fall outside of the exemption. Submissions also suggested that the definition may be too narrow and may not capture various "non-custodial services".

Treasury considers that the scope and application of this definition is consistent with policy intent and does not require amendment. Paragraphs 1.331 - 1.352 of the Explanatory Memorandum set out the intended scope of the public digital token infrastructure definition. The definition is intended to capture public, permissionless networks and decentralised applications. It does not focus on whether infrastructure allows a participant to possess another person's digital tokens, or whether it is able to be updated or altered, such as through governance processes.[22] Rather, the definition focuses on, among other things, whether digital tokens transmitted, processed and recorded through the infrastructure's protocols is done in a non-discretionary manner without reliance on a critical participant.[23] Amending the definition so that it captures infrastructure reliant on a critical participant would contradict policy intent. Additionally, concentrating on ownership of digital tokens rather than possession, and on whether a participant has authority to transfer digital tokens rather than a factual ability, may make it unclear as to when the definition is satisfied.

Submissions also commented that a clear list of infrastructure services that are exempt from the regulatory perimeter should be included in the Bill, such as node operation, indexing and data analytics. Taking this approach would be inconsistent with the principles-based approach taken by the reforms. This is also already addressed in the Bill. Under the Bill the operation of a node for public digital token infrastructure will not constitute operating a clearing and settlement facility or providing a financial service.[24] Whether other services fall within the regulatory perimeter is fact-dependant.

[21] See section 9E(2)(c) of the Corporations Act, as inserted by item 59 of Schedule 1 of the Bill.
[22] See Corporations Amendment (Digital Assets Framework) Bill 2025, Explanatory Memorandum, paragraphs [1.339] and [1.340].
[23] See Corporations Amendment (Digital Assets Framework) Bill 2025, Explanatory Memorandum, paragraphs [1.341] and [1.349].
[24] See sections 766A(3)(b) and 768A(2)(h) of the Corporations Act, as inserted by items 64 and 65 of Schedule 1 of the Bill respectively.

Staking and liquid staking tokens

Submissions suggested that the exemptions for staking may be too narrow. It was suggested that the "intermediated staking" exemption (which has been renamed to "custodial staking" in the Bill in response to feedback during the exposure draft consultation) should be expanded to include "non-reward operational benefits". The exposure draft Bill was amended in response to similar comments during consultation by including transaction fee savings as a listed benefit and a regulation making power to supplement the list of benefits.[25] It is unclear what other "non-reward operational benefits" the submission is referring to, but any additional benefits may be considered as part of amendments to the Corporations Regulations, rather than by amending the definition in the Bill.

Submissions also requested that the Bill confirm that TCP operators may issue "liquid staking tokens". The term "staking" and "liquid staking token" do not have precise legal meanings and may refer to a variety of different types of activities or digital tokens, respectively. We have assumed that these terms have the same meaning and scope as in the Explanatory Memorandum, which we explain in further detail below. For completeness, we also note that the obligations that apply to a TCP operator where it issues a liquid staking token is fact-dependent, and depends on the legal nature of the arrangements, including the rights attached to that token.

The Bill and Explanatory Memorandum address the intended regulatory treatment of staking and liquid staking tokens in detail.[26] Paragraph 765A(1)(xb) of the Corporations Act, as inserted by item 62 of Schedule 1 of the Bill, expressly exempts a right, interest or benefit arising out of staking (which is defined in the Bill with reference to conducting "consensus activities" as described in paragraph (2)(b) of the definition of public digital token infrastructure). The Explanatory Memorandum explains that this is intended to cover staking on blockchain networks that meet the public digital token infrastructure definition, such as the Ethereum network. The Explanatory Memorandum also explains that this exemption also applies to liquid staking tokens (which are digital tokens to which staking rights, interests or benefits are attached).[27] The Bill also exempts liquid staking tokens issued under custodial staking arrangements made available through a TCP.[28] This scenario is set out in Example 1.28 of the Explanatory Memorandum and is explained in paragraph 1.392 of the Explanatory Memorandum.

Submissions also took the view that some of the benefits that may be provided as part of a custodial staking arrangement are not achievable and suggested that their inclusion may mislead consumers. To clarify, providers of custodial staking arrangements are not required to provide any of the listed benefits as part of the arrangement. However, if they do, then the exemption provides that this does not cause the arrangement to be a financial product or managed investment scheme. We understand that it is not uncommon for providers of these types of arrangements to provide the benefits identified as not being achievable. The first identified benefit was to allow a beneficiary to notionally unstake and receive their digital tokens back earlier than if the beneficiary staked directly. We understand that this is typically enabled by the operator reallocating unstaked digital tokens from its own reserve to the beneficiary and replenishing their reserves once the staked digital tokens unlocked

[25] Subparagraphs 9F(1)(e)(iv) and (v) of the Corporations Act, as inserted by item 59 of Schedule 1 of the Bill.
[26] See "Exemptions for public digital token infrastructure and custodial staking arrangements" section of Corporations Amendment (Digital Assets Framework) Bill 2025, Explanatory Memorandum.
[27] See Corporations Amendment (Digital Assets Framework) Bill 2025, Explanatory Memorandum, paragraphs [1.335], [1.346], [1.347] and [1.354] – [1.356]. See also Examples 1.25 (Ethereum network as public digital token infrastructure), 1.27 (Non-custodial staking) and 1.28 (Custodial staking through a tokenised custody platform).
[28] See sections 9(mf) and 765A(1)(pb) of the Corporations Act, as inserted by items 57 and 61 of Schedule 1 of the Bill respectively.

and became available. The second identified benefit was to protect the beneficiary from any losses arising from the operation of public digital token infrastructure by the platform operator or a third-party service provider. This is explained at paragraphs 1.383 and 1.385, and Example 1.28 of the Explanatory Memorandum.

Other issues

Civil proceedings and foreign entities

Submissions identified practical issues in civil proceedings concerning the application of Australian laws to foreign entities. To address this, submissions recommended mechanisms to ensure Australian laws apply.

These practical issues are not unique to digital asset businesses, and addressing these issues are outside the scope of the reforms.

Token classification framework

Submissions noted that it would be helpful for the government to provide guidance in relation to whether a particular digital asset, or class of digital assets, constitutes a financial product. ASIC has recently updated Information Sheet 225: Digital assets: Financial products and services (INFO 225). Treasury understands that INFO 225 is unlikely to significantly change following the commencement of the Bill as key financial product definitions are not being changed by the Bill.

Intra-group licensing

Submissions have noted that operators should be able to appoint corporate authorised representatives or rely on intermediary authorisation appointments to allow group entities to issue DAPs without requiring a licence.

It is intended that the corporate authorised representatives licensing exemption[29] will apply to financial services provided in relation to DAPs and TCPs consistent with how it applies to other financial services.

The availability of the intermediary authorisation exemption[30] will be considered in amendments to the Corporations Regulations in connection with the Bill.

Digital asset market panel

Some stakeholders proposed creating a dedicated expert advisory panel to support interpretation of the framework. Stakeholders also proposed this, as well as suggesting that ASIC's Digital Finance Advisory Panel be repurposed to facilitate this, during consultation on the exposure draft of the Bill. As explained in Treasury's summary of consultation outcomes, while such a panel could provide valuable non-binding input on novel intersections of technology and law, establishing a standing body is

[29] Section 911A(2)(a) of the Corporations Act.
[30] Section 911A(2)(b) of the Corporations Act.

outside the scope of these reforms. This stakeholder feedback has also been provided to ASIC for consideration.[31]

[31] Treasury, Summary of consultation outcomes: Corporations Amendment (Digital Assets Framework) Bill 2025, <https://storage.googleapis.com/files-au-treasury/treasury/p/prj37f059c66284c24051948/page/c2025_701519_outcomes.pdf>.