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Blockchain Australia – Submission to Economics Legislation Committee Digital Assets (Market Regulation) Bill 2023

May 2023



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1. Blockchain Australia

This submission is made by Blockchain Australia, in collaboration with its members and industry stakeholders.

Blockchain Australia is the peak industry body representing Australian businesses and business professionals participating in the digital economy through blockchain technology. Blockchain Australia is non-partisan and encourages the responsible adoption of blockchain technology by the government and industry sectors across Australia as a means to drive innovation and create jobs in Australia.

The Blockchain Australia membership base consists of 120+ leading cryptocurrency and Blockchain centric businesses and 100+ individuals across multiple verticals including:

- Accounting and Taxation
- Artificial Intelligence
- Banking
- Cyber Security
- Art
- Development
- Building & Construction
- Digital ID
- Energy and Resources
- Entertainment
- Gaming
- Health and Wellbeing
- Insurance
- Investment
- Legal
- Professional Services
- Recruitment
- Real Estate
- Risk and Compliance
- Supply Chain
- Venture Capital

The sector contributes AU\$2.1 billion and employs around 11,600 people ([Source](#)) and with supportive reform these figures could increase to AU\$68.4 billion and over 206,000 people employed in the sector.

In responding to this and other government consultation we seek a fit-for-purpose, technology-enabling regulatory framework with clear guideposts for consumers and a focus on driving innovation and Investment while protecting consumers.

We thank the Economic Legislation Committee for taking the time to consider our submission.

Gordon Little

Policy, Blockchain Australia



2. Executive Summary

Blockchain Australia is grateful for the opportunity to provide its response to the Digital Assets (Market Regulation) Bill 2023. Our association, representing numerous members in the digital assets sector, is supportive of the government's efforts to establish a fit for purpose regulatory framework that is suitable for the digital assets industry.

We acknowledge that this Private Member Bill is presented while the government is concurrently undertaking consultations to establish Digital Asset Custody and Digital Asset Exchange Licensing regimes. We firmly believe that the groundwork laid by Senator Bragg provides a foundational start towards a comprehensive digital asset regulatory framework. If the bill does not pass, we recommend incorporating relevant provisions into the Custody and Digital Asset Exchange licensing regimes as appropriate.

Our specific response to this legislation has been limited to highlighting areas where our recommendations from our October [submission](#)¹ were not addressed in this version. In addition, we would like to draw attention to the following topics that were discussed during the token mapping [consultation](#)² but not included in this legislation:

- Regulation of services like staking / yielding;
- Limitations in current financial services regulation around definitions, for example the use of the word “person” meaning that some things that look like financial products avoid regulation based on a technicality i.e. if it has a financial product purpose, how do we make sure it is regulated accordingly;
- How (and if) market licensing should apply to digitised financial products traded on exchanges. This is a key bottleneck in the digitisation of financial products and while it remains unresolved we are unlikely to see many traditional financial products on the blockchain;
- The issue with decentralisation finance which means DAOs and DEXs avoid regulation because of lack legal personhood;

These issues are crucial in advancing the digitization of financial products, and their resolution is essential to ensure proper regulatory oversight.

¹<https://blockchainaustralia.org/wp-content/uploads/2022/12/Blockchain-Australia-Submission-to-Andrew-Bragg.pdf>

²<https://blockchainaustralia.org/wp-content/uploads/2023/03/Blockchain-Australia-Token-Mapping-Submission-Final.pdf>



3. Recommendation

The following are the key recommendations from our submission

Topic	Recommendation	Comments
Definitions	<p>Digital Assets - We recommend that the definition of Digital Assets remove NFTs to be consistent with the EU MiCA framework.</p> <p>Digital Asset Exchange - The definition is too broad and should be narrowed so it does not pick up other business models which do not exhibit the same risk factors.</p> <p>Stablecoins - The definition of stablecoins is extremely broad and could capture non-fiat backed and wrapped assets, we suggest narrowing the definition to focus on these specific risks.</p>	<p>The change in the definition for Digital Assets (refer draft legislations³) does not reflect our recommendation that NFTs be excluded, and therefore may hinder Australia's ability to innovate in other industries, such as video gaming and entertainment.</p> <p>The change to the Digital Asset Exchange definition does not reflect our recommendations, it is still too broad and would capture businesses like NFT stores or marketplaces that may be non-financial in nature, and more aligned to entertainment.</p> <p>The proposed definition of Stablecoin has been written in such a way that it would include tokens not considered to be stablecoins, such as asset backed tokens.</p> <p>The definition of Stablecoin should be amended to exclude Asset</p>

³https://files.elfsightcdn.com/0c590f84-0d62-4f95-9662-f8300341e9bc/dda21a78-c6f4-43e7-a3a4-286f6bb74733/20220919-Digital-Assets--Market-Regulation--Bill-2022_Bragg-V04--Consultation-Draft-.pdf



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		<p>Referenced Tokens such as tokenised gold or tokenised carbon.</p> <p>Governance of stablecoins and asset-referenced tokens may not always be identical, and thus should be treated separately.</p> <p>Our view is that products should be regulated with equivalence on and off blockchain (with regulation enabling the efficiencies of blockchain but not permitting existing regulated products to avoid regulation by using a blockchain), and we do not believe the wording in the current bill results in this outcome.</p> <p>Specifically, asset-backed tokens should be regulated if they are clearly financial products, but if not, they should not be subject to any specific regime other than the normal consumer protection laws that apply.</p> <p>For example, the ownership and storage of gold is currently not regulated, as such, we submit tokenised gold should not be similarly regulated, absent features of a scheme which would render such a regulated product.</p>
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<p>Licensing</p>	<p>We propose 1 license with three authorisations.</p> <ul style="list-style-type: none"> • Stablecoins (Issuance) • Exchanges • Custody <p>To assist new entrants (start-ups) low value thresholds can prevent those businesses being disincentivised while at a proving stage.</p> <p>Consideration should be given to whether it is appropriate to allow passporting of foreign-issued AUD stablecoins which will not hold reserves onshore.</p>	<p>We recommend turnover or assets under custody thresholds be introduced to provide opportunities for startups to enter the market.</p> <p>Products or services for which a license would be required for a Digital Asset Exchange needs to be more specifically defined. We are concerned that the current wording would mean that providers require a license to provide services where no licensing requirements presently exist for non-digital asset equivalent products.</p> <p>For example under this licensing structure an exchange would require a license for the actual exchange process – fiat to regulated asset and vice versa, and regulated asset to regulated asset. Australia does not currently regulate spot trades of foreign currency, for example. Futures, derivatives and forward contracts should of course be regulated as financial services under existing regulations.</p> <p>Stable coin Licensing</p> <p>Blockchain Australia would like to note that there are 3 main forms of stablecoins</p> <ol style="list-style-type: none"> 1. Fiat-backed Stablecoins 2. Asset-backed Stablecoins 3. Algorithmic Stablecoins
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		<p>However, the DCE industry has been subject to de-banking, causing difficulty in issuing reliable stablecoins of fiat-backed nature.</p> <p>Stablecoin issuers are to hold reserves in an account with an ADI – this is a problem in light of current de-banking issues.</p>
Interaction with existing regulation	<p>The proposed legislation needs to clearly articulate how it will interact with existing AFSL, Market Operators, Credit, Custody, Banking and Payments regulatory requirements (including licensing).</p> <p>Consideration should be given to allowing participants who have an existing financial services license to be deemed to have met certain obligations under this proposal, while requiring them to meet other specific obligations under this bill.</p>	It is still unclear how this regulation will interact with existing licensing regimes.
Maintenance of Capital Adequacy	We recommend a tiered approach to the capital adequacy requirements, with further consultation needed on tiering thresholds to balance innovation and customer protection.	We recommend turnover or assets under custody thresholds be introduced to provide opportunities for startups to enter the market.



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Monitoring Activities	<p>The legislation does not specify detailed monitoring requirements. This detail is needed and where possible should be consistent with the requirements with existing obligations for exchange operators while recognising and making allowances for the nuances inherent in operating a digital currency exchange, such as the ability to remotely audit on-chain wallet balances.</p>	<p>This has not been addressed in the legislation.</p>
Segregation and Custody of Funds	<p>ASIC have promulgated RG 133 to provide relief for omnibus accounts. We believe this relief should be extended to digital assets with specific conditions to accommodate the specific technologies used to hold and manage the accounts.</p> <p>To ensure clients are informed on how their assets are being held, reporting by exchanges on a client's holdings, and disclosure on what arrangements exist for client asset protection, to allow clients to make informed decisions. To ensure consistency of reporting we believe a standard form for disclosure should be made to</p>	<p>Segregation of duties has now been addressed in part 2, section 10 and section 16.</p>



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	retail clients by authorised exchanges and should be included within the legislative framework.	
Transitional Arrangements	<p>As there are little to no existing resources or experience in implementing this type of licensing regime in any of the regulators, as such we believe an 18 -24 month timeframe is more appropriate.</p> <p>In addition to a transition period, an exemption regime should be included for Digital Currency Exchanges and Digital Asset Custody Services currently operating with such exemption in force until a license application is determined.</p>	<p>A 3 month transition period is too short to allow for all participants to comply. We recommend a 18-24 month translation period.</p> <p>During the transitional period we also recommend that safe haven be implemented</p>
Digital Asset Custody Requirements	<p>Given the complexity and nuances of providing custody for digital assets we recommend that a separate consultation be undertaken on the rules for custody of non-financial products. Consideration should also be given as to whether these rules should apply to any AFSL licensee that provides custody services for digital assets. Report 705 by ASIC</p>	<p>The custody rules only apply to assets that meet the definition of “regulated asset”.</p> <p>We recommend that non - regulated assets held in custody should be subject to the same custody requirements.</p>



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	provides a sensible starting point for technical custody requirements.	
Alignment to international regulatory frameworks	The bill needs to be reviewed in light of recent legislation being introduced in Europe, the UK and the United States to ensure, where possible, consistency from a global perspective.	This has been addressed in part 2, Section 31 which has provisions for recognition of foreign licenses.