



# AUSTRALIAN BITCOIN INDUSTRY BODY

## Bill Submission

Digital Assets (Market Regulation) Bill 2023

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Prepared by

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## **About the Australian Bitcoin Industry Body (ABIB)**

ABIB is the peak industry body that represents organisations and professionals that engage exclusively with the Bitcoin network within Australia.

ABIB's primary objectives are to advance and promote:

### **Bitcoin, not Crypto**

Bitcoin is the world's only truly decentralised peer-to-peer, open, uncensorable and voluntary monetary network with an immutable fixed supply. It has no CEO, no foundation, no marketing team. Properly understood, it is clear that Bitcoin is distinct and separate from all other cryptocurrencies.

### **The HODL Act**

To protect the nation's treasury against the persistent and inevitable decline in the value of fiat currencies, we call upon the Australian government to enact legislation that permits government, at both a Federal and State level, as well as the Reserve Bank of Australia, to allocate a portion of their treasury to bitcoin.

### **Privacy and Freedom of Speech**

Privacy is a human right, as declared by the United Nations in the Universal Declaration of Human Rights, Article 12. As such, we reject all forms of surveillance including chain surveillance, central bank digital currencies and mass surveillance of communications and internet activity. Additionally, we reject the censorship of speech, code or financial transactions.

### **Financial Self-Sovereignty**

Empower Australians to achieve financial self-sovereignty by becoming independent of "trusted" intermediaries, such as banks. Bitcoin facilitates this through the ability to receive bitcoin directly, as well as the ability to make payments for goods and services.

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## Executive Summary

ABIB's member exchanges offer their customers the ability to exchange bitcoin for Australian Dollars and vice-versa, with the oldest exchange being in operation since 2014. All of our members encourage their customers to take custody of their bitcoin (*ie* store their bitcoin in their own wallet in which only they know the seed-phrase that enables spending from that wallet), and have devoted resources to educate their customer base on how to do so. In offering only bitcoin, and encouraging customers to self-custody, they have protected their customers from the key risks that exist in the bitcoin and adjacent ecosystems, namely:

- The total loss of funds that occurs when customers store their bitcoin at an exchange and the exchange collapses (*eg* FTX and many other examples).
- The partial or total loss of value that occurs when customers purchase and hold 'crypto' tokens (*ie* all cryptocurrencies other than bitcoin), all of which are either pyramid schemes or require the trust of a third-party. This loss of value is further magnified when measured against bitcoin, rather than Australian Dollars.
- The partial or total loss of funds when customers invest in trendy and apparently revolutionary technologies such as 'yield farming' (pyramid schemes) and NFTs.
- The slow erosion of purchasing power that impacts all citizens who attempt to store their savings in Australian Dollars (*eg* [Australia's CPI](#) rose 7.0% in the 12 months to the March quarter, while Australia's largest bank, Commonwealth Bank of Australia currently (as at 2<sup>nd</sup> May, 2023) offers 12 month [term deposit rates](#) of 4.35%, a real yield of negative 2.65%.

ABIB's member exchanges have shunned the potential, and significant, additional revenue that could have been earned from offering customers 'crypto' services such as token exchange, yield farming, staking, NFTs and leveraging their own balance sheets. By doing so, they have protected their customers from all of the risks identified above, and for this reason, none of our member exchanges has ever collapsed.

Thus, there is no need to further regulate the Bitcoin-Only industry within Australia.

ABIB acknowledges that bitcoin can and has been used for money laundering purposes, as is the case with Australian currency and gold. However, [according to Treasury](#), in 2021 only 0.15% of global crypto transactions are illicit (*p5, final paragraph, footnote 8*). Of the US\$14 billion in transactions, US\$7.8 billion worth of transactions were related to scams and theft. This implies that money laundering and terrorism financing (ML/TF) represent 0.07% of global crypto transactions.

Given the incredibly low volume of ML/TF transactions globally, and that the Bitcoin-Only exchanges within Australia are already regulated by AUSTRAC, the entity charged with fighting financial crimes, the existing regulatory environment appears sufficient. If anything, regulations relating to ML/TF could be loosened to reduce the administrative burden on Bitcoin-Only exchanges and provide a better user experience for their customers. ABIB have requested of AUSTRAC the use of a threshold (*eg* \$1,000 per day in deposits) to trigger the need for customer identification (or Know Your Customer procedures), as is used already by some countries.

In relation to ML/TF risks, it is of note that AUSTRAC is not mentioned in the Bill, and that they were not consulted on the preparation of this Bill (as advised by ABIB's contact). It is unclear

whether this implies that ML/TF is no longer seen as a key risk. Further, the office of the Attorney General is also [conducting a complete review](#) of Australia's regulations against ML/TF.

In summary, if ML/TF are no longer seen as a priority (as implied by the lack of mention of AUSTRAC in the Bill) and ABIB's member exchanges are already protecting their customers from the known risks in the bitcoin ecosystem, it is unclear why additional regulation of the Bitcoin-Only industry would be required at all.

As such, ABIB requests that Bitcoin-Only exchanges be excluded from the Digital Assets (Market Regulation) Bill 2023.

## **Previous Submission**

ABIB's positions regarding much of the content of this Bill, such as asset custody, are covered in our response to Treasury's consultation paper *Crypto asset secondary service providers: Licensing and custody requirements*.

This submission can be viewed [here](#).

## **Specific Feedback**

### Objects of This Act

*p2 line 14:* According to the document, the objects of this act are to "promote investment in Australia". From ABIB's perspective, this act does the opposite. This proposed bill came as a surprise to the Bitcoin-Only community, and the threats of jail terms for non-compliance are most unwelcome. Additionally, having different sets of proposed regulation from Treasury and this Bill create a sense of confusion, and concern that potentially additional regulations may be proposed from another party. Further, the proposed restrictions on capital requirements discussed later on in this document, without specific explanations on how this would be implemented, creates more uncertainty. All of these elements together create an environment that strongly discourages capital investment into Bitcoin-Only organisations in Australia. Given Bitcoin is not aligned to any single jurisdiction (deliberately so), and that every country represents an enormous growth opportunity, Australia will risk missing out on potential investment by proposing multiple sets of contradictory regulations.

### Division 2-Digital Asset Exchanges

*p9 line 20:* The suggested penalty of "imprisonment for 5 years" is completely unreasonable and at odds with the stated goal of this act to "promote investment in Australia". One can infer from this unnecessarily severe penalty that there is an unstated goal of this Bill which will not be speculated up here but which is at odds with the listed objectives.

The penalty is proposed to be implemented when a person owns and operates a Digital Asset Exchange while not holding a valid digital asset license. Such a situation could easily occur from a

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clerical error. Further, the Bill proposes a transition period of only 3 months (*p33 line 8*). This is far too short a time period for exchanges to comply with legislation that could result in their owners being imprisoned.

### 11 Digital Asset Exchange Requirements

*Part 2a, p10, line 18*: This section outlines the requirement for Digital Asset Exchanges to “maintain a minimum amount of capital”. No specifics are provided on how this would be implemented, particularly: how much capital?

The concept of maintaining a minimum amount of capital is most relevant to fractional reserve banking, and those Digital Asset Exchanges that practice fractional reserve. As none of ABIB’s members utilise fractional reserve methods, ABIB requests that Bitcoin-Only exchanges are exempted from this requirement.

This particular clause, if the minimum capital requirement is set high enough, could be used to consolidate the industry to a much smaller number of exchanges. Such a strategy is inherently risky as this smaller number of exchanges becomes a larger honeypot attracting hackers and scammers.

### 12 ASIC to supervise digital asset exchanges

*p11, line 7*: Currently AUSTRAC regulates digital asset exchanges within Australia. This Bill does not mention AUSTRAC. Does this mean that AUSTRAC will no longer regulate digital asset exchanges? If this is the case, is the implication that money laundering and terrorism financing are no longer a concern? It is unclear what moving regulation from AUSTRAC to ASIC will achieve in respect to the Bitcoin-Only exchanges within Australia. As mentioned in the introduction, Bitcoin-Only exchanges protect their customers from the numerous risks that exist in the crypto ecosystem. As has been ABIB’s consistent message from its inception, Bitcoin and crypto are different, and therefore one set of regulations cannot effectively regulate both industries. Bitcoin-Only exchanges are much more similar to gold bullion exchanges than to the crypto industry. Gold bullion exchanges are regulated by AUSTRAC, which could continue to be the case for Bitcoin-Only exchanges. Again, ABIB requests that Bitcoin-Only exchanges be excluded from this Bill.

### Division 3-Digital asset custody services

The Bill has not defined what digital asset custody is, which leads to significant confusion.

Absent regulation, there will be a burgeoning industry of estate lawyers who will participate in custody of their clients’ bitcoin for inheritance purposes. In general, this will use a multi-signature bitcoin wallet. There are many possible permutations as to how could be implemented, however an example that is in use today is wallet that requires two-of-three signatures to spend the bitcoin contained in the wallet. The lawyer would hold one key, the client one key, and a third party such as [Unchained Capital](#) holds the third and final key. In the event of the client’s passing, and the completion of the legal proceedings in relation to their estate, the lawyer in conjunction with the third party can transact the bitcoin per the client’s wishes. In this example, the lawyer does not have **sole custody** of the bitcoin, they have one key which on its own cannot access any bitcoin. ABIB suggests that organisations that do not have sole custody should be excluded from this Bill, and the

definitions updated to reflect this. If this is not amended, and given the threats of imprisonment, fewer lawyers would adopt the inheritance model outlined here, resulting in citizens managing the inheritance of their bitcoin on their own, outside of the view of the legal system.

Part 7—Application and transitional provisions

*p33, line 8:* While ABIB has requested that its members be excluded from this Bill, if it were to be implemented the proposed transition period of 3 months is too short. ABIB proposes that the transition period be increased to 6 months.