Article Information

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Blockchain Bites: One giant leap for crypto – Digital asset legislation heads to Parliament

The Piper Alderman Blockchain Group bring you the latest legal, regulatory and project updates in Blockchain and Digital Law.

The Australian Government has taken a significant step toward regulating digital asset platforms under the Australian Financial Services Licensing (AFSL) regime, with draft legislation set for its second reading in Parliament. This swift move follows public consultations with industry on exposure draft legislation which were completed on 24 October 2025.

Feedback during the consultation period was broadly supportive, though concerns remain about compliance costs, definitional scope and the potential impact on smaller operators. ASIC has also, in the meantime, updated its INFO 225 guidance and issued a sector-wide 'no-action' position until 30 June 2026. The effect of that guidance is that operators must consider the extent to which they will require additional licences and product authorisations to operate their business in addition to the new digital asset framework laid before Parliament. The new legislative framework is targeted only at custody of non-financial products, asset tokenisation and clarifying the application of existing rules to these two new types of financial product.

What are the updates from the draft?

The legislation, formally titled the *Corporations Amendment (Digital Assets Framework) Bill 2025*, proposes a licensing framework for businesses operating digital asset platforms and tokenised custody services. These entities will be treated as financial service providers under the *Corporations Act 2001*, bringing them under the oversight of the Australian Securities and Investments Commission (ASIC).

Changes from our previous breakdown of the legislation are as follows:

Meaning of digital token

The definition covers an *electronic record* that one or more persons are capable of controlling. Control is still generally taken to mean factual control rather than legal control. According to the draft bill, a person is considered to have control, *whether alone or jointly with one or more other persons*, if they can:

1. Transfer the electronic record; and
2. Exclude others from transferring the electronic record; and
3. *Demonstrate* themselves as the person capable of performing those actions.

The definition of digital object has been dispensed with and collapsed into a single definition of a digital token. The definition includes provision for regulations which may prescribe or exclude certain electronic records.

The definition of 'possession' has moved from section 9 to section 86 to demonstrate its specific meaning in relation to digital tokens. Where a person factually controls an electronic record, the person possesses the digital token in question, unless the exception in that provision applies. The exemption now more clearly excludes non custodial arrangements. The general meaning of possession is otherwise preserved in the Corporations Act for things other than digital tokens.

Importantly, the legislation clarifies that in determining whether a person can undertake the above actions, it only matters that a person can do it factually rather than legally, and stipulates that it does not matter if another person can do such a

thing.

New financial products

The two new financial products “digital asset platform” and “tokenised custody platform” remain.

1. Digital Asset Platform (DAP)

The definition of a DAP has been amended to cover a wider variety of custody arrangements in relation to digital assets, including situations where the operator acts as a trustee, or bailee, or is obliged to ensure digital assets are handled in accordance with that person’s instructions.

It appears that a person stills becomes a client of a platform when they enter into the facility by accepting its terms on opening account. As noted in our earlier article, this definition is broad enough to cover platforms that solely provide custody of digital tokens, as well as those that enable operators or third parties to act on behalf of clients (e.g. using, transferring, or staking tokens), with the operator holding the underlying assets in a manner analogous to physical custody.

A DAP is still required to hold an AFSL if it surpasses an asset holding threshold of more than $5,000 per customer and facilitates more than $10 million in transactions per year, and the proposed volume test would apply on a rolling 12-month basis.

2. Tokenised Custody Platform (TCP)

A TCP is now defined as a facility (again, rather than a non-transferable facility) where the operator identifies specific real-world assets other than money and creates a unique digital token for each asset. Possession of the token gives the holder the right to redeem or direct delivery of the actual asset it represents, where the operator holds as trustee, bailee, or is otherwise obliged to act on the token holder’s instructions. The operator may also be authorised to manage or take actions involving the asset on the holder’s behalf. Again, a person becomes a client of the platform by accepting its terms and opening an account, regardless of how they acquired the token.

The definition remains broad enough to include platforms that provide simple custody and tokenisation, as well as those enabling operators or third parties to act on behalf of clients (e.g., buying, selling, transferring, or staking with the underlying assets). It is still anticipated that additional licence authorisations may be required to deal in or provide other financial services relating to an underlying financial product, consistent with ASIC’s INFO 225 guidance.

Importantly, there is now a clear statement that a tokenised custody facility cannot be a DAP.

Compliance, Disclosure and Design and Distribution Obligations

A licensee that is authorised to issue a DAP or a TCP must comply with:

- general obligations under financial services laws;
- asset holding standards;
- obligations to implement platform rules;
- transaction and settlement standards;
- breach reporting; and
- design and distribution obligations.

Licensees are still subject to the requirement to issue a facility guide (DAP/TCP Guide), and these provisions remain substantively unchanged.

AFS licensees providing financial services related to the above will still be exempt from certain other fundraising, disclosure and anti-hawking requirements.

Carve-outs from definition of managed investment scheme

The legislation retains the carve outs for specific DAPs and TCPs as qualifying as a managed investment scheme (MIS).

As a reminder, a DAP will not be classified as a MIS if:

- Clients under the platform have the right to redeem or request delivery of the assets held on the platform;
- The platform operator can only act on instructions from the client regarding acquisition, disposal or use of the assets; and

- The operator cannot materially negotiate or determine the rights attached to the assets held on the platform.

Similarly, a TCP would not come under this definition of MIS if:

- Clients under the platform have the right to redeem or request delivery of the assets held on the platform;
- The platform operator can only act on instructions from the client regarding acquisition, disposal or use of the assets;
- The operator cannot materially negotiate or determine the rights attached to the assets held on the platform;
- All assets linked to tokens on the platform are of the same asset class; and
- Tokens are only divisible to the extent that the asset can be physically divided and delivered in the same way.

In that context, while the legislation contemplates the tokenisation of an asset itself will not create an MIS, the fractionalisation of interests in that asset will do. This may pose a considerable restriction on the development of tokenised assets markets for retail investors, given the onerous compliance obligations which apply to retail managed investment schemes.

Regulatory clarity

The legislation retains targeted exemptions for blockchain infrastructure and activities. Specifically, it covers custodial staking arrangements (previously intermediated staking arrangements), public digital token infrastructure, wrapped tokens and the 'coffee shop' exemption.

The most significant change is the shift in terminology from 'client' to 'beneficiary' in the definition of custodial staking arrangement. Under the legislation, a beneficiary means:

- For a DAP: a client under the platform; or
- For a TCP: a person who possesses a digital token created under the platform by its operator.

3. Custodial staking arrangement

A custodial staking arrangement is proposed to be exempt from being classified as a financial product where:

- The beneficiary (rather than a client) and the operator agree to an arrangement using a DAP;
- The operator is allowed to use the beneficiary's digital tokens for consensus activities (as opposed to staking generally); and
- Any rewards earned from consensus activities (rather than staking), after fees, are passed on the beneficiary.

Consensus activities are defined within the scope of 'public digital infrastructure', being infrastructure protocols that permit any person to contribute to the integrity, functionality and reliability of the infrastructure by conducting activities involving transmitting, processing and recording electronic records.

Further, the arrangement must benefit the beneficiary in at least one of following ways:

1. The beneficiary can redeem assets earlier than if consensus activities directly;
2. The beneficiary can participate in consensus activities even if they don't have enough assets to do so on their own;
3. The beneficiary is protected from or compensated for losses related to issues in the operation of the public digital token infrastructure in relation to the assets;
4. The beneficiary can pay lower transaction fees than if the beneficiary has participated in the consensus activities directly; or
5. In a way prescribed by the regulations.

The inclusion of provision for arrangements which result in lower transaction fees is new.

4. Public digital token infrastructure

The definition of public digital token infrastructure has been clarified and is exempt from classification as a financial product or clearing and settlement facility if it meets the following conditions:

1. It is used for the transmission, processing or recording of electronic records that are digital tokens or in relation to digital tokens;
2. The protocol is open source and operates in a non-discretionary manner;
3. Anyone can contribute to the system's integrity, functionality and reliability by contributing data without needing permission; and
4. The Protocol operates with decentralised control.

The definition now more clearly specifies the public nature of infrastructure which is open source, permissionless and decentralised.

5. Wrapped tokens

A narrow exemption is provided which permits persons to disregard redemption rights in considering whether something is a financial product in limited circumstances. Given the breadth of ASIC's approach to applying the concept of a derivative to wrapped tokens, this exemption may have limited application.

The exemption applies where:

1. A wrapped token is created in relation to a related asset (which could be a digital asset or a real world asset under a tokenised custody platform);
2. The token is issued under a tokenised custody platform or held through either decentralised wrapping software or public digital token infrastructure; and
3. The holder of the wrapped token has a right to redeem or direct delivery of the related asset.

There is also an addition for the regulations to prescribe an asset as a wrapped token. The exemption does not apply to financial products where rights or interests attached to the wrapped token are not equivalent to the underlying asset.

Decentralised wrapping software, in relation to a wrapped token, has been defined in this section as software through which the asset associated with the wrapped token is held and the software would be considered a tokenised custody platform if the actions it performs were instead carried out by an operator within the meaning of subsection 761GD(1). Those actions include creating the wrapped token and holding the related asset for, or on behalf of, the person who possesses the wrapped token.

6. 'Coffee shop' exemption

The insignificant part of business exemption is retained and is designed to exclude businesses from AFSL requirements when their involvement with DAPs or TCPs is incidental. It applies to entities that, in the ordinary course of a primarily non-financial services business, arrange for clients to use a DAP or TCP or advise them about its existence.

Ministerial powers

The legislation still provides broad discretionary ministerial powers to deem a facility that is ordinarily a DAP to be instead classified as either a financial market or a clearing and settlement facility.

Transitional commencement and application

The legislation will commence 12 months after the legislation receives assent, with transitional rules allowing entities that do not have an AFSL or appropriate authorisation under an AFSL a 6-month grace period before compliance is required. For financial-services related provisions, if an AFSL application is submitted during this period, an entity's obligations will begin either upon ASIC's determination or after the transition period ends.

Written by Steven Pettigrove, Luke Higgins and Tahlia Kelly

Navigating the Howey Triangle: SEC charts token taxonomy

In a recent speech, the Securities and Exchanges Commission (**SEC**) Chairman, Paul Atkins, tackled one of the most vexed issues in relation to cryptocurrency, the application of the US securities laws.

The speech shed more light on 'Project Crypto', the commission's flagship initiative to drive America's digital finance revolution. The SEC Chairman announced earlier this year plans to facilitate US financial markets to move on-chain and renewed his call to embrace market innovation at the Fordham Blockchain Regulatory Symposium.

Atkin's speech at the Federal Reserve Bank of Philadelphia focused on the application of federal securities laws to tokens and related transactions. He speech touched on three key themes:

(i) a clear token taxonomy;

(ii) the application of the Howey test to investment contracts; and

(iii) what this could mean in practice for innovators, intermediaries and investors.

Commenting on whether crypto assets are securities, Atkins said that current legislation:

"crypto asset" is not a term defined in the federal securities laws. It is a technological description. It tells you something about how records are kept and value is transferred. But it says little about the legal rights attached to a particular instrument or about the economic reality of a particular transaction, which are key to determining whether something is a security.

Atkins continued:

I believe that most crypto tokens trading today are not themselves securities. Of course, it is possible that a particular token might have been sold as part of an investment contract in a securities offering. That is not a radical statement; it is a straightforward application of the securities laws.

Atkins outlined his current thinking on token taxonomy. He is of the opinion that digital commodities, network tokens, digital collectibles, and digital tools are not securities. He does maintain that tokenised securities are and will continue to be securities.

Atkins went on to consider the consequences of the Howey test which is used to determine whether a transaction is an investment contract. In Atkins' view crypto assets can be part of or subject to an investment contract despite not being securities themselves. This begs the question as to how one separates a non-security crypto asset in an investment contract. Atkins resolves this:

the issuer either fulfills the representations or promises, fails to satisfy them, or they otherwise terminate

In other words, non-securities crypto assets can be accompanied by certain representations or promises to satisfy the Howey test. This allows for multiple propositions: once an investment contract has run its course or expires by its own terms, the token may continue to trade but is no longer considered a securities transaction. Accordingly, crypto assets may be initially represented as securities and later change form. For example, a token may be sold to sophisticated investors in private sales as a security before trading as a commodity in secondary markets.

According to Atkins:

too many have asserted the view that if a token was ever subject to an investment contract, it would forever be a security. This flawed view extends even further presuming that every subsequent trade, everywhere and always, is a securities transaction.

Atkins analogized the position of crypto assets to orange groves in the Howey case, that is, the fact that the orange groves were found to be the subject of an investment contract did not render them inherently a security. In Atkin's view, a token can form the subject matter of an investment contract before evolving into a commodity. In the same way, an orange grove is not rendered a security for all time just because it was once the subject of an investment contract, it can evolve into a golf resort and serve another purpose.

Commissioner Peirce has rightly observed that while a project's token launch might initially involve an investment contract, those promises may not remain forever. Networks mature. Code is shipped. Control disperses. The issuer's role diminishes or disappears. At some point, purchasers are no longer relying on the issuer's essential managerial efforts, and most tokens now trade without any reasonable expectation that a particular team is still at the helm.

Atkins' approach appears to be at odds with ASIC's views as set out in its digital asset guidance in INFO225 in certain respects. Specifically, ASIC has adopted the view that a wide range of tokens may qualify as financial products beyond tokenised securities. In ASIC's view, a token bundled together with other products and service may form a single arrangement. Atkins takes a more liberal approach and seeks to balance competing policy objectives. Atkins nevertheless acknowledges in strong terms the need to enforce against fraud and illicit conduct.

The reality is that if the United States insists on making every on-chain innovation run the through a securities-law minefield, those innovations will migrate to jurisdictions that are more willing to distinguish among different kinds of assets, and more willing to write down the rules in advance. Instead, we are going to do what regulatory agencies are supposed to do. We are going to draw clear lines and explain them in clear terms.

Chair Atkins concluded his remarks with a call to establish rules for crypto-asset markets that are knowable, reasoned and appropriately constrained. This does not mean deciding the fate of the market, but rather balancing the policy objectives of facilitating markets, innovation and protecting investors.

Written by Steven Pettigrove, Luke Higgins and Sophie Nguyen

Cayman Crypto Foundation Count Climbs to New Heights

The Cayman Islands, with a secure British legal system, safe business environment and tax neutral status, has long been a favoured home to US Hedge funds (35,000+) and crypto companies, and new data from the Cayman Islands General Registry underscores just how much that growth has continued.

In 2017, the Cayman Islands legislated into existence the Cayman Foundation in the Foundation Companies Act, a highly flexible corporate structure which could operate to manage wealth and behave in many respects like a fund. Foundations have a number of actors including:

1. Directors, who may be executive or non-executive and who are the mind, management and control;
2. Supervisors, who typically have the power to add and remove directors, providing a useful oversight function. The Supervisor should always be completely independent from the foundation's directors;
3. The Founder, which is an optional role that is typically excluded from web3 structures, but typically has power to replace the Supervisor and so directors. A founder should always be entirely independent from a foundation's directors;
4. Beneficiaries, which are not required and are typically not included in web3 structures but can be included to have a foundation operate more like a trust; and
5. Members, every foundation starts with one, but they usually resign, creating an "ownerless" or "orphaned" structure.

The ability to create an ownerless structure with an independent board co-incided with the rise of web3 projects and decentralised autonomous organisations, and since 2018 the number of foundations in the Cayman Islands has continued to grow.

In 2023, the islands were home to 793 foundation but in 2025, that figure topped 1,700, meaning that more than 1 foundation a day has been being incorporated. This boom has seen numerous law firms recently seek to profess web3 expertise and established a strong director and services talent pool assisting web3 projects to have the best chances of success. (When choosing a web3 provider, look to those with a long track record, deepest knowledge and experience in the space).

The figure shows no sign of stopping as the US makes crypto friendlier rules but projects rapidly learn that new experimental structures, like the DUNA, are complimentary, not replacements for, Cayman Foundations. With accessible VASP regulation, and coming RWA and Tokenised Funds legislation, the Cayman Foundation remains both the gold standard, but also the very reasonable option for start-ups looking to embrace decentralisation and ensure greater certainty for their projects.

By Steven Pettigrove

US CFTC Unlocks Tokenised Collateral in Derivatives Markets

The US continues to drive forward in crypto, with the powerful Commodities, Futures Trading Commission (**CFTC**), which has often been seen in competition with the Securities Exchanges Commission (**SEC**), moving to announce a digital asset pilot program and updated guidance under which tokenised assets will be approved for use as collateral for derivatives in regulated US markets and "outdated" requirements removed.

The move could see a variety of tokenised assets used increasingly as collateral in traditional and crypto markets. This announcement came on the heels of the CFTC allowing spot crypto trading on derivatives exchanges.

Acting Chair Pham said:

The CFTC is … providing regulatory clarity through tokenized collateral guidance for real world assets like U.S. Treasuries, and withdrawing CFTC requirements that are now outdated under the GENIUS Act

The guidance offers a definition of tokenisation:

a tokenized asset is a digital representation of a real-world asset, such as a U.S. treasury or agency security, corporate bond, share in a money market fund, or equity security, that has been recorded on a blockchain as a digital token. The

tokenization process allows for digital ownership, fractional ownership, and potentially faster transfers compared to traditional methods of asset transfer. Tokens can represent rights, ownership, or claims and are traded on digital platforms.

The guidance also addresses areas of 'regulatory concern', being:

- **Eligible tokenized assets:** Only a limited number of tokens will meet the standards for liquidity, maturity, and credit-quality.
- **Legal enforceability:** Entities must demonstrate that standards for legal status and documentation of assets are met.
- **Segregation, custody, and control arrangements:** Registrants will need to hold a perfected security interest over the tokenized asset, subject to applicable segregation and eligible custodian requirements.
- **Haircuts and valuation:** Haircuts using the same risk-based approach already applied to the underlying asset under Part 39 of the Commission's regulations, adjusted for any settlement-time differences or other differences in credit, market, or liquidity risks.
- **Operational risks:** Operational readiness and the application of existing risk management frameworks to innovative technologies.

The move has been welcomed by the crypto industry, with Bloomberg noting that it "pushes crypto deeper into the plumbing of US finance". However, at this stage it does not appear that cryptocurrencies like Bitcoin will be approved as collateral. The value and innovation unlocked by this regulatory move is nevertheless likely to have significant ongoing effects as tokenisation of assets spreads in the economy. With the regulation of stablecoins, the CFTC's pilot could pave the way for fully tokenised regulated commodities markets.

By Steven Pettigrove

That's one small shard for man, one giant leap for blockchain-kind

Ethereum upgrades have always been a mix of spectacle and subtlety—Dencun's blobs reshaped Layer 2 economics overnight, Pectra's account tweaks whispered promises of smoother user experiences. But the latest fork: Fusaka, activated on December 3, 2025, at epoch 411,392 (around 21:50 UTC), was more of an under-the-hood upgrade that will have broader and longer impacts.

Named after a cosmic nod—"Fulu" for the consensus layer's starry precision, "Osaka" for the Devcon 2025 host city—Fusaka bundles a dozen Ethereum Improvement Proposals (EIPs) into a package. The most noticed is PeerDAS, a data availability sampling mechanism that finally delivers on sharding's 2015 dream without the fanfare of full Danksharding.

At its core, PeerDAS (EIP-7594) lets validator nodes sample tiny chunks of blob data—random slivers, so they don't have to try and process much larger data chunks. Blobs are temporary data sponges for Layer 2 rollups which have been choking bandwidth and spiking fees during peak hours. Now, with erasure coding, nodes can reconstruct the full picture from just over 50% of samples, slashing data loads by up to 85%. This probabilistic verification is robust against 51% attacks because it involves client-side sampling.

As Vitalik Buterin put it on X just after activation:

PeerDAS in Fusaka is significant because it literally is sharding. Ethereum is coming to consensus on blocks without requiring any single node to see more than a tiny fraction of the data.

Fusaka layers in practical polish with EIP-7935 bumping up the block gas limit to 60 million (a 67% jump, gated by caps like EIP-7934 to fend off DoS attacks), while EIP-7825 and others throttle transaction sizes and math operations for greater stability. Secp256r1 support (EIP-7212) opens the door to phone-native signatures—Face ID for your wallet perhaps?

Blob fee reserve (EIP-7918) aims to smooth volatility, hoarding excess during lulls to flood back in crunches. And the Blob Parameter Only ramps blob capacity 3.5x initially, targeting 14 per block by January, with a soft max of 21—conservative scaling to let the network acclimate.

The ripple effects hit where it counts: Layer 2s. Rollups like Arbitrum and Optimism, already reaching near Visa-levels of throughputs will see a massive fall in fees as settlements zip faster. Congestion eases because validators aren't bandwidth hogs anymore, lowering the bar for solo stakers— a quiet win for more decentralization. L1 Ethereum benefits too, inching toward higher gas limits once ZK-EVMs mature.

Buterin flagged the roadmap ahead in September:

Fusaka will fix this [blob bottlenecks]. But also, safety first… This is all new technology, and the core devs are wise to be super cautious.

It's not flawless. Buterin notes the gaps: L1 scaling lags without ZK-EVMs for $O(c^2)$ transaction bursts, proposer bottlenecks persist, and mempools aren't sharded yet. Still, this is a core evolution of one of the most popular blockchains, with sharding not as a monolith, but as probabilistic resilience.

Core dev Marius van der Wijden echoes the measured optimism:

The improvements will take a few months to fully play out, since we will only slowly increase the blobs.

And from ConsenSys' Gabriel Trintinalia:

The Fusaka upgrade really shows that Ethereum is serious about making Mainnet faster.

In a world chasing TPS for usable blockchains, Fusaka might really deliver and help move Ethereum to 100,000 TPS across L2s.

By Steven Pettigrove