



Our Ref: PD:8872

24 October 2025

Director
The Treasury

Dear Director,

RE: Regulating digital asset platforms – exposure draft legislation

Thank you for the opportunity to provide feedback on Treasury's consultation paper '*Regulating digital asset platforms – exposure draft legislation*' (**the Consultation Paper**).

We have provided further feedback in response to the consultation questions below.

ABOUT US

Holley Nethercote Lawyers is one of Australia's leading financial services regulatory firms. We are experts in digital asset technology, financial services and consumer credit regulation, financial crime and commercial law. Employing over 37 staff across Melbourne, Sydney, and Brisbane, our firm acts for many of the world's largest digital asset groups, as well as local Australian startups, and traditionally regulated entities entering the digital asset sector. We:

1. Helped draft the Commonwealth Model Law on Virtual Assets¹ which we are instructed is being implemented in 33 countries.
2. Were primary authors of the Digital Economy Council of Australia (**DECA**)'s Code of Conduct for Digital Currency Businesses.
3. Advocate for the digital economy via:
 - a. Managing Partner Paul Derham's role as Chair of DECA, which is Australia's peak industry body representing the digital economy; and
 - b. Partner Michael Mavromatis' role on the Digital Assets working group with the Australian Custodial Services Association (**ACSA**), the leading industry body representing Australia's custody and investment administration sector.

Holley Nethercote also provides non-legal services, including Australian Financial Services Licence (**AFSL**) and Australian Credit Licence (**ACL**) application support, training, and template compliance documents and regulatory updates via www.hnhub.com.au.

¹ [The Commonwealth Model Law on Virtual Assets | Commonwealth](#)

SUMMARY OF OUR VIEW

We are in favour of Treasury's proposal to regulate the custodial platform rather than to regulate the underlying digital asset – whilst acknowledging Treasury (and ASIC)'s view that some underlying digital assets or tokens are in fact financial products.

We also acknowledge the incredible amount of work that Treasury has put into the exposure draft legislation and the explanatory materials. The abundance of examples in the explanatory materials are welcome.

We have worked with many of Australia's top law firms to present the collective findings in DECA's submission, and we fully support them, and do not wish to unnecessarily duplicate arguments. In our view, key issues are:

1. **ASIC's power to make asset-holding standards should require it to impose graduated risk-based rules, and consult with industry.** Currently, there are no limits or industry consultation requirements imposed. We support a regime where the industry is given the opportunity to grow and mature in a manner that proportionately balances facilitating innovation and investor protection.
2. **Use plain, universally accepted language.** In an attempt to be technology neutral, Treasury has avoided common language that is globally understood and increasingly globally adopted, creating unnecessary complexity in the Australian legal environment. Treasury should consider following the UK's lead, which had already defined cryptoasset for AML/CTF purposes, and recently have proposed to create new categories like "qualifying cryptoassets" for custody-related purposes.² For example:
 - a. Section 5B of Australia's *Anti-Money Laundering & Counter-Terrorism Financing Act 2006* (as amended by the Anti-money Laundering & Counter-Terrorism Financing Amendment Act 2024) defines a virtual asset as a digital representation of value that includes and excludes certain functions and characteristics.
 - b. Treasury should consider replacing its proposed definition of Digital Token, with a term like "Qualified Virtual Asset" or similar, which includes and excludes functions and characteristics so as to only capture those tokens as intended. For example:

"Qualified virtual asset" means a virtual asset within the meaning of section 5B of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 that is also a digital object over which one or more persons are capable of exercising control.
3. **Simplify regulatory treatment regardless of the platform's execution model.** Platform execution can amount to making a market, operating a market, acting as a broker, or something else. Treasury should exempt operators of DAPs

² [Future financial services regulatory regime for cryptoassets \(regulated activities\) - Policy Note \(Accessible\) - GOV.UK](#)

and TCPs from requiring an Australian Markets Licence or Clearing and Settlement Facility Licence (**AML/CSF**) if they meet rules, which should be:

- a. developed by ASIC in collaboration with the industry;
- b. fit-for-purpose to reflect how distributed ledger technology works;
- c. robust enough to avoid regulatory arbitrage. We recognise the concern that entities may choose to move from a traditional AML/CSF to the DAP/TCP if the rules are too "light on"; and
- d. risk-based and proportionate to the market risk that the execution model and the size of trade volumes, present. So, smaller operators with lower volumes should have lighter obligations.

As always, we welcome the opportunity to discuss.

Yours sincerely,

A handwritten signature in red ink, appearing to read 'Paul', with a stylized flourish extending to the right.

Paul Derham
Managing Partner
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