

23 February 2026

Senator Lisa Darmanin
Chair, Senate Standing Committees on Economics
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: economics.sen@aph.gov.au

Dear Chair,

Corporations Amendment (Digital Assets Framework) Bill 2025

1. The Business Law Section of the Law Council of Australia submits in response to the Committee's inquiry into the above Bill.
2. This submission has been prepared by members of the Business Law Section's Digital Commerce and Financial Services Committees.
3. We broadly welcome the fact that the Bill has been introduced to the Parliament and that a number of points in our 3 November 2025 [submission](#) to the Commonwealth Treasury on the exposure draft Bill have been addressed.
4. We nevertheless wish to raise technical issues with the Bill as drafted, for your consideration.

Scope of the digital asset platform definition and obligations

5. We would suggest that the definitions in proposed section 761GC and section 761GD of the *Corporations Act 2001* (Cth) for the concept of *digital assets platform (DAP)* may still be too narrowly drawn, despite broadening relative to the exposure draft Bill.

'for or on behalf of' and 'obliged to ensure that the underlying assets are dealt with on the instruction of the other person'

6. The revised Bill requires digital tokens to be 'possessed for or on behalf of' the client. As we understand it, some centralised cryptocurrency exchanges (**CEX**) and other crypto platform operators do not promise to hold digital tokens for, or on behalf of, their users—rather digital tokens are owned by the platform operator and the user merely obtains a chose in action representing their right to have equivalent tokens reconveyed upon demand, the value and denomination of the chose in action fluctuating according to account balances.

7. We note that technical changes have been made to the relevant definition: namely, to permit a structure whereby the operator is ‘obliged to ensure that the underlying asset is dealt with on the instructions of the other person’. This appears to be intended to capture circumstances where there has been a total title transfer of the asset to the CEx. However, this remains unclear. In our view, such platforms may still not be covered by the DAP definition. This is because the operator of such a platform may not possess relevant tokens “for or on behalf of” platform clients, and nor would they be strictly “obliged to ensure that the underlying asset is dealt with on the instructions of the other person.”

“as trustee or bailee”

8. As a matter of law, *Re Blockchain Tech Pty Ltd* [2024] VSC 690 found that bitcoin, being intangible property, could not be held under a bailment arrangement. Bailment is a form of title to chattels for the purpose of doing something. It does not confer legal or beneficial title to the bailee. As such, it is unclear how a digital token can be possessed ‘acting as ... bailee’.

Asset holding standards

9. We note that paragraph 912BE(2)(b) effectively requires that Australian Securities and Investments Commission (**ASIC**) asset-holding standards must require any money held under a digital asset platform or tokenised custody platform (that is not an underlying asset of the platform) to be held in trust for, or on behalf of, a client. By contrast, the custody requirements for non-money assets or for underlying assets are delegated to ASIC’s asset-holding standards (section 912BE), which will be made by legislative instrument. The Bill constrains what those standards can require: notably, paragraph 912BE(2)(e) provides that the standards must not prohibit a licensee from holding client digital tokens in a single wallet or address provided the licensee’s internal accounting identifies the tokens as the client’s, but the Bill is otherwise not prescriptive about the custody model an exchange should offer.
10. Changes to the definition of DAP should therefore be made to ensure that they clearly cover platforms that purport to operate on the title transfer model, as an anti-avoidance measure. Once such platforms are within the regime, we would expect that ASIC’s asset-holding standards may affect how these platforms may operate and what requirements are imposed on them. For example, we would note that International Organisation of Securities Commissions’ (**IOSCO**) [Cryptoassets Recommendation 13](#) provides a pathway for regulating the CExs using the “title transfer model”:

Regulators should impose specific measures in situations where the [cryptoasset service provider or] CASP takes legal and/or beneficial ownership of Client Assets. These requirements should include, for example:

- *receiving prior explicit consent from the client for the assets, for example, to be lent out, re-used or re-hypothecated;*
- *providing clients with clear, concise and non-technical, prior disclosure about the risks of these types of activities, including the potential loss of their entire crypto-asset holdings.*

Scope of digital token concept

11. A contrasting concern is with the wide scope of the concept of **digital token** (section 761GB), which has an inclusive definition by reference to electronic records that can be “factually controlled”.
12. While we assume that this definition is directed at cryptographic tokens native to distributed ledger infrastructure, the statutory language appears to be technology-neutral and contains no such limitation.
13. We are concerned that the definition is substantially broader than may have been intended, and specifically that it may cover forms of property or quasi-property that are not within the purview of ASIC, such as intellectual property.
14. The concept of “factual control” is new to the law, and thus there is limited learning to apply to it. In our view, the test may be satisfied by any electronic record over which a person exercises exclusionary control in fact, a standard that could be met by structured datasets, trained AI model weights, proprietary databases, and digitally stored confidential information generally. All of these datasets are typically subject to structured authorities to access, amend and transfer which may be exclusionary.

Definition of Control/Possession

15. The definition of “possession” of digital tokens (section 86) turns on the definition of “factual control” (section 761GB(2)) which can include situations where no single party has unilateral control or control is exercised jointly. The definitions do not clearly exclude infrastructure providers, non-custodial software, or persons who exercise negative control for security or fraud prevention purposes. As drafted, there is a risk of inadvertently applying the Australian Financial Services Licence (**AFSL**) regime to a range of persons or products beyond recognised cryptocurrency exchanges and custodians and to whom AFSL obligations and asset holding standards are not well adapted. We consider that Parliament should exercise caution and consider in detail the policy implications of these arrangements before legislating in this way. This could be achieved by providing a list of exemptions and deferring these matters for further detailed consideration as technology evolves.
16. We note a related concern that by enacting a definition of “possession” of digital tokens, the Bill will pre-empt the ongoing consideration by the judiciary of whether cryptocurrencies are choses in action, choses in possession, or, if Australia were to follow the UK, a third type of property, and whether remedies and actions proper to choses in possession such as the torts of conversion and detinue, and possessory liens, can apply to them. We would suggest this issue could be dealt with by a note to section 86 to disclaim any such intention. Further, such a note should clarify that the nature of an asset does not change merely because it exists in tokenised form. For example, an interest in a managed investment scheme retains its characteristic whether it is issued as a token or in an account based system (such as a register).

Refusal to submit to the jurisdiction of Australian Courts

17. Frequently in civil proceedings involving crypto-assets, freezing orders are sought over exchange-hosted cryptocurrency accounts, or orders are sought against

cryptocurrency exchanges to disclose the personal details of account-holders identified only by wallet blockchain address. In practice, local subsidiaries of some global cryptocurrency exchanges disclaim any role in maintaining the relevant wallets and thus refuse or are unable to comply. This frustrates attempts by Australians to use Australian Courts for legitimate asset tracing and recovery purposes.

18. We would therefore urge that consideration be given to an amendment which would require:

- any entity that is a registrable foreign body exercising custody or transfer authority over client assets by arrangement with an AFSL holder, to be obliged to be a registered foreign body and to maintain such registration and to submit in a binding way to the non-exclusive jurisdiction of Australian courts; and
- AFSL holders to be obliged to take all reasonable steps to procure information and documents concerning customer assets from related entities in responding to Australian court processes.

Equivalence of foreign regimes

19. We would agree with the suggestion made by other commenters that a form of recognition of equivalent foreign regulatory regimes be built into the legislation. This could, for example, empower ASIC to declare by legislative instrument a sufficiently robust foreign licence or regime is “equivalent”, so long as it remains sufficiently consistent with applicable IOSCO / Financial Stability Board standards, is adequately supervised and enforced, and adequate arrangements for the exchange of information for supervisory and enforcement cooperation remain in place. Schedule 2 of the *Treasury Laws Amendment (Genetic Testing Protections in Life Insurance and Other Measures) Bill 2025* currently before parliament proposes such a framework for financial services more generally. We recommend that its application to digital asset platforms and tokenised custody platforms be considered.

20. We thank you once again for the opportunity to comment and stand ready to engage further as required, including through bilateral discussions as needed.

21. Please do not hesitate to contact the Chair of the Digital Commerce Committee, Dr Aaron Lane [REDACTED]; or the Digital Assets, Fintech and Innovation Lead of the Financial Services Committee, Liam Hennessy [REDACTED], if you wish to discuss any aspect of this submission.

Yours sincerely



Adrian Varrasso
Chair, Business Law Section