

Article Information

Authors: Steven Pettigrove, Michael Bacina

Service: Blockchain, FinTech

Sector: Financial Services, IT & Telecommunications

Australian Senate to consider Digital Asset Licensing Law

Michael Bacina and Steven Pettigrove of the Piper Alderman Blockchain Group bring you the latest legal, regulatory and project updates in Blockchain and Digital Law.

Australian Senator [Andrew Bragg today introduced a new Bill](#) to the Australian Senate proposing to regulate digital asset exchanges in Australia. The [Digital Assets \(Market Regulation\) Bill 2023 \(Digital Assets Bill\)](#) – builds on an earlier draft Bill published last year, the [Digital Assets \(Market Regulation\) Bill 2022](#) which was also proposed by Senator Bragg.

In his [tweet](#) foreshadowing the 2023 Bill, Senator Bragg said:

...Parliament must step up to protect Australians & promote investment.

In 2021, the Senator was part of a bipartisan inquiry, the Senate *Select Committee on Australia as a Technology and Financial Centre*, which released a [final report](#) making [12 recommendations](#) to regulate and support the digital asset industry in Australia (here is [our digest](#) of those recommendations).

In September 2022, following Treasury's Consultation over the proposed shape of a centralised exchange licensing regime, Senator Bragg [proposed](#) a private member's bill establishing a licensing regime and reporting requirements for digital asset exchanges.

In a statement introducing the Digital Assets Bill, the Senator said he was introducing the Bill as:

Australia is losing the race to regulate digital assets.

This is a sentiment shared by many in the blockchain industry when viewing jurisdictions overseas such as Singapore, Dubai, Hong Kong and London as well as Europe, which are moving forward with fit-for-purpose crypto regulation. This Bill adds to the discussions and considerations flowing from the [token-mapping consultation](#) presently underway.

Definitions

Definitions are key in the area of digital assets. The Bill:-

1. Keeps the definition of *digital asset* broad and introduces *regulated digital assets*, being a subset of digital assets, including asset-referenced tokens, electronic money tokens, and exchange tokens but excluding financial products. This approach draws on concepts from the European Union's [MiCA regime](#);
2. Defines stablecoins to capture both asset-referenced tokens, which are given a definition which is, in effect, seeking to capture stablecoins and commodity backed tokens, and electronic money tokens, which are defined as purely fiat backed tokens;
3. Defines exchange tokens to seek to capture tokens "*the main purpose of which is to be used as a means of exchange*" which would appear to capture most crypto-currencies but as defined would exclude most NFTs.

Digital Currency Exchange Licences

Licensing is required under the Bill for anyone offering trading / the exchange of *regulated digital assets*. Licensed

exchanges would be subject to business requirements to be monitored by ASIC including:

- designation of key personal located in Australia;
- requirements for the fair, orderly and transparent operation of the exchange;
- minimum capital requirements;
- regulation of exchange participants and protection of participants;
- monitoring of activity on exchanges;
- segregation of client assets, reporting on same and disclosures around the protection of client assets, but with omnibus accounts permitted for such holdings;
- cybersecurity standards to be met;
- record-keeping; and
- information disclosure to ASIC, APRA or other government agencies.

Holders of *recognised foreign licences* (as determined by the Minister) would be exempt from needing a licence in Australia. Critically a publicly searchable register of licence holders would be created so members of the public could verify if they are dealing with a licensed business.

Custodial Service Licences

Any business providing custody of digital assets will be required to meet additional safeguards around those assets:

- designation of key personal located in Australia;
- minimum capital requirements;
- segregation of client assets, reporting on same and disclosures around the protection of client assets, but with omnibus accounts permitted for such holdings; and
- auditing, assurance and disclosure requirements.

Stablecoin Licences

Issuers of stablecoins operating in Australia would also be required to be licensed, and will have to:

- hold the full amount of the face value of the liabilities for the stablecoins on issue with an Australian Bank in either AUD or the currency backing the stablecoin;
- provide APRA with quarterly statements setting out the amount held in reserve, the number of stablecoins issued, and the value of assets held in reserve;
- be audited annually and publish financial statements from those audits;
- publish quarterly statements setting out the size and composition of assets held in reserve and stablecoins on issue;
- have a 'tailored and appropriate plan' to protect holders 'against cybersecurity risks in relation to those stablecoins'.

As with digital currency exchanges, holders of *recognised foreign licences* (as determined by the Minister) would be exempt from needing a custodial licence in Australia.

Central Bank Digital Currencies

Under the Bill, banks are required to report to ASIC and the Reserve Bank of Australia:

- the number of Australian businesses that have accepted payments using designated CBDCs;
- the number of digital wallets for Australian customers which are 'open in relation to the [CBDCs]; and
- the total amount of CBDC held in digital wallets by Australian customers of the bank.

Licence Application Process

The proposed process for licensing would make ASIC responsible for considering applications and grant it powers to suspend or cancel licenses. Rules, yet to be introduced, would set out licensing requirements and specify circumstances under which licensing could be granted, suspended or cancelled.

Licence applicants or holders would have appeal rights to the Administrative Appeals Tribunal if they are dissatisfied with a decision to grant, or not grant, a licence, or for the varying, suspension or cancellation of a licence.

Transitional Period

The Bill proposes a 3 month transitional period for businesses to comply with licensing which seems an extraordinarily short period of time for rules to be made and ASIC to deal with what would undoubtedly be a significant rush of

applications.

What's Next?

With a number of matters pressing on the national agenda, the Digital Assets Bill is a needed part of the conversation in Australia to help shape upcoming regulation, but in the present form is unfortunately not likely to be taken up by the Government. It represents an evolution in the legislative thought process and discussion and will be a valuable reference point as Australia seeks to catch up with regulation moving forward in the rest of the world.