Article Information

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Service: Banking & Finance, Blockchain, Corporate & Commercial, FinTech
Sector: Financial Services

Blockchain Bites: DECA urges reforms on tokenisation, tax and trade; Offshore platforms face ASIC scrutiny; and Understanding your new AML/CTF obligations

Steven Pettigrove, Luke Higgins and Emma Assaf of the Piper Alderman Blockchain Group bring you the latest legal, regulatory and project updates in Blockchain and Digital Law.

Open for digital business: DECA urges reforms on tokenisation, tax and trade

The Digital Economy Council of Australia (**DECA**), an independent industry group, has released a policy paper on reforms needed to unlock the benefits of asset tokenisation and trade digitalisation through reform of the current tax and financial services framework. The paper follows the DECA Proactive Policy Forum, which brought together more than 60 leaders from Australian and international organisations. The result is a unified strategy to update Australia's regulatory framework in three key areas including tokenisation, taxation and trade digitalisation.

The recommendations aim to modernise laws, foster innovation and position Australia as a global leader in digital assets and infrastructure. The paper sets out priorities in three areas:

- strengthening Australia's tokenised asset market;
- improving how Australia taxes crypto-token activity; and
- advising Parliament on digital trade reforms.

Advancing the tokenised asset market

During the Tokenisation Roundtable, participants identified three key policy recommendations. First, establishing a clear and innovation friendly regulatory environment for digital assets. For example, by ensuring that agencies such as the Australian Securities and Investments Commission (**ASIC**), the Australian Taxation Office (**ATO**) and Treasury use consistent terminology to avoid confusion and coherent policy development.

> *"We need clear definitions, used consistently to avoid confusion, especially as tokenised RWAs differ from crypto-native assets."* — A roundtable participant

There is also an urgent need to introduce a regulatory framework for AUD-denominated stablecoins. Without it, Australia cannot scale tokenised asset markets or remain competitive with jurisdictions such as the United States which adopted comprehensive stablecoin legislation this month.

> *"Nothing works without stablecoins. You need the mechanism for payment in your native currency."* — A roundtable participant

The paper similarly urges a fit-for-purpose licensing regime for digital asset markets.

> *"It's just not feasible to launch a digital asset market today given the financial market infrastructure licensing … it's a three-year process of fitting a square peg into a round hole."* — A roundtable participant

The paper encourages reforms to ASIC's regulatory sandbox to support the commercial deployment of tokenised real-world assets (**RWAs**). The current sandbox only covers a limited range of products and has been criticised for failing to provide pathways to scale. The UK, by contrast, has introduced a sandbox for digital market infrastructure with flexibility to adjust policy settings. DECA recommends allowing tokenised RWA platforms to test market infrastructure, payment rails and financial products at meaningful scale. It also recommends introducing progressive licensing and structured transition pathways to enable businesses to move from sandbox pilots to full-scale commercial deployment with regulatory certainty.

Third, DECA proposes developing industry best practices to guide compliance and encourage innovation. This should include licensing and compliance guidance, clear engagement channels with regulators, standardised risk frameworks (for example, AML/KYC protocols) and collaboration between ASIC and industry to develop these standards.

Tax reform for crypto-tokens

Roughly six million Australians now hold or have held crypto-assets yet Australia's tax rules are designed for traditional finance. According to the DECA report, this creates confusion, stifles innovation and increases the risk of penalties. Four urgent reforms are proposed:

1. *Remove the 10% GST from the sale of fiat-backed stablecoins.*ASIC currently classifies stablecoins as non-cash payment facilities, a view many legal experts dispute. Until new laws are introduced, interim administrative relief is needed.
2. *Define what a crypto-token is and distinguish it from its associated crypto-token arrangement.* DECA describes a crypto-token as the right to request a state change on a public blockchain, whereas the arrangement refers to the rights and duties tied to that token.
3. *Clarify the tax treatment of common activities.*These include staking, decentralised finance, tokenised assets and crypto held in managed funds.
4. *Help taxpayers comply by updating guidance and offering protections.*DECA recommends safe harbour provisions for good-faith taxpayers and voluntary disclosure programs for cases with missing records. The paper also recommends implementing the OECD's Crypto Asset Reporting Framework (**CARF**) to ensure global alignment on cross-border reporting and enforcement.

Trade digitalisation

Trade digitalisation means shifting from paper-based to digital processes with legal equivalence to streamline and modernise international trade. The benefits cited in the paper include better traceability and fraud prevention, improved productivity and predictability, faster settlements and stronger cash flow.

However, Australia's trade system is fragmented. More than 30 agencies, 200 pieces of legislation and over 140 digital systems operate in silos. DECA proposes a whole-of-government response. This includes, among other recommendations:

- creating a central agency under the Department of the Prime Minister and Cabinet to lead national digital efforts;
- promoting private sector input, including from SMEs, insurers and digital technology firms;
- facilitating the mandate of real-time gross settlement (**RTGS**) in banking and payments;
- rebuilding the National Committee on Trade Facilitation to reflect modern needs;
- strengthening collaboration across agencies such as the ATO, Treasury, Border Force and Foreign Affairs, and aligning them under a national interoperability framework for real-time data sharing and compliance;
- expanding support for verifiable credentials and digital product passports to ensure provenance, ESG compliance and supply chain resilience using distributed ledger technology; and
- phasing in a National Digital Trade Platform that integrates customs, logistics, finance, crime management and biosecurity to replace 'forms' with 'data rivers'.

Digitalising trade also requires integrating tax systems such as Business Activity Statement (**BAS**) reporting with real-time data flows. This means building platforms that connect customs, logistics and payments, and replacing forms with digital records. A phased rollout is advised, beginning with exports and jurisdictions that have already adopted international standards like the UNCITRAL Model Law on Electronic Transferable Records.

A call for leadership

Global standards are moving fast, with other jurisdictions legislating stablecoins, implementing cross-border tax reporting and embracing tokenisation and trade automation. As one participant put it:

"We are already wiring trade for a future where Distributed Ledger Technology (DLT) and interoperability aren't buzzwords, but lifelines. This isn't theory—it's the machinery of tomorrow's trade, and Australia's either on board or left behind."

DECA led a delegation of 50 industry participants to Canberra this week to deliver the paper to Government and the bipartisan Parliamentary Friends of Blockchain group. By learning from international leadership and leveraging our local strengths, the paper provides a blue print for Australia to foster tokenised markets and trade digitalisation. If adopted, the proposed reforms will shape Australia's competitiveness in the digital economy and, as the paper puts it, send a signal to the world that Australia is "open for digital business".

Written by Steven Pettigrove, Luke Higgins and Emma Assaf

Under the hammer: Offshore platforms face ASIC scrutiny

Australia's maintains a very broad definition of what it means to "carry on business in Australia" for the purposes of financial services laws and, in the digital age, the line between what is and what is not carrying on business in Australia has become increasingly complex with the emergence of global social media platforms, app stores, and influencers.

In October last year, the Australian Securities and Investments Commission (ASIC) reissued Regulatory Guide 121 (RG 121), which provides updated guidance for foreign entities on whether their activities may constitute carrying on a financial services business in Australia (requiring them to hold an AFS licence unless an exemption applies). As we discussed in our previous post, the reissue of RG 121:

- removed references to expired or repealed AFS licensing relief;
- amended descriptions of AFS licensing exemptions and relief to reflect those currently available;
- updated the description of the Courts' interpretation of "carrying on a business in Australia", including the general indicators of carrying on a business, other relevant factors and when a one-off transaction may amount to carrying on a business; and
- updated descriptions of, and references to, certain financial products and services, AFS licensee obligations, legislation administered by ASIC, applicable rules and ASIC's regulatory documents to reflect the current legal and regulatory framework.

There are significant criminal and civil penalties for offering financial services in Australia without proper licensing.

This week ASIC issued an investor alert warning Australians against trading with an unlicensed financial service provider allegedly offering cryptocurrency futures products. Notably, this appears to be the first time ASIC has identified and issued a warning against overseas crypto-asset related offerings available through app stores. However, the alert acknowledges that the provider has added disclaimers on its website and app, stating that it is unlicensed and that its services are not intended for individuals in Australia.

This is not the first time that ASIC has issued warnings to the public relating to offshore cryptocurrency platforms. In 2021, ASIC issued a general warning that investors engaging with unlicensed platforms may have no access to typical consumer protections under Australian law, such as internal dispute resolution or client money protections.

For overseas financial service providers, this is a timely reminder to consider the scope of any platform offering and marketing efforts which may bring them within the scope of Australian jurisdiction. As for investors, ASIC encourages them to check if a company is licensed, understand how the investments work, assess scam indicators and explore available complaint pathways if something goes wrong.

Written by Steven Pettigrove and Emma Assaf

Are you VASP-ready? Understanding your new AML/CTF obligations

The *Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2024* (Cth) (**the Act**) passed on 29 November 2024, will usher in a major overhaul of AML/CTF laws for digital currency exchanges in Australia. We break down the major changes below and the questions every provider should be asking.

1. **From DCE to VASP**

A key feature of the reforms is a shift in terminology from 'digital currency' to 'virtual assets', bringing Australia in line with the international standards set by the Financial Action Task Force (**FATF**). The new definition captures stablecoins, utility tokens, governance tokens and most NFTs, but excludes money, digital representations of value used exclusively within electronic gaming environments and customer loyalty or reward points. Digital currency exchanges are also getting a rebrand as Virtual Asset Service Providers (**VASPs**).

2. **New Designated Services**

In alignment with FATF Recommendation 15, the Act introduces five new categories of designated services involving virtual assets. VASPs will now be regulated if they engage in any of the following activities:

1. exchanges between virtual assets and fiat currencies;
2. exchanges between different forms of virtual assets;
3. transfers of virtual assets on behalf of a customer;
4. safekeeping of virtual assets; and
5. provision of designated services related to the offer or sale of virtual assets.

These new laws commence on 31 March 2026. While AUSTRAC is yet to release full details of the transition process, AUSTRAC expects that applicants will seek enrolment and registration prior to the deadline with some temporary relief likely to be offered to those with a pending application awaiting determination.

3. **Travel Rule Obligations**

The amendments extend the "travel rule" to VASPs via new section 66A. Under this rule, VASPs must collect, verify and transmit identifying information about both the payer and payee in a virtual asset transfer. Ordering and beneficiary institutions must conduct counterparty due diligence to determine whether the recipient virtual asset wallet is custodial or self-hosted, and whether it is controlled by a regulated VASP, an unregulated VASP, an illegally operating VASP or is a self-hosted wallet.

There are limited exceptions under s 66A(9) and (10), which allow omission of this information if the Australian entity has reasonable grounds to believe the counterparty:

1. cannot securely comply with the travel rule; or
2. cannot safeguard the confidentiality of the data.

Travel rule compliance begins from 31 March 2026. Transitional arrangements are expected as AUSTRAC phase out IFTIs in favour of International Value Transfer Reports (IVTRs).

4. **Reporting Requirements for Unverified Self-Hosted Wallets**

Additional due diligence and reporting obligations will apply to VASPs who facilitate transfers to unverified self-hosted wallets. These wallets are seen as higher risk from a money laundering/terrorism financing perspective. Where such a service is provided, the VASP must submit a report to AUSTRAC within 10 business days. Further guidance is expected from AUSTRAC in the coming months.

5. **Targeted Financial Sanctions**

Although not specific to VASPs, the second exposure draft of the AML/CTF Rules introduces a new requirement for all reporting entities to develop and maintain AML/CTF policies that ensure compliance with targeted financial sanctions, including asset freezing, when providing designated services. The rules will also place increased onus on VASPs to target proliferation financing risks.

6. **New Reporting Details for SMRs and TTRs**

There are new details on the required contents of suspicious matter (**SMR**) and threshold transaction (**TTR**) reports. Where the matter involves virtual assets, reports must now include:

1. the type of virtual assets, including details of the backing asset (if any);
2. the quantity of virtual asset units;
3. the value in AUD;
4. the applicable exchange rate in determining the value;
5. the unique transaction reference number, including a transaction hash; and
6. the wallet address, including destination tag or memo details.

AUSTRAC will be releasing new online forms for these SMRs and TTRs.

7. **Registration Details for VASPs**

Under the new exposure draft AML/CTF Rules, VASPs will now face a more robust registration process by expanding the information AUSTRAC considers. AUSTRAC will maintain a public VASP Register and publish key registration details (whereas the existing DCE register is not currently made public).

The new registration process includes the following requirements, among others:

1. Identifying and assessing the money laundering, terrorism financing and proliferation financing risks associated with the VASP's operations. This includes evaluating risks arising from customer types, countries of operation and the products and services offered, as well as outlining the process for reviewing and updating these risk assessments.
2. Outlining AML/CTF policies, including evidence of the knowledge, training and experience of key personnel in meeting AML/CTF obligations, and conducting due diligence on those individuals.
3. Providing additional registration details, such as the types of virtual assets offered, how services are delivered and how customer funds or virtual assets will be used in exchanges.

Are you reform-ready?

Given the above reforms, VASPs should actively assess their compliance posture by asking:

1. Do you currently provide a service that will become a newly regulated designated service?
2. Have you reviewed whether you need to register (or re-register) as a VASP with AUSTRAC and update your enrolment as a reporting entity?
3. Are you prepared to submit a robust application that explains how you manage ML/TF and proliferation financing risks across customers, products, jurisdictions, delivery channels and transaction types?
4. Have you updated your AML/CTF risk assessment (which will be a mandatory requirement) to include proliferation financing and targeted financial sanctions obligations?
5. Have you reviewed and upgraded your AML/CTF program and policies, including in relation to counterparty wallet due diligence and travel rule compliance?
6. Do you meet organisational requirements, including appointing a 'fit and proper' AML/CTF compliance officer?
7. Have you implemented appropriate staff training and due diligence?
8. Do you have the internal processes to meet the new SMR and TTR reporting obligations?

The AML/CTF reforms include sweeping changes which touch both existing reporting entities and a range of new designated services. This article provides only a high level overview of key changes which specifically apply for VASPs. With final AML/CTF Rules yet to be finalised, and more consultations and guidance expected in the coming months, VASPs should also continue to actively monitor updates and developments from AUSTRAC.

In the meantime, AUSTRAC has launched a dedicated webpage with helpful resources which can be found here: https://www.austrac.gov.au/about-us/amlctf-reform

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