Law Council
OF AUSTRALIA

Business Law Section

3 November 2025

Ms Claire McKay
Assistant Secretary
Payments, Scams and Innovation Branch
Treasury

By email: crypto@treasury.gov.au

Dear Ms Mackay

Regulating digital asset platforms—exposure draft legislation

1. The Business Law Section of the Law Council of Australia welcomes the opportunity to provide feedback in response to the above consultation, focusing on the exposure draft legislation as explained in the draft Explanatory Memorandum and Fact Sheet. This submission has been prepared by members of the Business Law Section's Digital Commerce and Financial Services Committees.

2. Our response is relatively high-level, and broadly welcomes the fact that the draft legislation has been issued. Had there been a longer period of consultation, we would have been better placed to respond to the specific questions posed by Treasury (many of which we consider to be sensible).

3. While we recognise that the proposed reforms are important and need to progress, we also make the observation that the amendments to Chapter 7 of the *Corporations Act 2001* (Cth) contained in the exposure draft legislation will only serve to add to what has become an unmanageably complex legislative regime.[1] The introduction of this further complexity makes the case for commencing measures to meaningfully address the complexity even more compelling.

4. We encourage Treasury to prioritise simplification and reduction in the complexity of Australia's financial services laws, which would complement ASIC's focus on regulatory simplification, which ASIC has comprehensively articulated in ASIC Report 813 *Regulatory simplification* (published 3 September 2025).

Key Points

5. The key points the Committee wishes to make are as follows:
    a. the concepts of "digital assets platform" and "tokenised customer platform" may warrant some refinement to ensure that their scope is consistent with the policy intention;
    b. the definition of "digital object" appears to be very broad and this could have some unintended consequences;

[1] We refer to the observations of the Australian Law Reform Commission in Report 141 *Confronting complexity: Reforming corporations and financial services legislation*, dated November 2023 and published on 18 January 2024.

c. the concept of “control” may be more appropriate than “possession” when it comes to some uses of digital assets;
d. the timing of the introduction of the legislation and the transition period should take into consideration other events and other related legislative reforms; and
e. as with any new legislation, there are likely to be some unforeseen unintended consequences, and it is important to have suitable arrangements in place to have those issues dealt with promptly, informed by appropriate technical and industry expertise.

Scope of the regime

6. As a key point, we would suggest that the scope of the concepts of *digital assets platform* (**DAP**) and *tokenised customer platform* (**TCP**) may be too narrowly drawn. As is well known, many centralised cryptocurrency exchange (**CEx**) platform operators do not promise to hold digital tokens on trust 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. Such platforms would not appear to be covered by the DAP definition. It is also not clear to us that the TCP definition would cover them either. There seems to be no compelling economic reason why these types of CEx should be treated differently from those platforms the operators of which explicitly promise to hold client digital tokens in trust. Indeed, the recommendations of the International Organisation of Securities Commissions Policy Recommendations for Crypto and Digital Asset Markets: Final Report (November 2023), Recommendations 12, 13 and 14 are to the effect that a CEx that does not hold digital tokens in trust should be required to do so.

7. As for decentralised cryptocurrency exchange (**DEx**) platforms, we assume the intent is that they be outside the regime altogether. We believe such an outcome would be appropriate, both as being in line with the approaches taken in major jurisdictions such as the European Union, and also in light of the difficulty of addressing and enforcing against entities that may be operating as unincorporated businesses. Any changes to the DAP or TCP definitions to address our key point above should not bring DExs into the regime, at least without a conscious decision being taken in that direction.

8. Another concern is with the wide scope of the concept of *digital object*, which has an inclusive definition that may include many varieties of intangible property such as intellectual property, currency or similar. The consequences of such a broad definition need to be carefully thought through.

9. We appreciate the intent underlying the concept of *possession* as set out in section 761GB(4). There needs to be a concept for an analogue to possession of tangible objects for some uses of digital assets. However, we believe that the same result could be achieved by adopting the more neutral concept of “control” with minimal changes to the existing draft bill. This would have the benefit of not influencing, one way or the other, the judicial consideration of whether causes of action that are historically associated with tangible objects (such as conversion or bailment) ought to be applied to digital assets also.

10. We believe some minor improvements could be made to the EM as follows:

    (a) the term “AFS licensee” has been used in a number of places where it is clear that the appropriate term is “AFS licence” (see for example, paragraph 1.36 on page 14 which mentions “requiring persons providing relevant financial services in relation to digital asset platforms and tokenised custody platforms to hold an AFS licensee authorising them to perform the financial service ...”);

    (b) paragraph 1.119 mentions a facility that “possesses” non-financial products, and we query whether the intention is to refer to a facility through which non-financial products are made available;

    (c) paragraph 1.191 cross-refers to “paragraph x” and the appropriate paragraph number cross-reference should be inserted; and

    (d) there are some cross-references to section numbers of the Corporations Act that do not exist—for example section 764 (in paragraph 1.123) and section 953 (in paragraph 1.223). There are a number of provisions in the Corporations Act which commence with this number and are followed by a letter of the alphabet and the EM needs to include the relevant alphabet letter to allow the reader to find the relevant provision. We have inferred that the intention is to refer to sections 764A and 953B respectively, based on other parts of the content.

11. It would be beneficial if a careful and thorough review of this document were undertaken by someone with a suitable level of familiarity with Chapter 7 of the Corporations Act before it progresses to Parliament.

Implementation timing

12. We believe the legislation is an important step in the right direction, and consider it is important to move forward toward implementation, acknowledging that there will be imperfections that can be ironed out through exemptive relief or similar measures.

13. In our view, it is important that the legislation be progressed in a timely way in this Parliament, having regard to the lengthy 24-month transitional period envisaged to implementation and the considerable time that has elapsed since this Government first consulted on the issues in 2022. It would be key for subordinate legislation to be finalised in the first 12 months after Royal Assent so that the first and second transitional periods can be utilised by firms with the benefit of having full knowledge of the proposed regimes.

14. However, we also suggest that the commencement and the ends of the first and second transitional periods be defined so that they do not fall awkwardly: for example during the Christmas/New Year holidays, on a non-business day, or close to the end of a financial year. This could be done by suitable drafting in the Bill to nominate the first of one or more (non-problematic) calendar dates after the date of Royal Assent.

15. While it would in an ideal world be desirable for the reforms to progress in parallel with the payments reforms which are linked through the concept of a stored value facility, of which stablecoins will form one class, we do not consider it appropriate

to link these measures formally and would expect that the digital assets measures will be able to progress more quickly given they will involve fewer regulators and fewer mandates. We nonetheless encourage appropriate and timely collaboration between policy makers and regulators with a view to avoiding unnecessary regulatory duplication and compliance costs for affected businesses.

Industry consultation

16. We would expect and welcome continued engagement and consultation by Treasury as the legislative framework (including any Ministerial instruments) is finalised. We would suggest that the mandate and composition of the existing Digital Finance Advisory Panel which advises the Australian Securities and Investments Commission (ASIC) be reviewed and, if necessary, refreshed in order to properly address implementation of the regime including the drawing up of regulatory standards. We note that Treasury observers, as well as observers from other regulators, may participate in the Panel's deliberations. We consider that this will be optimal for the development and implementation of the new regime.

17. We suggest that a more formal role be given to the Panel, in terms of consulting with ASIC and the Minister, and communicating their views to the market. Given the complexity, and novelty of the market, there is potential for novel issues to arise which may benefit from having the Panel's input to inform decisions which ASIC and the Minister may need to make.

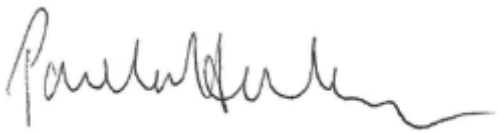
18. It would also be conducive to a smooth and orderly start to the regime for the Minister and ASIC to consult and engage with industry and other stakeholders at an early stage around draft legislative instruments, around the time of the commencement of the regime and certainly well ahead of the end of the first (6-month) transitional period.

Conclusion and further contact

19. We would be pleased to discuss any aspect of this submission. We thank you once again for the opportunity to comment and stand ready to engage further as required, including through bilateral discussions as needed.

20. Please do not hesitate to contact the Chair of the Digital Commerce Committee, Dr Aaron Lane [redacted], or the Co-Chair of the Financial Services Committee, Pip Bell [redacted], if you wish to discuss any aspect of this submission.

Yours sincerely



Professor Pamela Hanrahan
Chair
Business Law Section