coinbase

To:
The Treasury,
Langton Cres,
Parkes ACT 2600,
Australia
crypto@treasury.gov.au

31 October 2025

Re: Regulating digital asset platforms – exposure draft legislation

Coinbase Global, Inc. together with Coinbase Australia Pty Ltd. and its other subsidiaries, (**Coinbase**) appreciates the opportunity to respond to Regulating digital asset platforms – exposure draft legislation (**draft legislation**) published by the Australian Government, The Treasury (**Treasury**).

Coinbase started in 2012 with the idea that anyone, anywhere, should be able to send and receive Bitcoin easily and securely. Today, we are publicly listed in the United States and provide a trusted and easy-to-use platform that millions of verified users in over 100 countries rely on to access the crypto economy.

We commend Treasury on the release of this draft legislation. It elegantly ensures that consumer's digital assets are protected when held on their behalf without creating regulatory overreach, representing a culmination of years of work.

We encourage Treasury to use this opportunity to clearly legislate its expectation that global businesses will continue to serve Australian consumers. As digital assets and their markets are inherently global, Australian consumers achieve the best outcomes when they can access regulated, reputable platforms of their choosing. We look forward to continuing to work closely to help shape a globally competitive digital asset regime for Australia.

Yours sincerely,

Tom Duff Gordon
VP, International Policy
Coinbase Global, Inc.

John O'Loghlen
Country Manager
Coinbase Australia Pty Ltd

coinbase

Introduction

Coinbase welcomes the opportunity to respond to the Treasury's draft legislation. As the world's largest publicly listed digital asset platform (**DAP**) we have staked our reputation on being the most trusted and reputable way to access digital assets. This comes with our full commitment to the fit-for-purpose regulation of DAPs to ensure consumers are protected.

In this submission, Coinbase commends Treasury for anchoring the proposed regime in custody and for its pragmatic approach to consumer protection. We also affirm the treatment of staking as a core digital asset service aligned with international best practice.

At the same time, we identify two areas where greater clarity or legislative precision would further strengthen the framework and operating environment for DAPs in Australia:

1. **Ensuring that deference to ASIC's standard-setting powers does not inadvertently restrict global business models**, which are essential to providing Australian consumers with access to deep liquidity, robust custody standards, and competitive pricing; and
2. **Providing clearer policy settings for innovators operating between financial and non-financial products**, to ensure consistency and certainty for Australian projects developing next-generation digital asset services.

Anchoring in Custody and Consumer Protection
We commend Treasury for anchoring the proposed regime in custody - recognising that while not all digital assets are financial products, key consumer protections can be achieved by regulating digital asset platforms (DAPs) under the financial services framework. The focus on control and possession of tokens appropriately addresses the core consumer harm: counterparties failing to safeguard client assets through malice or malpractice. We have also recommended alignment with FinCEN to ensure that essential restore and recovery services are not inadvertently captured within the regime.

Treatment of Staking Services
Coinbase appreciates Treasury's understanding that staking is a core offering expected of DAPs, allowing its provision under the proposed regime. This treatment of staking services brings Australia in line with other major jurisdictions such as the US, Hong Kong, Europe under MiCA and the UK. We also appreciate the guidance as to the primacy of the DAP regime over the Managed Investment Scheme (MIS) regime for staking services, providing a bright line for entities whose core business is staking and may otherwise not appear to be typical DAPs.

coinbase

Scope and Global Business Models
While Treasury has expressed an intent for the DAP regime to accommodate a diversity of business models, the current drafting provides ASIC with wide discretion to define or narrow these models through standard-setting powers. This creates uncertainty for global firms seeking to serve Australian consumers, and risks limiting competition and choice. We therefore recommend that the legislation and accompanying explanatory materials explicitly preserve the ability for global business models to operate in Australia. Two such examples include ensuring continued access to best-in-class global custodial models as well as the deep liquidity and tight spreads available from global exchanges. Availability of these models is critical to delivering the best outcomes for Australian consumers.

Clarity for Digital Innovation
We thank Treasury for grounding the legislation in the principle of control, which effectively brings custodial intermediaries within financial services oversight while avoiding jurisdictional overreach into non-financial digital assets. However, the current process does not revisit broader policy questions relating to digital innovation.

Concurrent to this consultation process, ASIC released an update to INFO225[1], which maintains uncertainty around what constitutes a financial product and, in some cases, relies on relief to provide temporary clarity. This underscores the need for legislation rather than guidance or relief instruments in order to establish a stable and consistent framework for all operators in the market. Providing greater certainty for projects operating at the intersection of financial and non-financial digital assets will help Australian innovators compete globally and reduce regulatory friction for compliant businesses. Coinbase stands ready to work with Treasury and its portfolio Ministers to advance these policy settings.

[1] Australian Securities and Investments Commission, "Updated ASIC Guidance Supports Digital Asset Innovation and Boosts Investor Protection," Media Release 25-250MR, October 29, 2025

coinbase

Key recommendations

While we endorse Treasury's direction, we identify several refinements that would strengthen the legislative framework and provide greater certainty for both consumers and well-regulated businesses. Specifically, we recommend that Treasury:

1. **Preserve access to global business models** by ensuring that deference to ASIC's standard-setting powers does not inadvertently restrict global custodial or liquidity arrangements;

2. **Embed consultative, good-faith rulemaking requirements** for delegated regulatory standards and ministerial powers, supported by parliamentary oversight and clear articulation of policy intent;

3. **Clarify definitions of "possession" and "control"** in line with FinCEN guidance, to avoid inadvertently capturing backup and recovery services lacking independent transactional authority;

4. **Provide clearer policy settings for innovators operating between financial and non-financial products,** to ensure consistency, reduce regulatory friction, and retain talent and investment in Australia; and

5. **Confirm the policy treatment of staking and tokenised custody platforms (TCPs),** as proposed in the draft legislation, ensuring these core services remain accessible under a single, proportionate framework.

We elaborate on each of these recommendations in detail below.

1. Ensure global models

We recommend that the draft legislation and explanatory materials explicitly reference the intention to allow for global business models to be part of the DAP regime. As currently drafted, there is little to prevent ASIC from setting standards that could require localisation of liquidity and custodial arrangements. Given the inherently global nature of digital asset markets, Australian consumers achieve the best outcomes when DAPs can access deep liquidity and institutional-grade custodial infrastructure – the same infrastructure relied upon by global institutions like Blackrock and Van Eck.

While we do not anticipate ASIC will seek to restrict global models, legislative clarity would prevent any future misinterpretation. To that end, we propose the following additions to the draft language:

912BE(2)(d): add -

(iii) in any specific geographical location; or

912BF(3): add -

(ca) does not limit the ability of the issuer of a digital asset platform to source liquidity to effect transactions through the platform from any particular jurisdiction; and

These amendments would embed Treasury's intent in legislation, allowing ASIC to focus its supervisory powers on the appropriateness of custodial and liquidity mechanisms, without constraining the ability of regulated entities to operate global models

Local subsidiary-global parent arrangements are common across the digital asset industry providing deep liquidity, sophisticated trading tools, and best-in-class custody. When such models are restricted, users typically migrate to offshore providers. This trend is already evident in Australia, where unlicensed offshore platforms attract derivatives traders seeking deeper liquidity and competitive pricing[2].

Other jurisdictions that adopted localisation measures - including Hong Kong and Malaysia - are actively revisiting those policies after licensed providers struggled to achieve scale and unlicensed entities gained market share. Australia has the opportunity to avoid these missteps by ensuring its regime is explicitly fit-for-purpose for global participants.

2. Require consultative, good faith rulemaking

Coinbase appreciates Treasury's comprehensive and pragmatic approach in designing the DAP and Tokenised Custody Platform (TCP) regimes. We recognise that, for practical and timing reasons, Treasury has delegated certain rule- and standard-setting powers to ASIC and, in some cases, to the Minister. While we support this overall approach, we caution against ongoing deference to those delegated powers. Without appropriate clarity, such discretion risks diluting Treasury's policy intent and introducing uncertainty for industry participants.

We recommend that the legislation include clear requirements for a good-faith, consultative rulemaking process wherever Ministerial or regulatory powers are exercised. This would ensure transparency, accountability, and continuity with Treasury's objectives as articulated throughout this consultation. .

To further strengthen procedural safeguards, Treasury should:

---

[2] Australian Securities and Investments Commission (ASIC), "Investor Alert: ASIC Warns Investors of Bitget's Unlicensed Crypto Asset Futures Products," news item, July 28, 2025.

- Introduce a parliamentary disallowance provision to any Ministerial powers, consistent with the precedent set under the PSRA[3]; and
- Provide illustrative guidance and examples in the legislation or explanatory materials to clearly define the intent and limits of delegated rulemaking.

These refinements would help ensure that delegated powers are exercised consistently with the Government's policy objectives, preserving confidence in the regime and preventing regulatory overreach that could inhibit Australia's competitiveness in digital assets.

3. Refine definitions of possession and control

The current drafting risks capturing entities that have only a technical capability to access assets, rather than the actual control over them. This could inadvertently extend regulation to non-custodial backup or recovery service providers, despite the fact that they do not hold or transact on behalf of users.

Australian regulation should clearly distinguish between an entity's control over assets and its mere technical capability to access them, consistent with U.S. Financial Crimes Enforcement Network's (**FinCEN**) 2019 guidance[4]. The defining characteristic of possession is the unilateral ability to transact, which key backup and recovery services do not possess. These services are passive and only act when a user requests data recovery. Their function is security-based (i.e. to mitigate the risk of catastrophic asset loss) - not financial intermediation.

We believe that classifying this dormant capability as "possession" is a category error. These services function more like a safe-deposit-box company that holds the master key but does not possess or control the contents within. Regulation should target entities that can independently control and move user assets, not ancillary security providers who act solely as a user-directed failsafe.

FinCEN distinguishes between custodial services (money transmitters) that have "total independent control" over a user's assets and non-custodial software providers that do not. A service that holds a backup or recovery key is analogous to a non-custodial software provider. The service has the capability to access the key, but only under specific, user-initiated circumstances. It lacks the unilateral control to transact with the user's assets at will.

---

[3] Shadow Assistant Treasurer Pat Conaghan, "Coalition Delivers Modern Digital Payments Safeguard," news item, September 4, 2025

[4] Financial Crimes Enforcement Network (FinCEN), Guidance: Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies, FIN-2019-G001 (May 9, 2019)

4. Provide boundaries for clarity

Clarity is critical to ensuring the development of local talent and innovation. When there is uncertainty regarding legal requirements, especially in the face of an aggressive regulator, innovation freezes and investment into technologies is put on hold. Investors like venture capital funds pride themselves in their ability to assess the risk of early stage innovation, but baulk at assigning capital when faced with the unquantifiable potential of a regulator testing its boundaries. Without investment, innovative ideas are unable to gather momentum, forcing talented developers offshore—a story we are all too familiar with in Australia.

Clarity is also important to ensure that the proposed legislation serves a purpose. If, as has been stated publicly in recent years, ASIC believes that most digital assets and related services involve a financial product, the DAP regime provides little value. According to ASIC, though in contradiction with the courts, digital assets and related mostly services sit within the current financial services regime, this implies the DAP regime is unneeded. We suggest that for new industries, policy creation remains the responsibility of the government under Ministers and their departments, not the agencies that work for them.

In creating a DAP regime the Government is providing important protection for consumers while recognising that the assets DAPs hold on their behalf are not financial products. We suggest that as this clear, causal relationship exists, there is the ability to provide further guidance to: (a) embed the importance of this legislation; and (b) give innovators more guidance on the boundaries between financial and non-financial digital assets. This will help them focus on building, rather than spending tens-of-thousands of dollars on understanding if their product sits in or out of ASIC's jurisdiction.

Providing clarity would also save taxpayers money. ASIC has taken a wide variety of cases to court in recent times, testing the boundaries of their jurisdiction with the intention of creating binding case law. This targeting of a nascent industry which is looking to innovate and increase Australian productivity, has resulted in businesses and related investment being frozen in uncertainty, courts being clogged, and taxpayers footing the bill. In multiple cases ASIC's arguments have been found lacking, though they continue to pursue them to the Full Federal Court and the High Court, in one case being required to undertake to the High Court to pay the costs of the respondent—little wonder productivity growth is close to all time lows.

While we understand that a revision of definitions is unlikely at this stage of the legislative process, we encourage Treasury to consider adding examples in the explanatory materials to provide greater clarity as to the separation of financial and non-financial digital assets.

5. We commend the staking and the TCP regimes

Coinbase thanks Treasury for the acknowledgement that staking is a core offering expected of DAPs,specifically allowing its provision to DAP clients under the regime. This treatment of staking services brings Australia in line with other major jurisdictions such as the US, Hong Kong, Europe under MiCA and the UK.

We also appreciate the clear line guidance as to the primacy of the DAP regime over the MIS regime for staking services. While avoiding dual licensing requirements, it also provides certainty for entities whose core business is staking and may otherwise not appear to be typical DAPs. These businesses, depending on how they are structured, offer access for non-technical users to participate in critical infrastructure services, especially for proof-of-stake (PoS) networks.

Allowing access to these services not only ensures the avoidance of dilution for DAP clients that are holders of network tokens on PoS networks, but also cements the provision of critical public blockchain infrastructure upon which the global tokenisation effort relies.

We also commend Treasury on creating the TCP regime. While, under the form of derivatives or managed investment schemes, tokenisation and access intermediation to assets has existed under the Australian financial services regime since its existence, compliance overheads have impeded its expansion beyond financial assets and highly traded commodities. In creating the TCP regime, a new approach to tokenisation is now available especially in regards to the tokenisation of physical goods, from bottles of wine and whiskey, to pokemon cards and Labubu dolls, with the potential to become a reference regime for other jurisdictions.

Targeted responses

We commend Treasury and the Office of Parliamentary Counsel for the draft legislation and the comprehensive nature of the explanatory materials. For the most part, we feel that Treasury's policy intent is reflected in the draft legislation, and the outcomes are clear. As such, we have only provided a targeted response to the lengthy set of questions, focusing only on those where we wish to draw attention to potential improvements or highlight the importance of the sections in question.

Digital Tokens and Digital Assets

1. The component parts of the 'digital token' definition used in the draft Bill have been informed by international work including the UK Law Commission's Final Report on Digital Assets, the UNIDROIT Principles on Digital Assets and Private Law, and the US Uniform Law Commission's Uniform Code Amendments 2022.

1.1. Is the concept of "control" in section 761GB sufficiently clear to allow stakeholders and courts to determine the circumstances in which: (i) a digital object is a digital token; and (ii) a person is issuing a digital asset platform (DAP) or tokenised custody platform (TCP)? If not, how can it be improved?

We commend Treasury's efforts to develop the concepts of possession and control for the legislation and for the most part we agree with them. As we detailed in the key suggestions section of this submission, the legislation should distinguish between an entity's control over assets and its mere technical capability to access them to ensure key backup and recovery services are not accidentally captured.

Key backup and recovery services are an important part of increasing the usability and safety of public token infrastructure and the tokens themselves. These services operate in a passive manner, and their use is contingent on a user's request for data recovery, not for financial intermediation. Their function is not to custody assets for transacting, but to provide a contingency mechanism for the user's benefit.

To address this, we suggest the following additions (in bold) that jointly or severally work towards imposing a reasonable boundary on the broad definitions of the concept of "control" or "possession":

> **761GB** (3)
> In working out whether a person is capable of doing a thing in paragraph (2)(a), (b) or (c):
> (a) have regard to what the person is currently capable of doing as a matter of fact rather than law; and

> **(b) disregard capabilities involving fraudulent, malicious or unauthorised conduct designed to bypass digital or physical security systems; and**
> (**c**) it does not matter if another person is also capable of doing the thing.
>
> **761GB** (4)
> A person possesses a digital token if the person is capable of controlling the digital object that is the digital token unless:
> (a) the person can only do so with the cooperation **or upon instruction** of one or more other persons; and
> (b) one of those other persons is unilaterally capable of controlling the digital object.

We also believe that the current draft legislation could be read as requiring the person to prove they are able to exclude others from possessing the object, to be able to be said to be in control of the object. This is a seemingly impossible action, where the only proof can be to the negative. Someone can prove that you are not excluding them, by transferring the token without your permission, though you cannot prove that you are excluding everyone.

To ensure clarity, we suggest Treasury provides further explanatory material regarding the purpose of 761GB(2)(a) 'excluding others from controlling the digital object'. If this is intended to be in relation to the rivalrous nature of digital tokens, the drafting of 761GB (2) could focus on digital tokens, rather than digital objects.

1.2. Is the concept of "control" in section 761GB sufficiently flexible to enable the law to develop and apply to various technologies in future? If not, how can it be improved?

We suggest that while the breadth of the concept of control is very wide, allowing for flexibility, the application of it may capture arrangements that are not intended to be captured. To amend we suggest the drafting in 1.1 above, as well as including further detail in the explanatory materials as to the intention of capturing control as a key feature of the legislation.

3. The draft Bill focuses on circumstances in which a person in fact possesses or transfers a digital token. It does not change the way that the existing law applies to determining whether a person – by possessing or transferring a digital token – is holding or transferring a financial product.

We thank Treasury for the clear draft legislation and explanatory materials regarding the application of financial markets and financial products/services. We believe that they reflect Treasury's policy intent to leave the application of existing financial product and related financial services laws unchanged.

While we note in our key recommendations that more clarity could have been provided on how Treasury expects digital assets to be assessed in regards to the financial product definition, it is clear that where financial products are involved the existing law applies rather than the DAP and TCP regimes.

Coinbase suggests that Treasury should prioritise financial asset tokenisation as part of its future program of work. Treasury should evaluate all applicable existing laws with the intent of identifying any issues that would impede the direct issuance of securities on public blockchain infrastructure with the intent of removing the impediments.

Digital asset platforms and tokenised custody platforms

6. Under the draft Bill, a "client" of a TCP is a person who has entered into an agreement with the operator. Merely possessing a TCP token does not make a person a client – a TCP token holder must onboard with the operator and become a client before being able to exercise rights in relation to the underlying assets.

6.1. Is the draft Bill sufficiently clear on this distinction between TCP client and TCP token holder? If not, how could this be clarified?

We agree with Treasury that focusing on the legal contract between a TCP and a user is an appropriate way to identify clients of TCPs, separating them from persons who merely hold tokens representing the TCP. This treatment reflects the reality of token arrangements in the market, especially in regards to wrapped tokens and stablecoin tokens, and is important for continued market function.

To ensure that this intent is clear in the draft legislation we suggest adding a 'Note' under 761GD clearly stating:

> Note: Merely possessing a token created in 761GD(1)(b) does not make the holder a client. To become a client, a token holder must enter into a contractual arrangement with the issuer that reflects those terms.

We also, suggest that this same language be used in the tokenised stored value facility regime to provide clear understanding of the differences between the rights of stablecoin token holders vs clients, while ensuring that the normal function of stablecoin tokens and their related markets continue.

6.2. Does the draft Bill need to make specific provision for operators to hold underlying assets on trust for TCP token holders, including those who may be unknown to the operator? If so, how could such a provision be implemented?

To ensure consumer protection Coinbase suggests that the addition of a specific provision to hold underlying assets on trust for TCP token holders is necessary, particularly if the definition of a TCP is amended to remove the "in trust for" holding concept (as recommended by many in the industry during recent roundtables).

This can be achieved by adding a provision in section 912BE of the Act to ensure that any asset holding standards made by ASIC must require operators to hold underlying assets on trust for TCP token holders.

7. The draft Bill is intended to allow a digital asset platform or tokenised custody platform to be jointly operated by more than one licensee. This approach reflects existing business models where different entities provide custodial and transactional functions, and is designed to provide structuring flexibility while preventing avoidance of obligations. It also seeks to reduce duplication by allowing joint operators to prepare a single DAP/TCP Guide, with liability apportioned to each operator for their own services.

Coinbase commends Treasury on its foresight to include this section in the draft bill. While we do not have any suggestions, we recognise Treasury's intent to ensure that a wide variety of business models that exist in the digital token industry are considered valid ways to structure for the DAP/TCP regime. This ensures that there is no unnecessary market dysfunction or poor consumer outcomes from over proscription of business structure.

We also believe that the anti-avoidance mechanisms in the Corporations Act are sufficient to prevent entities structuring around the proposed regime.

Priority rules and safe harbour test

9. The draft Bill does not alter the priority between facilities that are financial products and facilities that are financial markets or clearing and settlement facilities.

9.1. Is it clear that a facility (or part of a facility) that meets both: (i) the definition of a DAP; and (ii) the definition of a financial market or clearing and settlement facility, will be a financial market or clearing and settlement facility (and not a DAP)? If not, how could this be clarified?

We appreciate Treasury providing clear guidance, noting the primacy of the financial markets and clearing and settlement facilities, over the proposed DAP regime. This guidance provides welcome clarity for the industry and we believe the draft legislation and explanatory materials as written reflect the stated policy intent.

10. The draft Bill introduces: (i) a priority rule between DAPs/TCPs and managed investment schemes; and (ii) a safe harbour for DAPs/TCPs from the managed investment scheme regime).

We thank Treasury for including a priority rule and safe harbour between DAPs/TCPs and managed investment schemes (MISs). This rule brings Australia in line with other jurisdictions such as Hong Kong and Europe, ensuring that digital asset platforms are able to safely and efficiently provide directed staking services to their clients without requiring duplicate licensing.

Importantly the priority rule does not stop businesses providing access to financial products that manage investments in digital assets and their associated staking returns, as these will still be able to structure as MISs.

10.1. Is it clear that an arrangement (or part of an arrangement) that meets both: (i) the definition of a DAP or TCP; and (ii) the definition of a managed investment scheme, will be a DAP or TCP only if it satisfies the safe harbour test (in paragraphs (mc) and (md) of the MIS definition in section 9? If not, how could this be clarified?

It is important that DAP clients are able to avail themselves of services provided by the platform, without any accidental triggering of the MIS regime, especially in regards to staking. To provide full clarity we suggest that in the explanatory materials Treasury include illustrations showing that DAP clients should be able to provide express consent for the management of their assets

To accompany this, Coinbase suggests that the explanatory materials provide illustration of the policy intent regarding the term 'lawful client instructions' in the suggested insertion to Section 9, (md)(ii), as there is no precedent for this language in the Corporations Act.

10.2. Do the elements of the safe harbour test appropriately capture the characteristics of DAPs and TCPs that justify relief from the MIS regime? If not, what alternative or amended test would you suggest?

In practice there are arrangements, where units are issued representing some amount of the underlying, but some total number of them are required to action a redemption, even though a smaller redemption is factually possible. For example, an otherwise TCP issues tokens representing a claim on some gold. Gold can physically be delivered in very small amounts, though from a business stand point chipping a piece of gold off a gold bar for delivery would jeopardise the value of the bar. The TCP may thus require an amount of tokens representing the value of a whole gold bar before facilitating a physical, in kind, redemption request. This should not negate the business from being classified as a TCP and push it into the MIS regime.

We suggest that the Treasury ensure that the policy intent for TCP unit issuance is reflected in the drafting.

There are also some DAP models that only allow buy/sell and not an ability to withdraw. We expect that the proposed insertions, (mc)(iii) and (i), into Section 9 may cause these models to fall out of the DAP regime and thus be ineligible for relief from the MIS regime. Treasury should assess whether this matches the policy intent.

Disclosure

12. The draft Bill replaces the default product disclosure statement obligations for DAPs and TCPs with a requirement to prepare and provide a "DAP/TCP Guide" comprising: (i) the content necessary to satisfy financial services guide obligations; and (ii) specific information about the operation of the platform.

12.2. Should any specific content requirements be added or removed? If so, which ones?

Coinbase believes that the format of the guide prescribed in the draft legislation is appropriate and we recognise the importance of providing a DAP/TCP Guide (**Guide**) to consumers to provide similar levels of disclosure to a financial services guide.

To ensure practical implementation, we suggest that Treasury include the words 'where practicable' when referring to disclosure relating to non-financial digital tokens. As most digital tokens do not have identifiable issuers or source of truth documentation the DAP issuer must not be expected to provide up to the minute verified information on the token and must not be exposed to liability for the information it provides on a token.

We also suggest that it be made clear that for section 1020AO(1)(e)(ii) relating to providing information regarding how to complain (where possible) to issuers of digital tokens featured on the platform, each token does not have to be listed in the Guide. Rather, the Guide can refer to a linked list ensuring that the Guide does not need to be updated every time a token is listed or delisted.

13. Section 1020AR of the Bill would empower the Corporations Regulations to prescribe a disclosure regime for non-financial product digital tokens offered through a DAP or TCP.

Coinbase agrees that a fit-for-purpose level of disclosure for non-financial digital tokens is important for positive consumer outcomes. Requirements for these disclosures should extend only to those expected under the Competition and Consumer Act (2010) for example, not being misleading or deceptive. An extensive regime would be outside policy principles, and as DAPs only provide access to digital tokens, not issue them, information can only be provided on a good faith basis with no guarantee of accuracy.

We suggest that this Ministerial power could be avoided with some legislative drafting and accompanying explanatory materials. As this is directed at digital tokens that are not financial products the required disclosures for providing access to those tokens should be limited.

If the Government feels that a disclosure regime must be created, then we suggest that this Ministerial power is more appropriate than standards prepared by ASIC and must require a full consultation process for its development.

Regulatory clarity and flexibility

14. The draft Bill attempts to provide regulatory clarity with targeted exemptions and flexible powers that can be exercised by the Minister or ASIC.

14.1. Do the exemptions for wrapped tokens, public digital token infrastructure, and intermediary staking arrangements adequately address the regulatory uncertainties that arise in each context? If not, how could they be improved?

We appreciate Treasury's efforts to ensure that the market structure of the digital asset ecosystem is maintained. The exemptions for wrapped tokens and the clarity provided regarding the operation of public digital token infrastructure is pivotal in its recognition of their importance to the operation of digital asset markets, and their critical role as the base layer for the next iteration of financial markets.

Exempting intermediaries from unnecessary obligations required by the Australian Markets and Clearing and Settlement Facilities regimes is key to ensuring the continuing function of digital asset platforms as access points for public token infrastructure. Wrapping tokens allows for digital tokens to be represented on their non-native chain as well as expanding the usability of digital tokens. While some arrangements could be considered custodial and may meet the DAP test, no further protections are provided by applying the AML and CSF regimes that outweigh the detriment of loss of access.

We suggest that the similar language should be used in the tokenised stored value facility regime to ensure that intermediaries of stablecoin tokens are appropriately exempt from the AML and CSF regime, ensuring the ongoing importance of stablecoin tokens on public token infrastructure.

14.2. Is the power for the Minister to declare that specific digital tokens are not treated as financial products for the purposes of the financial markets or clearing and settlement regime an appropriate way to provide flexibility to "right-size" regulation in future?

We agree that this is a good way to create clarity for the industry where ASIC may view certain digital tokens as financial products but their treatment as such would trigger unnecessary, and potential unworkable requirements to comply with Australian Markets and Clearing and Settlement Facilities Licencing regimes. This power would have been useful in March[5] for example, when the Government declared the intended treatment of wrapped tokens and stablecoin tokens for intermediaries, though had to rely on ASIC's discretion to follow that treatment against their proposed updates to the guidance contained in InfoSheet 225.

We suggest that as Treasury has identified the need for this power, it should also provide initial examples of digital tokens that it would expect not to be treated as financial products in the explanatory memorandum. This would help give some industry clarity and may dissuade ASIC from taking opposing positions that would require the Minister to exercise this power. This power should also include the ability to extend the declared treatment to digital tokens with equivalent features to ensure efficiency.

We also suggest that this power be accompanied by a requirement to consult with industry before its enlivenment.

15. The appendix to the Explanatory Memorandum includes a series of worked examples covering the application of the definitions and exemptions in the Bill. These examples are intended to show at a high level how the statutory tests are intended to apply in practice.

We thank Treasury for the comprehensive set of examples in the explanatory material, especially noting the importance of these to understanding the application of the definitions of possession and control.

We suggest that the creation of explanatory examples should become standard practice in Treasury's development of future legislation, especially as the pace of technological change and accompanying regulation increases. A well formed set of examples allows for

---

[5] Australian Government, The Treasury, Statement on Developing an Innovative Australian Digital Asset Industry (March 2025)

lawyers, businesses, courts and future legislators to understand the policy principles behind legislation and how it was intended to be applied.

15.2. Are there additional examples or clarifications that would assist stakeholders in understanding how the regime applies in practice?

While the policy intent to not capture many of the important entities involved in developing and running public digital token infrastructure is generally clear, clarification regarding the examples has been asked for by industry. As discussed in our key recommendations and in answer to 1.1, it is not clear that the provision of services that allow for key recovery is exempt from being captured under the DAP regime. We suggest that examples illustrating their exemption are provided for clarification. Key recovery services are critical for the protection of consumers from asset loss and their capture may lead to services not extending their offerings to Australians.

We suggest that Treasury develop more examples illustrating its intended treatment of software providers, accompanied with explanations of why they are exempt or not. Where possible, Treasury and Office of the Parliamentary Council should develop these directly in discussion with software providers to ensure understanding on both sides.

Transitional arrangements

16. The draft Bill provides transitional timeframes for: (i) staged commencement of amendments and obligations; (ii) ASIC to begin accepting licensing applications; and (iii) temporary relief from obligations during a transitional period.

16.1. Is the transitional period sufficient for businesses to obtain legal advice, prepare and lodge an AFS licence (or variation) application, and adjust compliance systems?

It is important that businesses applying for DAP authorisations be able to make adequate assessments of their obligations under the regime before the undertaking of expensive and time consuming licensing processes.

We suggest that the initial transitional period be extended from 6 months to 12 months after royal assent.

Six months is too little time for ASIC to create and consult on standards relating to the operations of DAPs, to ensure businesses are able to make informed decisions for their licence applications. The extension to 12 months will ensure businesses have the required time to understand ASIC expectations.

coinbase

16.3. Is the option to extend the transitional periods under the Corporations Regulations appropriate, or should certainty be provided by setting out the intended transitional periods in the Bill?

Rather than relying on an option for ASIC to extend transitional periods under the Corporations Regulations, Treasury should consider creating a grandfathering period, in principle authorisation or, non-time bound transition period for good faith DAP licence applicants.

We think providing ASIC with the option to extend transitional periods is appropriate, especially if consultation processes regarding standards are lengthy. But for licensing specifically we believe that a better outcome would be provided by including transition arrangements stating that all DAPs who have submitted a licence application within the required 6 month period (which we argue should be extended to 12 months in 16.1 are in compliance until their licence application has been withdrawn, or is rejected by ASIC.

This will ensure a smooth transition for DAPs and their clients, no matter the amount of applications received by ASIC or its resourcing for assessing them—avoiding any serious market dislocations potentially resulting from legislative efforts.

Necessary Regulations

17. Under existing financial services laws, operators of facilities akin to DAPs or TCPs would be providing a custodial or depository service if they held financial products. Under the draft Bill, this would no longer be the case.

17.1. Should the following exemptions, currently granted to custodial and depository service providers, be extended to issuers of DAPs that do not provide transactional and settlement functions (i.e. those that only provide custody): – sub-custodian exemption – Regulation 7.6.01(1)(k); – overseas issuer and client exemption – Regulation 7.6.01(1)(fa); – overseas related body corporate exemption – Regulation 7.6.01(1)(na); – nominee exemption – Regulation 7.6.01(1)(v); – advising about the existence of a non-transactional DAPs – Regulation 7.1.33E; – status of wholesale clients – Regulation 7.1.27; or – financial product advice modifications – Regulation 7.1.08?

We agree that the proposed exemptions, currently granted to custodial and depository service providers, be extended to issuers of DAPs that don't provide transactional and settlement functions. This is an important part of the proposed regime that recognises the variety of DAP business models and ensures that they are not subject to obligations that are unnecessary.

17.2. Alternatively, should the exemptions listed above apply to issuers of DAPs and TCPs generally?

There should be no difference as a matter of policy between transaction only and full service DAP or TCPs so long as it is clear that the exemptions apply to the custody function only.

For example, the sub-custodian exemption in regulation 7.6.01(1)(k) is relevant to all DAP and TCP issuers which are licensed to issue and operate DAPs, who may choose to engage a sub-custodian to hold underlying assets on behalf of their clients. In addition, regulation 7.1.33E should also apply in relation to the custodial capabilities of any DAP or TCP issuer so long as the advice does not relate to any underlying financial product. The majority of the remaining exemptions relate to services provided to related bodies corporate which should apply to all issuers of DAPs and TCPs generally.

We suggest that these exemptions should be extended to all DAP and TCP issuers (i.e. those that provide transactional, settlement and custody functions).

19. Issuers of margin lending facilities and similar products cannot rely on the intermediary authorisation exemption due to regulation 7.6.01AAA of the Corporations Regulations.

19.1. Should this intermediary authorisation exemption also be disapplied to DAPs and TCPs under regulation 7.6.01AAA?

We support oversight that ensures that entities holding assets on behalf of others are not cutting corners in their custodial arrangements and decreases the likelihood they commit fraud, due to checks through the application process, like the requirement to have fit and proper responsible managers, professional indemnity insurance, registration with AFCA and sufficient operational and financial resources.

We suggest that only AFSL holders should be able to issue DAPs as they custody client's assets, though it makes sense to disapply this exemption there's still an element of custodial oversight that should apply. ASIC oversight of policies and procedures is important for the protection of consumers and the ongoing functioning of the sector.