



# Regulating digital asset and tokenised custody platforms

The Albanese Government is introducing new rules for digital asset and tokenised custody platforms in Australia. These platforms hold billions of dollars in assets for Australians. Digital asset innovations have the potential to boost competition and productivity in the financial sector, and regulatory certainty will better enable this. But repeated failures of major platforms, both overseas and in Australia, show the need for stronger safeguards to protect consumers and ensure market integrity.

## Key Concepts

A **digital token** is digital information that can be controlled and transferred, often by using cryptographic keys. It is used as an identifier in the same way as physical tokens (e.g. like the *paper* of a bearer bond, the *cardboard* of a movie ticket, or the *plastic* of a banknote).

A **digital asset** is the bundle of legal rights linked to a digital token. It is like the *value* of a bearer bond, banknote, or movie ticket—but packaged in such a way that the value is digitally transferrable without an intermediary.

## Regulations that are fit for purpose

The government is introducing a regulatory regime tailored to the main risks that arise in the digital asset space. The focus of the framework is businesses that hold assets on behalf of clients, rather than on the digital assets themselves. This approach:

- closes regulatory gaps and reduces the risk of exploitation through loopholes
- is technologically neutral, so it can adapt as new forms of tokenisation and services emerge
- mitigates risk by applying well-understood and time-tested frameworks designed specifically to mitigate the target risks.

The new framework does not displace existing laws generally. Where digital assets already fall within existing financial product definitions, the current laws will largely apply to activities involving those assets in the same way they do now. However, they introduce targeted elements of risk mitigation, regulatory clarity, and “right-sized” obligations – in a way that facilitates innovations without sacrificing consumer protections.

## Dual aims of the reforms

### Managing Key Risks in Digital Asset Markets

Digital assets already fall within Australia’s existing legal and regulatory frameworks. They are treated under general frameworks (such as property, insolvency, criminal, family and tax law) in the same way as other assets. Specialised frameworks also apply depending on the asset or activity. For example: ASIC regulates financial products and services involving digital assets, APRA oversees banks, insurers and super funds with digital asset exposure, and agencies such as the ACCC, ACMA and IP Australia may regulate digital assets activities in their respective domains.

Despite this existing legal and regulatory coverage, failures of digital asset intermediaries have caused major losses for consumers, including in Australia. Treasury’s consultations confirmed that the main unmitigated risks arise in custody-based business models, which are common across the digital asset space (e.g. trading platforms, brokerage services, wallets, and tokenisation products are typically custody-based).

While some of these intermediaries are already regulated, a gap exists when intermediaries hold large volumes of digital assets that aren’t financial products. Outside the digital asset space, this “gap” has not been a major concern, but digital tokens make it far easier to transfer and pool assets at speed and at scale – leading in more than one case to billions of dollars in client assets being held by a single unregulated intermediary. The consequences for consumers have been clear: frozen withdrawals, insolvency proceedings, commingling with provider funds, undisclosed proprietary trading, weak governance and disclosure, fraud, and cyber theft. These harms are symptomatic of large, unregulated custodial arrangements.

The draft legislation addresses these risks by extending established financial services frameworks to the target intermediaries. This will bring them under the same rules already applied to intermediaries with similar product offerings, such as operators of investor-directed portfolio services, managed discretionary accounts, and registered schemes.

This approach:

- ensures equivalent safeguards for similar products and services;
- provides a framework for monitoring financial stability as digital asset use grows; and
- aligns with the “same activity, same risk, same regulation” principles – maintaining consistency with peer jurisdictions and the recommendations of international regulatory bodies.

### Addressing Regulatory Uncertainty to Unlock Innovation

Broad financial product definitions have created significant uncertainty about the regulatory status of some digital asset products and services. This lack of clarity has left many participants unsure of how to operate under Australian law, limiting the sector’s capacity to innovate and grow.

Part of this uncertainty arises from the characteristics of digital assets themselves. They can be transferred without intermediaries, and some may have no identifiable issuer. This does not sit neatly within a framework designed to regulate financial promises made by intermediaries, such as product issuers and service providers.

Other uncertainties arise from the novel nature of the products and services that are available for digital assets. Activities such as staking and wrapping can still fall within existing financial product definitions, despite having no clear financial system analogues or sharing risks with the

activities originally targeted by those definitions. ASIC's recent draft guidance on digital assets highlights the resulting complexity and compliance challenges.

While these reforms are not intended to remove all uncertainty, they do provide clarity and certainty by reducing reliance on ill-fitting product definitions in relation to key activities in the digital asset space, including:

- creating and dealing in wrapped tokens;
- participating in the operation or development of public digital token infrastructure; and
- acting as an intermediary to a client's staking activities.

## Unlocking potential for Australia

These changes will unlock the potential for digital assets to grow the innovative capacity of Australia's financial services sector. They will assist:

- **Banks and fintechs** to safely offer new products like tokenised deposits, programmable payments, and digital wallets backed by regulated custody—cutting merchant costs, and simplifying cross-border transactions.
- **Start-ups** to build next-generation financial infrastructure—such as decentralised finance (DeFi) platforms, asset tokenisation services, and blockchain-based lending—without regulatory uncertainty holding them back.
- **Institutional investors** to access more liquid and efficient markets in bonds, commodities and private equity, with shorter settlement cycles—knowing that platforms are licensed, assets are safeguarded, and consumer protections are in place.
- **Traditional industries** (like agriculture, energy, and real estate) to explore tokenised asset models that improve liquidity, transparency, and access to capital—for example, carbon or biodiversity credits, or fractional ownership of farmland and renewables.
- **Creative sectors** (gaming, entertainment) to create tradable digital objects such as in-game items or event tickets, knowing that regulated secondary markets exist for those assets.
- **Global firms** to see Australia as a credible, well-regulated hub for digital asset innovation—reducing regulatory arbitrage and attracting investment, talent, and partnerships.

## Leveraging Australia's financial services laws

### New types of financial products

To close these regulatory gaps and reduce regulatory uncertainty, the Government will extend Australia's financial services laws to target two types of custodial arrangements common in the digital asset space. This will be done by defining two new types of financial products: Digital Asset Platforms (DAPs) and Tokenised Custody Platforms (TCPs).

Treating DAPs and TCPs as financial products means the full suite of consumer protections and licensing rules automatically apply. This includes:

- prohibitions on misleading and deceptive conduct
- prohibitions on unfair contract terms
- design and distribution obligations
- administration, supervision, and enforcement by ASIC.

The common feature of all DAPs and TCPs is that an operator, not the client, holds the underlying assets. This creates significant risks when large volumes of assets are pooled

together, including fraud, mismanagement, and operational failures. Regulating these arrangements as new financial products allows the proven safeguards of the financial services framework to apply directly. It ensures consumers receive the same protections already in place for comparable custodial products, while giving industry clarity and consistency.

### What is a Digital Asset Platform?

A DAP is a product where an operator holds digital tokens on behalf of clients. The operator may also provide transactional functions in respect of the digital tokens (such as transferring them, buying or selling them, staking them, or otherwise using them) at the client's direction.

In traditional finance, a "platform" is an arrangement for a provider to hold, deal in, and administer pools of investments chosen by individual clients. DAPs are the digital asset equivalent: they offer the same functions for investments involving digital tokens.

Examples of DAPs include:

- multilateral trading platforms – where operators facilitate the platform on which clients exchange digital tokens with each other.
- brokerage platforms – where operators buy and sell digital tokens on behalf of clients.
- market making platforms – where operators buy or sell digital tokens to clients from their own stockpiles.
- wallet and custody platforms – where operators store and safeguard digital tokens on behalf of clients.
- staking platforms – where operators contribute to the maintenance of a public network in return for a reward that is shared with clients.

DAPs do not include software programs that do not involve an operator taking possession of digital tokens on behalf of a client, such as self-hosted wallet applications or automated market makers.

### What is a Tokenised Custody Platform?

A TCP is a product where an operator holds underlying assets (of any type) and creates tokens to identify the people who can redeem, or direct the delivery of, those assets. Like with DAPs, the operator may also provide transactional functions with respect to the underlying assets (such as transferring them, buying or selling them, or otherwise using them) at the client's direction.

TCPs are similar to DAPs in that they too are the digital asset equivalent of custodial platforms in traditional finance, except they use tokens (rather than accounts) to record who the operator is holding assets for. The tokens created through TCPs represent "interests" in the underlying assets. If the underlying assets are financial products, the "interests" in those underlying assets are also financial products.

Examples of TCPs include:

- tokenised physical asset platforms – where the operator holds physical assets (such as gold bullion) and creates tokens to identify the persons entitled to those assets.
- tokenised intangible asset platforms – where the operator holds existing intangible assets (such as shares or bonds) and creates tokens to identify the persons entitled to those assets.
- bridging and wrapping platforms – where the operator holds digital tokens on behalf of clients and creates new tokens (on a different network or in a different form) to identify the persons entitled to the original tokens.

TCPs do not include:

- software programs, such as non-custodial bridges or wrapping protocols, where no operator takes possession of client tokens; or
- platforms that tokenise “money” to create stablecoins, as these types of platforms will instead be subject to the separate stored value facility framework as part of the broader payments licensing reforms.

## Licensing and obligations

Anyone providing specified services in relation to DAPs or TCPs will be treated as providing a financial service. This makes activities such as advising on, or dealing in, or arranging for others to deal in, DAPs or TCPs regulated activities.

Providers of financial services will need to hold an Australian Financial Services Licence (AFSL), the same licence required for other financial service providers. AFSL obligations require services to be delivered efficiently, honestly and fairly, and ensure providers meet a variety of well-understood conduct, reporting, and compliance requirements.

Using the existing AFSL framework avoids the need for a new licensing regime. It also reduces complexity and gives industry and consumers the benefit of familiar rules and protections.

### Operators of DAPs and TCPs

In addition to the baseline AFSL obligations, operators of DAPs and TCPs will need to comply with new minimum standards, to be developed by ASIC. These will focus on two areas:

- the platform’s transaction and settlement functions
- the platform’s arrangements for holding client assets.

This approach mirrors how ASIC is responsible for setting rules for similar functions across the financial services framework.

Operators will also follow a tailored disclosure regime. Clients must receive the same disclosure about the underlying assets they acquire through a DAP or TCP as they would have received if they had acquired those assets directly. On top of this, the operator will issue a Platform Guide. This guide explains how the service itself works, covering:

- how the platform handles custody, transfers and client instructions
- the ways in which clients can use their digital tokens on the platform
- the operator’s fees and charges
- the risks of using the service (such as operational, liquidity or counterparty risks)
- the reporting and rights available to clients.

The Platform Guide replaces the need for duplicative product disclosure documents, and ensures investors get information that is specific to the service they are using.

## Interactions with existing financial services laws

The framework for regulating DAPs and TCPs relies heavily on Australia’s existing financial services laws. Adding DAPs and TCPs as new financial products does not generally displace those laws.

**Example:** A TCP operator has provided the financial service of *dealing in securities* if, through the transactional functions of the platform, the operator acquired securities to hold on behalf of a client (in advance of ‘tokenising’ those securities).

The existing framework is also relied on to determine when an arrangement (such as a contractual agreement) is a financial product. This includes circumstances where identifying the “holder” of a financial product involves identifying the person in possession of a digital token.

**Example:** A person who transfers a digital token also transfers a financial product where:

- (i) a contractual agreement exists that meets one of the existing ‘financial product’ definitions; and
- (ii) the terms of that contractual agreement are such that a person in possession of that digital token is the “holder” of that financial product.

Similarly, there is no special test for deciding whether activities involving digital tokens are regulated under the existing financial services laws. Rather, the existing financial services law continues to apply, unless the reforms expressly relieve DAP/TCP operators from specific obligations.

**Example:** A person operating a facility where offers to acquire or dispose of digital tokens are regularly made, will be a financial market operator – if the transfer of digital tokens between facility participants effects a transfer of financial products between those participants.

The reforms expressly relieve DAP/TCP operators from certain obligations for a range reasons, including to avoid regulatory duplication or to mitigate unique risks. In most cases, the relief replicates existing relief provided to similar products issued under the existing frameworks.

**Example:** A person operating a DAP will *not* be providing a “custodial and depository service” – even where, by possessing client digital tokens, the operator is holding client financial products – because this will already be covered by the new minimum standards. This is the same approach as for issuers of other ‘custody-based’ financial products.

## Futureproofing with flexibility

The framework has been designed to adapt to future risks while also supporting innovation. Digital asset markets evolve rapidly, and rigid rules would either leave gaps or stifle new business models. The regime instead uses mechanisms that allow obligations to be adjusted, expanded or narrowed, giving regulators and operators the tools to strengthen safeguards when new risks arise and the space to adapt as technologies and services develop.

One example is the use of minimum standards. ASIC already regulates custody-based products through principle-based standards, and the Bill extends this approach to transactional and settlement functions. These standards will be outcomes-based and proportionate, so they can apply across different platforms without creating unnecessary barriers for smaller or innovative operators.

Flexibility is also built in through the requirement that all DAPs and TCPs establish and enforce platform rules. These rules must cover key matters such as client eligibility, execution methods, and settlement arrangements, and will operate as a contract between the operator and its

clients (and, in some cases, between clients of the platform). The rules are aimed to be implementable through automated systems such as smart contracts, enabling regulatorily compliant protocols like automated market makers or programmable assets. This approach ensures transparency and accountability to clients while leaving ample flexibility for innovation in how operators design their platform offering.

Finally, the framework gives the targeted ministerial powers to adjust how facilities are regulated as markets evolve. The minister can declare a facility to be treated as a financial market or clearing and settlement facility. Conversely, the Minister can declare a facility to be treated instead as a digital asset platform. The Minister may also prohibit specified products from being offered through platforms if they create systemic risks. These powers allow regulation to be “right-sized” in either direction—tightened where new risks emerge, or eased where obligations are disproportionate or inconsistent with technological innovation—without the need for new legislation or regulations.

### Next steps

Consultation on exposure draft legislation closes on 24 October 2025. The timing of any further work depends on the outcomes of exposure draft legislation.