



Ministerial Submission

MS25-000035

FOR INFORMATION - Australia's Approach and A Global/Key Jurisdiction Comparison

TO: Treasurer - The Hon Jim Chalmers MP

CC: Assistant Treasurer and Minister for Financial Services - The Hon Stephen Jones MP

KEY POINTS

STATUS OF DIGITAL ASSET REFORMS GLOBALLY

- The regulation of digital assets in Australia and abroad is being guided by recommendations of international organisations like the Financial Stability Board (FSB) and the International Organisation of Securities Commissions (IOSCO). The FSB recommendations focus on promoting financial stability, market integrity, and consumer protection. The IOSCO recommendations focus on investor protection, transparency, and mitigating systemic risks.
- Australia's efforts to implement digital asset regulatory reforms are neither leading nor trailing the global community. For example, while over 90 per cent of FSB member jurisdictions have plans to develop new or revise existing regulatory frameworks to accommodate digital assets, only around 60 per cent of FSB member jurisdictions expect to have done so by 2025. Australia sits within that majority of jurisdictions that plans to implement reforms by 2025.
- Some peer jurisdictions (such as the European Union and Singapore) have already implemented digital asset reforms. Other peer jurisdictions (such as the United Kingdom and United States) have not yet implemented reforms. Australia's progress on digital asset reforms is broadly similar to the United Kingdom's progress – being at the legislative development phase following public consultations.
- Many jurisdictions are also beginning to explore ways to facilitate the potential productivity and competition benefits of digital asset technology. For example, the United Kingdom has implemented its 'digital securities sandbox', which aims to facilitate markets for tokenised versions of conventional financial products. While Australia is exploring the benefits of tokenisation through the work on Central Bank Digital Currencies (CBDCs) and tokenisation, its existing regulatory sandbox is much less effective than global leaders (Singapore, UK and Hong Kong) .
- Reforms relating to anti-money laundering and counter-terrorism financing (AML/CTF) also form an important part of the global approach to digital asset regulation. The Financial Action Task Force (FATF) sets compulsory standards for member jurisdictions, including in

relation to digital assets. On 29 November 2024, Australia passed the *AML/CTF Amendment Bill 2024* to implement those standards. Most FATF member jurisdictions have been assessed as largely compliant.

- While most stakeholder understand the importance of AML/CTF rules, many also worry they could become an impediment to digital asset innovation – particularly because of the disintermediated and peer-to-peer nature of many of the most innovative digital asset businesses.
- Further information on the status of digital asset reforms globally, including some case study examples using peer jurisdictions, is provided in Attachment B.

AUSTRALIA’S APPROACH TO DIGITAL ASSET REFORMS

- The recommendations from organisations like IOSCO and the FSB comprise high-level principles rather than prescriptive standards. In Australia, the best way of implementing these recommendations was considered and developed across several public consultations. The current proposal, which has broad stakeholder support, is to implement reforms by leveraging the existing financial services framework in Chapter 7 of the Corporations Act.
- The three primary elements to Australia’s approach to digital asset reforms are:
 - a proposed framework for regulating digital asset platforms (DAPs) as a new type of financial product;
 - a proposed framework for regulating stablecoin products as a new type of financial product; and
 - a suite of initiatives to investigate ways to safely unlock the potential benefits of digital asset technology across financial markets and the broader Australian economy.

Regulating ‘digital asset platforms’

- Digital asset platforms are businesses that take custody of customer digital assets – usually to facilitate trading or other transactions on the customers’ behalf. The failure of these businesses have caused significant losses for consumer, for example the FTX collapse. Targeted reforms are needed to mitigate the inherent risks of these platforms.
- The financial services laws are designed to mitigate many of the risks that customers of digital asset platforms are exposed to. For example, liquidity risk arises when platforms lack sufficient assets to meet withdrawals, while counterparty risk stems from reliance on operators to honour transactions and safeguard assets. Operational and fraud risks include the commingling of funds, opaque operations, misappropriation of assets and cyber risks, such as hacking and data breaches.
 - Financial services laws address these risks by requiring asset segregation, capital adequacy, operational resilience, and transparent reporting, fostering consumer protection and trust in the digital asset ecosystem.

- Whether a digital asset qualifies as a financial product depends on the specific rights or entitlements it confers. While financial services laws can be effectively applied to intermediaries like digital asset platforms, categorising all digital assets as financial products would be counterproductive.
 - Financial services laws are designed to regulate product issuers, primarily to ensure that financial promises are clear to consumers and are honoured by the issuers. However, many digital assets—such as Bitcoin—do not have issuers making financial promises. Their ‘price’ is driven purely by supply and demand dynamics, which underpins their use in payments or as collateral.
 - While applying financial services laws to intermediaries helps mitigate conventional risks associated with activities like custody and trading, applying them directly to an asset because of its technological underpinnings or how people choose to use the asset would misalign regulatory focus (e.g. it would engage regulatory obligations that are inoperable and unenforceable, encourage the use of other technology to avoid regulatory obligations, and create unnecessary complexity without addressing meaningful risks to consumers or markets).
- Accordingly, digital assets that do not meet existing ‘financial product’ definitions will not be treated as financial products per se. Rather, they will be regulated in-directly, by applying the financial services laws to operators of platforms that provide custody, trading, or related services for those assets. This approach allows businesses to experiment issuing and using digital assets for non-financial purposes (e.g., airline tickets, video game items, loyalty rewards) without undue regulatory burden – but still protects consumers and ensures financial stability for the riskiest activities involving those assets.
- The proposed framework harmonises the regulatory obligations on most digital asset platforms (i.e. platforms dealing in non-financial product digital assets must comply with the same obligations as those dealing in financial product digital assets). However, the financial product classification remains important in key respects. For example, a platform that operates a market for financial product digital assets would require an Australian markets licence while those that operate a market for non-financial products would require an AFSL.

- The design of the proposed framework for digital asset platforms is set out in Attachment A.

Regulating stablecoin products

- Broadly, stablecoin products involve digital tokens (known as ‘stablecoins’) that are redeemable for \$1 (or other currency equivalent). The similarities between stablecoin products and conventional payment products (such as PayPal or Revolut accounts) means that stablecoin reforms can progress with the broader payments licensing reforms.
- Stablecoins have the potential to play a positive role in the payments system. However, some unique treatment of stablecoins is required because: (i) stablecoin issuers could present financial stability risks to the broader economy; and (ii) existing regulatory frameworks do not accommodate the unique characteristic of stablecoins, which are present in all ‘token-based’ systems.
 - Financial stability risks arise because stablecoin issuers typically store value in government bonds, creating potential vulnerabilities as the scale of their holdings grows. While the total value stored by AUD-denominated stablecoin issuers remains negligible at present, the potential for exponential growth cannot be ignored. For example, the top US dollar-denominated stablecoin increased its holdings of US Treasuries from approximately USD 4 billion in 2020 to an estimated USD 150 billion by 2025.
 - : This level of concentration in government bonds could amplify systemic risks, as a rapid sell-off by stablecoin issuers during times of stress could disrupt bond markets, increase volatility, and impact broader financial stability.
 - : Moreover, reliance on stablecoin issuers for liquidity management could create dependencies within the financial system, necessitating robust oversight to pre-empt potential contagion effects.
 - . Most digital payment products are account-based – meaning a central account keeper is involved in all transactions between third parties (e.g. PayPal settling buys/sells on eBay). Being token-based, payments made using stablecoin products are a digital analogue to cash transactions (i.e. parties can exchange goods for stablecoins without the knowledge or involvement of the stablecoin issuer).
- The design of the proposed framework for stablecoin products is set out in Attachment A.

Initiatives investigating the broader economic benefits of digital asset technology

- While the Government is addressing existing risks and consumer harms with its proposed regulatory frameworks for digital asset platforms and stablecoins, it is investigating

facilitative reforms to capture the potential of digital asset technologies to drive economic growth, enhance productivity, and improve competition across industries.

- Treasury's forward-looking work plan aims to identify opportunities for innovation and establish the foundations for future reforms that can unlock the full benefits of digital asset ecosystems while maintaining a balance between innovation and risk management. This includes:
 - working with the Reserve Bank of Australia (RBA) investigating the potential of a CBDC, exploring its implications for payments efficiency and financial inclusion;
 - examining the concept of 'tokenisation' – including working with the RBA to investigate settlement mechanisms in markets for tokenised assets – which could have a significant positive impact on trading, ownership, and transfer of traditional financial and non-financial assets;
 - researching the concept of 'decentralised finance' (DeFi) to understand its potential benefits and risks, including how it might complement or challenge traditional financial systems.
- Treasury has also recommended Government conduct a wholistic review on the effectiveness of Australia existing sandbox. A statutory review of the sandbox is overdue and stakeholder have frequently raised concerns that it is not fit-for-purpose.
- These initiatives represent a comprehensive effort to harness the transformative potential of digital assets while shaping a regulatory environment that supports innovation and growth. They will require sustained effort over a number of years to deliver. Further information on these initiatives is set out in Attachment A.

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ATTACHMENTS

A: Additional Information on Australia's Approach to Digital Asset Reforms

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ATTACHMENT A – ADDITIONAL INFORMATION ON AUSTRALIA’S APPROACH TO DIGITAL ASSET REFORMS

Additional information on the proposed framework for regulating Digital Asset Platforms

- On 16 October 2023, the Government released a consultation paper containing a proposal to regulate digital asset platforms (DAPs). The decision to regulate DAPs was made after several earlier public consultations, which identified DAPs as the key cause of consumer harms in the digital asset ecosystem. Treasury is working to have exposure draft legislation for public consultation within the first half of 2025.

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- DAPs are businesses that hold digital assets on behalf of customers in the digital asset space, usually to facilitate transactions on their behalf. This includes typical digital asset exchanges, many digital asset brokers, all custody and wallet services, and lending and borrowing platforms.
 - The risks associated with DAPs are similar to the risks associated with businesses that are already regulated under the financial services laws (e.g. managed investment schemes and investor directed portfolio services).
 - The proposed framework for regulating DAPs leverages these existing frameworks, while ensuring that the regulatory burden does not discourage businesses from using digital asset technology.
- The regulatory status quo is that activities involving digital assets are already subject to the financial services laws, if those activities involve financial products. There are two primary ways that digital asset activities can involve financial products.
 - First, digital assets can be financial products (e.g. a digital token that gives its holder the same rights as a conventional debenture holder).
 - Secondly, digital assets that are not financial products can be components of financial products (e.g. bitcoin held and traded via an exchange traded fund).

The financial services laws already deal with digital asset activities in these two categories appropriately.

- The reforms propose to expand the regulatory perimeter to capture specific additional activities involving non-financial product digital assets. The proposed framework would mean the financial product status of digital assets held by platforms would be significantly

less relevant. However, achieving the goal of providing regulatory clarity to digital asset businesses will rely on ASIC improving its regulatory guidance.

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- The proposed method of implementing the Government's reforms would involve a new type of financial product called a 'digital asset facility' (DAF) being defined in Chapter 7 of the Corporations Act to cover the act of holding third party digital assets for customers.
 - The impact of the new financial product would be that providers of 'financial services' in relation to DAFs must become AFS Licensees (i.e. DAF issuers or persons brokering or advising on the use of DAPs must comply with: (i) the existing general obligations; and (ii) the existing business conduct obligations).
 - A set of 'minimum standards for token holders' would apply to DAF issuers. These standards are derived from the existing minimum standards from custodians (e.g. they cover holding assets on trust, using client assets, entering agreements with retail clients, and using a sub-custodians – but are tailored for digital tokens).
 - There would also be an additional suite of obligations on operators of 'Platform DAFs'. Platform DAFs can be broadly described as full service digital asset platforms (e.g. a business that involves holding digital assets and also facilitating trading, lending, borrowing, etc). The additional obligations would cover a tailored disclosure regime, requirements to have market operating rules, and prohibitions on self-dealing).
- The proposed Digital Asset framework is intended to be technology neutral. It does not apply to any particular technology, such as distributed ledger technology. Rather, it applies to a particular type of risky business model that has been made possible because of the unique characteristics of digital tokens. The reforms do not target businesses simply using digital assets to deliver their products (e.g. a cinema that replaces 'paper tokens' with 'digital tokens' for ticketing would be unaffected).

Additional information about the proposed framework for regulating stablecoins products

- As part of the payment licensing reforms, a new type of financial product called a ‘Stored-Value Facility’ (SVF) will be created. The framework aims to leverages the existing AFSL regime and require issuers of SVFs to comply with existing financial services obligations, together with some new obligations tailored to SVFs.
 - At a high level, SVF arrangements involve an issuer storing customer funds in circumstances where customers can direct the movement of these funds for payments or transferring to another person.
 - Certain unique provisions relating to tokenised SVFs are needed because any ‘tokenised’ right (such as those underlying stablecoin arrangements) can: (i) have a secondary market and various marketplaces for secondary services; and (ii) be accepted as payment by a person who is not a client of the issuer. These characteristics will be addressed with:
 - : express provisions for secondary markets and marketplaces for secondary services to be regulated under the digital asset platform framework; and
 - : the application of a continuous disclosure regime on issuers of tokenised SVFs in Australia; and
 - : a statutory interest in SVF funds for all holders of the relevant tokens (not just registered clients of the SVF).
- While the payments framework will cover issuers of stablecoins and services in relation redemptions for money and assisted transfers (e.g. cross border transfers via an intermediary will be treated as remittances), the digital asset platform reforms will cover a variety of other services involving stablecoins (e.g. custody and trading of stablecoins).

Additional information on the initiatives investigating the broader economic benefits of digital asset technology

- Central Bank Digital Currencies: A CBDC is a form of digital money issued by a central bank. Like banknotes, it represents a direct liability of that central bank, and is often described as ‘digital cash’. Treasury is working with the RBA to explore the feasibility and potential benefits of an Australian dollar CBDCs.
 - Treasury and the RBA are assessing how a CBDC could enhance payments efficiency, improve financial inclusion, and complement existing payment and settlement systems – utilising pilot projects, in-depth research and stakeholder engagement.
 - Key areas of investigation include comparing retail vs wholesale CBDCs, technical feasibility studies, using CBDCs in cross-border transactions, using CBDCs as a settlement assets in financial markets, and ensuring the integrity and stability of a financial system that involves an Australian dollar CBDC.
 - On 18 September 2024, Treasury and the RBA released a paper that takes stock of the work to date on CBDC in Australia and outlines the forward workplan. It is

assessed that at the present time, wholesale CBDC has more promising benefits and less problematic challenges compared to the retail CBDC

- Tokenisation: Tokenisation involves creating digital assets by connecting rights or other entitlements to digital tokens (including rights of ownership to real world assets). Markets for tokenised assets may be able to leverage increased automation, reduce settlement risk, lessen reliance on multiple financial intermediaries, simplify trading processes, reduce transaction costs, and provide broader access to traditionally illiquid assets. Treasury's forward work program aims to understand the infrastructure, regulatory requirements, and economic implications of tokenised markets to position Australia as a leader in this emerging field.
 - In collaboration with the Digital Finance Cooperative Research Centre (DFCRC), Treasury is assisting the RBA with 'Project Acacia' – a practical investigation that will observe stakeholders trialling the use of different forms of tokenised money (including CBDCs and stablecoins) to facilitate the settlement of transactions in wholesale tokenised asset markets.
 - Treasury is investigating stakeholder claims that existing financial services laws act as a barrier to the emergence of markets for tokenised assets. Research to date indicates that reforms may be needed to existing regulatory frameworks – primarily because these frameworks are largely designed for 'account-based' transactions, which in turn assumes a (potentially unnecessary) need for certain processes and intermediaries.
- Enhance Regulatory Sandbox (ERS): The ERS provides an environment for businesses to test new financial products and services or credit activities without needing an AFSL or credit license. Commencing in September 2020, the ERS aims to facilitate innovation in the fintech sector by supporting the development and testing of new products and services in a pilot environment..
 - Treasury has recommended that the overdue statutory ERS review consider and compare the ERS against modern sandboxes in international jurisdictions – with a view to recommending reforms that would increase the use of the ERS by Australian businesses (see 'MS23-002022').
 - Treasury is monitoring the various international approaches to implementing sandboxes to support the upcoming review. Initial monitoring suggests that sandboxes are becoming a core feature of the innovation agenda in many international jurisdictions, with sandboxes in jurisdictions like UK being particularly highly valued.
- Decentralised Finance: DeFi refers broadly to applications or products that operate without traditional intermediaries – instead using software (called smart contracts) to facilitate complex transactions between unknown parties on a peer-to-peer basis. The current ecosystem of DeFi products comprises an ecosystem of financial-like services, including lending, borrowing, trading, and payments – all accessible globally and often without a centralised entity capable of controlling or interfering with transactions between users.

- Treasury proposes further investigating the potential benefits and risks of DeFi to better understand its role within Australia’s financial system, subject to resources and government priorities. Key areas of focus include the potential for DeFi to enhance financial inclusion, reduce transaction costs, and increase transparency in financial services.
- Treasury’s initial research highlights several risks associated with DeFi, such as the potential for market volatility, security vulnerabilities in smart contracts, lack of consumer protections, and challenges associated with regulatory oversight of decentralised systems. However, there does appear to be use cases for DeFi that align with Australia’s broader innovation and economic goals, which could be unlocked with an appropriate regulatory framework.
- Treasury is also monitoring international regulatory approaches to DeFi, with particular attention to jurisdictions like the EU and the US, to assess the suitability of their approaches for adoption or adaptation in Australia