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The Treasury
Level 29
201 Kent Street
Sydney NSW 2000
Australia

Submitted via email to: crypto@treasury.gov.au.

**RE: Response to the draft Treasury Laws Amendment (Digital Asset and Tokenised Custody Platforms) Bill 2025**

Ava Labs, Inc., through its Avalanche Policy Coalition ("**Ava Labs**"), appreciates the opportunity to provide feedback on the draft Treasury Laws Amendment (Digital Asset and Tokenised Custody Platforms) Bill 2025, including the supporting explanatory materials, consultation questionnaire and fact sheet ("**Draft Law**").

We acknowledge and appreciate the efforts of the Australian Government to address this complex area thoughtfully and to foster industry engagement, transparency, and regulatory clarity in the rapidly evolving and innovative space of digital assets.

*Unless otherwise defined, terms used in this response have the meaning given to them in the Draft Law.*

## PART A – PRELIMINARY INFORMATION AND FEEDBACK

### I. Introduction

Ava Labs is a Brooklyn-based technology company formed in 2018 with the aim of advancing blockchain and related technologies in order to foster greater adoption of this new database layer of the internet. Our founder and CEO, the Cornell computer scientist Dr. Emin Gün Sirer,[1] has spent much of his career developing, building, and implementing distributed systems and blockchain protocols.[2] His testimony before the United States Congress, House Financial Services Committee in 2023 provides background for the technology and several of the themes and concepts discussed below.[3]

At Ava Labs, we focus our efforts on the Avalanche blockchain technology, which is one of the most innovative blockchain technologies available due to its speed to finality and the ability of users to build customised blockchains for virtually any use case, including those that have strict compliance requirements. The Avalanche Primary Network was launched by a diversified group of validators in September 2020, bringing its novel consensus mechanism and the ability to create compliant blockchains to the world. The Avalanche Primary Network

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[1] See https://en.wikipedia.org/wiki/Emin_G%C3%BCn_Sirer.

[2] See *The Future of Digital Assets: Providing Clarity for the Digital Asset Ecosystem*, House Comm. on Fin. Serv. (13 June 2023), https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=408851, where Dr. Emin Gün Sirer, founder and CEO of Ava Labs, spoke as a witness at the hearing about the innovative uses of blockchain technology as well as our view that blockchain platforms should not be regulated at the protocol layer.

[3] See *Testimony of Dr. Emin Gun Sirer, Founder & CEO, Ava Labs Inc., Before the United States House of Representatives, House Financial Services Committee*, https://docs.house.gov/meetings/BA/BA00/20230613/116085/HHRG-118-BA00-Wstate-SirerE-20230613.pdf. The testimony includes a reference to "Owl Explains". Owl Explains is a project created by the legal team at Ava Labs with the goal of becoming a trusted educational resource for regulators, policymakers, and other stakeholders interested in learning about blockchain technology, crypto assets, and Web3. Owl Explains also collaborates with academics to give greater exposure to the research being done on these topics, including through our podcast series (https://www.owlexplains.com/en/podcasts/avalabsxcber/1/) with Crypto and Blockchain Economics Research (CBER) Forum (https://www.cber-forum.org/), covering topics such as whether crypto assets are securities, blockchain privacy and regulatory compliance and tokenisation of real-world assets. Avalanche Policy Coalition continues the work of Owl Explains.

is powered by the Proof-of-Stake based Avalanche consensus[4] and is secured by a distributed set of independently operated validators located around the globe who secure the network and authenticate transactions.[5] The native token of the Avalanche Primary Network is AVAX, which serves as the unit of account and means by which resources are allocated on the network through, among other things, paying "gas" and other fees and staking to operate validator nodes.

The Avalanche protocol also affords users the ability to build interoperable, custom layer-1 blockchains,[6] integrating compliance needs with bespoke programming for any use case. This capability makes Avalanche a network of blockchains, rather than a single chain.

To date, the Avalanche Primary Network has not only been used to process multitudes of transactions, but also to launch and operate all sorts of projects. Here are some examples of what participants from around the world have built:

- **Offerings of tokenised securities and other financial instruments** by institutions like BlackRock, Franklin Templeton, Apollo Global Management, and KKR.
- **Cross-border payment solutions** by companies like Visa, StraitsX and Fonbnk.
- **NFT-based ticketing and consumer programs** by Sports Illustrated and SK Planet.
- **Privacy, security, and data integrity components** of blockchain-based solutions, in connection with a wide range of entities like the California DMV, Deloitte, Chainlink, and J.P. Morgan.

Please refer to the Annexure for information and resources about the many and varied use cases built with the Avalanche technology.[7]

## II. Executive summary

We are supportive of the Australian Government's efforts in establishing a robust, workable regulatory framework for digital assets and welcome the introduction of a licensing regime for digital asset-related custodians. However, we have certain comments on individual aspects of the proposals and the scope of the regulatory perimeter, which we set out in this submission.

In particular, we believe that the nature of the asset, not just the nature of the activity, matters when it comes to regulation. The Australian regulators, including yourselves, have discussed this concept numerous times with regard to digital assets, explaining that not all digital assets are financial instruments and providing examples to illustrate when digital assets are subject to financial regulation and then they are not. We urge the Treasury to maintain this concept as it finalises the Draft Law to ensure that the necessary distinction between regulated financial instrument custody and broader objects and types of control is not diluted.

Overall, the focus of our comments are on:

- **understanding the purpose of the Draft Law**. Establishing a clear legislative intent will enable more accurate interpretations of the Draft Law, ensuring a higher level of compliance, and guiding appropriate implementation. Please see paragraph III of this Part A for further detail;

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[4] See Team Rocket et al., *Scalable and Probabilistic Leaderless BFT Consensus through Metastability* (24 August 2020), https://cdn.prod.website-files.com/5d80307810123f5ffbb34d6e/6009805681b416f34dcae012_Avalanche%20Consensus%20Whitepaper.pdf, a whitepaper on the Avalanche consensus.
[5] See *What is Staking?*, Avalanche, https://build.avax.network/docs/nodes/validate/what-is-staking, for further details on the validation mechanism and related staking on the Avalanche network.
[6] See *Avalanche L1s*, Avalanche, https://build.avax.network/docs/avalanche-l1s, which provides relevant information to users wanting to build custom layer-1 blockchains.
[7] Statistics about the network, its validators and activity levels are available at https://stats.avax.network/dashboard/overview, among other places.

- **reconsidering the term "digital token"**, which is very broadly drafted. Our view is that the current definition reaches far wider than is necessary to ensure a safe environment for digital asset consumers and falls well beyond the scope of financial services regulation. As such, we propose three alternatives – (1) to retain the existing financial services scope, (2) to adopt the existing "virtual asset" definition in section 5B of the forthcoming Anti-Money Laundering and Counter-Terrorism Financing Act 2006 ("**AML/CFT Act**"), or (3) otherwise, to significantly redefining the current proposed definition under the Draft Law to exclude assets that fall far from the financial instrument tree. Please see our specific comments below for further detail;
- the **practical operation of the proposals** to ensure implementation feasibility, and to avoid any unintended and unwanted consequences. Please see Part B for further detail;
- preserving the **distinction between infrastructure (whether centralised or decentralised) from intermediaries requiring regulation** at a general conceptual level. Specifically, please see paragraph IV and V of this Part A, as well as paragraph 4 of Part B for further detail; and
- ensuring **consistent treatment of custodians**. Please see Part B for further detail.

More specifically, our key comments are as follows:

- As we allude to above, to reconsider the term "**digital token**" altogether. We have highlighted some illustrative examples of how broad a net this casts (see paragraph 1 of Part B which lists out such examples in detail), far wider than the digital asset sector, far beyond the foundational risks that the Draft Explanatory Memorandum[8] ("**Draft EM**") explains as the inspiration for this reform, and far exceeding the approach of major regulatory bodies around the world. Further, while we acknowledge the spread of ASIC's statutory functions and powers, we respectfully note that regulating custody services relating to a vast range of non-financial related underlying assets, which (whether intentional or not) appears to be the result of the Draft Law, goes beyond the scope of ASIC's traditional regulatory remit[9] and (we would argue) the protective needs of consumers, not to mention the Australian Government's consistent position that the nature of the asset matters when determining the scope of regulation.

  With the above context, we suggest the following alternatives be considered:

  (a) **Option A**. Keeping to the existing financial services regime under the Corporations Act 2001 (Cth) ("**Corporations Act**"). The Australian regulatory perimeter is already very broad relative to other jurisdictions. Furthermore, ASIC's newly updated Information Sheet 225 titled "Digital assets: financial products and services"[10] ("**INFO 225**") clarifies ASIC's interpretation of that regulatory perimeter. We suggest it would be far better to provide time for INFO 225 and the associated "no action" period offered to the industry to play out and encourage stronger compliance, before undertaking a more radical expansion of the digital asset regulatory environment. As other jurisdictions have done,[11] Australia could also allow digital asset firms to "opt in" to this regime with appropriate parameters.

[8] Available at: https://storage.googleapis.com/files-au-treasury/treasury/p/prj37f059c66284c24051948/page/c2025_701519_em.pdf.
[9] For example, see: https://www.asic.gov.au/about-asic/what-we-do/our-role/ where ASIC describes is role as being *"Australia's integrated corporate, markets, financial services and consumer credit regulator"*.
[10] Available at: https://www.asic.gov.au/regulatory-resources/digital-transformation/digital-assets-financial-products-and-services/.
[11] See, for example, the initiative of the Securities and Futures Commission in Hong Kong in 2019, at sfc.hk/-/media/EN/files/ER/PDF/20191106-Position-Paper-and-Appendix-1-to-Position-Paper-Eng.pdf?rev=3458562e036845879879b6a8649e6c40.

(b) **Option B**. If the Treasury takes the view that the above is not feasible, leveraging the "virtual asset" definition already passed by the Australian Parliament for the forthcoming AML/CFT Act as of March 2026, with adjustments including to:

(i) exclude anything that is already a "financial product" under the Corporations Act; and

(ii) add in a clarification that "governance" for the purposes of the Corporations Act, would be limited to governance participation that also carries with it a right to passive financial profits,

thereby enabling ease of compliance and a recognition that not all controllable digital records require financial services regulation.

(c) **Option C**. If the Treasury considers the proposed new concepts of "digital token: and "digital "object" must be retained, materially re-casting the proposed definitions to rein in their current scope, which does not appear to have a clear and commensurately wide policy imperative.

We suggest Options A and B would promote a more cohesive regulatory regime within Australia, while also aligning with the Financial Action Task Force's ("**FATF**") standards and the approach taken in several individual jurisdictions. We strongly recommend the Treasury consider these alternative suggestions.

Please also see paragraph 1 of Part B for further detail.

- To **ensure precision in the language of the proposed financial services** so that any reasonable market participant can assess whether or not they are caught and to support a strong understanding that underlying infrastructure and related functions are not caught. We have several suggestions in this regard. Please see paragraphs 1 and 4 of Part B for further detail.

- To **reconsider the inclusion of the TCP regulated activity** or at least to more clearly exclude Programmatic Functions (as we define below). Please see paragraph 3 of Part B for further detail.

- To **broaden the applicability of the "public digital token infrastructure" exemption**, so that all (genuine) underlying infrastructure is exempt from the "managed investment scheme" and not just certain types of decentralised infrastructures. We have some specific suggestions to assist in achieving this. Please see paragraph 4 of Part B for further detail.

Our detailed response and recommendations are set out below.

Finally, we also suggest that *practical application* of all proposals must be front of mind. In our experience working with regulators and industries around the world, it is clear to us that the digital asset industry and the innovation it brings to the broader digital economy can thrive only with fair rules and the certain application of the law. To this end, we make several additional suggestions below.

## III. Unpacking the Purpose of the Draft Law

Understanding legislative intent is crucial to ensure proper interpretation and application of the Draft Law. As such, it would be beneficial for the Australian Government to provide additional clarity on what it aims to achieve by implementing the Draft Law and what activity it is precisely aiming to capture under the Draft Law.

In particular, we note that the Draft Law is drafted very broadly and we query whether such drafting is:

(a) deliberately broad and to be read as extensively as it appears on the page. We provide some illustrative examples in paragraph 1 of Part B; or

(b) only intended to capture a narrower scope of services that involve instruments:

(i) with a payment or financial investment purpose; or
(ii) which operate akin to shares that offer governance <u>and</u> passive financial profit participation,[12]

even though they may fall outside the current scope of "financial products" under the Corporations Act.

Our understanding is that the most sensible interpretation is as set out in paragraph (b), as suggested by the historical consumer harm inspiring these reforms as cited in the Draft EM, several of the examples provided in the Draft EM, and the requirement to obtain an Australian *financial services* licence ("**AFSL**"), from the ASIC as the relevant regulator.

However, as we explain in Part B, this is not clear and on a literal reading of the Draft Law (which we understand would ultimately take priority), a vast range of arrangements could be captured within the meaning of "digital token", and related service providers would require an AFSL. Further, the expression of intent to ensure "futureproofing", as suggested in the Fact Sheet[13] and Draft EM, also calls into question whether a more expansive net is intended.

We have similar comments in relation to the scope of service providers to be caught.

Please see Part B for our suggestions.

As an overarching comment, we also highlight the need for:

- Regulation that is easy to understand.
- Regulation that can be operationalised in practice.
- Regulation that is internationally consistent and thereby supports the competitiveness of Australia's digital economy and attracts capital, people and ideas.

[12] For clarity, we consider governance purposes alone should not be in scope given the wide possible contributions that "governance" can entail that do not (in our view) properly sit within financial services regulation.
[13] Available at: https://storage.googleapis.com/files-au-treasury/treasury/p/prj37f059c66284c24051948/page/c2025_701519_fs.pdf.

## IV. Role of infrastructure providers on blockchain networks

We also wish to highlight several points pertinent to infrastructure that inform several of the comments and suggestions we make in Part B.

A starting point for the determination of the digital asset regulatory perimeter should be an explicit recognition that ecosystem and network participants who provide and maintain the infrastructure that allows blockchain networks and related protocols to function are not engaged in the activities of a financial intermediary and thus should fall outside the regulatory perimeter. These infrastructure activities may include but are not limited to: hardware, software, and communications providers; miners, validators, delegators and node operators; and providers of APIs/RPCs, block explorers and other data (collectively, "**Infrastructure Providers**"). Some of these activities require the use of protocol or native DLT tokens ("**Native DLT Tokens**"), which are special tokens that are integral to the functioning of a distributed ledger like a blockchain, but many do not. We address the role and use of Native DLT Tokens in the provision of infrastructure functions in the next section, but the broad principle is the same: infrastructure functions are not intermediary activities and therefore should not be considered as being within the regulatory perimeter.

Infrastructure Providers supply the passive infrastructure layer that facilitates the functioning of networks and protocols. They do not engage in archetypal intermediary activities like managing the private keys to client digital assets, recommending, arranging or soliciting digital asset trades or portfolio allocations, or executing, clearing, and settling digital asset transactions. They simply provide the technology layer (hardware, software, communications, data) that makes it possible for networks and associated protocols to function and, if applicable, for the intermediaries to conduct their activities.

Another example of infrastructure is the provision of non-custodial (also called "**self-custodial**" or "**personal**") digital asset wallet solutions. There are different permutations available for non-custodial wallets, such as standard single signer ("**standard**") wallets, multi-signature ("**multi-sig**") wallets and multi-party computation ("**MPC**") wallets.

- A standard wallet is the classic personal wallet that stores private keys for a single signer, who can then conduct activities peer-to-peer by signing transactions.
- Multi-sig wallets involve a digital signing process that requires two or more users to sign transactions as a group to authorise the activity.
- MPC wallets involve a cryptographic technology that allows multiple parties to each hold secret information and then each solve a problem that requires the input of all these secrets in a decentralised way, without ever sharing the secret information with one another.
- For both multi-sig and MPC wallets, there is an additional layer of security by requiring multiple parties to come together to sign a transaction in order to conduct an activity, rather than just one signature from a single private key holder. The owner is always a necessary, even if not sufficient, participant in any signing for authorisation of an activity.

However, regardless of the different permutations, the wallet software provider, as an Infrastructure Provider, makes available the technical service, not a custody or dealing service because at all times it will be the customer who exercises ultimate control over the relevant private keys and hence all transactions and activities.  Even when other parties may participate as additional signers, they have no ability to conduct activities without the customer or change the customer's instructions. This is the case even where the wallet software provider acts as one of the signers. We also address the non-custodial wallet as an example of services that should fall outside the scope of digital asset custodian services in section V below.

We understand that the policy intent of the Australian Government is not to regulate such Infrastructure Providers.

Performing administrative and technological activities in connection with blockchains does not transform those providers into intermediaries any more than is the case for similar providers in traditional markets. As such, Infrastructure Providers whose involvement is limited to providing software (including non-custodial wallets), maintaining and enhancing the blockchain network's infrastructure and ensuring its functionality and security, should not fall within the regulatory perimeter. Similarly, we suggest due consideration of the very limited role of certain signers involved in multi-sig and MPC wallets to ensure they are not inadvertently caught.

## V. Blockchain Programmatic Functions Using Tokens Are a Type of Infrastructure

Native DLT Tokens play an integral role in protocol functionality.[14] They may have a variety of functions on the public blockchain they are entwined with, including resource allocation, means of payment, security incentive, and voting rights, among others. There is an inextricable link between Native DLT Tokens and the protocol and they cannot function without each other. We do not disagree that genuine intermediaries (dealers, custodians and exchanges etc) of Native DLT Tokens may appropriately be regulated. However, deploying the intrinsic technical features of these tokens constitutes a type of infrastructure provision, not the activities of an intermediary. For the purposes of this letter, "**Programmatic Functions**" include any transaction or other activity in which a token is transferred or otherwise used on a protocol in accordance with its design as an integral part of the operation of that protocol. We provide examples below.[15]

The nature of the Native DLT Token used on the network is infrastructure, not intermediation or investment. It is designed to be actively used by the holder in the Programmatic Functions integral to the workings of the protocol. It is intended for participatory action on the network, to help in network operations. Tokens used in Programmatic Functions are no less a part of the core technology operations of blockchain protocols than the hardware, communications, cybersecurity, and software that facilitate their operation. Just as activities and transactions related to the latter are not considered intermediary activities, so it should be with tokens used in Programmatic Functions.

Examples of Programmatic Functions include but are not limited to the following:

- Staking tokens and operating a validator node or delegating tokens to a validator.
- Receiving or distributing staking rewards in connection with validating transactions and/or securing the protocol.
- Locking tokens (e.g. in a smart contract), including wrapping, bridging, and staking.
- Minting and burning tokens.

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[14] See https://www.owlexplains.com/en/comment-letters/response-to-financial-conduct-authority/. In this submission to the Financial Conduct Authority, we explain these as follows: *"Native DLT tokens: A narrow category of truly DLT-native tokens (e.g., Bitcoin, Ether, AVAX, etc.). Might be a subset of intangible asset tokens in the sense that these tokens are just a bundle of rights with no physical item involved, although some may have an element of services (e.g., when the token is used for resource allocation on the network). The classification system treats native DLT tokens as not a subset of intangible asset tokens because the latter must be something that exists (or can exist) distinct from the blockchain that creates and maintains it. Native DLT tokens have no existence or purpose without the associated blockchain."*.

[15] Our recent submissions to the U.S. Securities and Exchange Commission Crypto Task Force discuss why infrastructure providers on blockchain networks are not financial intermediaries, including but not limited to when they use Native DLT Tokens to perform programmatic functions integral to the operation of the blockchain. 2025/4/23 submission: https://www.owlexplains.com/en/comment-letters/response-to-the-sec-crypto-task-force/; 2025/5/28 submission: https://www.owlexplains.com/en/comment-letters/crypto-task-force-nature-of-the-activity-test/.

- Payments of transaction or other fees on the protocol.
- Other participation in the operation or testing of the protocol.
- Claiming or otherwise receiving tokens through an airdrop or similar mechanism.
- Sending, receiving, or otherwise transferring tokens on the protocol for any related purposes.

We note a recent academic article compared Proof-of-Stake to Proof-of-Work as part of the critical infrastructure of blockchains and concluded that the former is more secure.[16] Relevantly, the article highlights, among other things, the *use* of tokens in Proof-of-Stake blockchains as part of that infrastructure.

All Programmatic Functions are foundational to the operation of blockchain networks - no less intrinsic than the role internet service providers, communications protocols, hardware makers, web browsers, or the internet generally play in traditional financial markets. These technology providers and related functions rightly sit outside the regulatory perimeter.

We therefore urge the Australian Government to:

- issue guidance specifically stating that Programmatic Functions, and the persons who perform them, are outside the regulatory perimeter, regardless of the types of assets tokenised on the blockchain. This clarity is essential to preserve the neutrality of infrastructure, protect innovation, and ensure that regulation remains appropriately targeted; and
- ensure that laws seeking to regulate the digital asset sector and/or related instruments such as guidance or explanatory materials, make it clear that the use of a Native DLT Token in accordance with its design for functions on its native protocol is not an offer or sale of the Native DLT Token, does not create a managed investment scheme or other type of security or other financial instrument.

We make several additional comments below.

[16] See Kose John et al., *Proof-of-Work versus Proof-of-Stake: A Comparative Economic Analysis* (16 December 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3750467. See also *The Fundamentals: What Is Staking?*, Owl Explains (11 March 2025), https://www.owlexplains.com/en/articles/the-fundamentals-what-is-staking/.

## PART B – OUR RESPONSE TO THE DRAFT LAW

We provide our feedback to the Draft Law as follows, with a focus on the scope of regulation, consistent with our comments above. Please also refer to the feedback we have provided above.

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<tr><th></th><th>Topic</th><th>Extract</th><th>Our comments</th></tr>
<tr><td>1.</td><td>Scope of tokens covered</td><td>(1) A digital object is a digital token if one or more persons are capable of controlling the digital object.<br>(2) A person is capable of controlling the digital object if the person is capable of:<br>(a) excluding others from controlling the digital object; and<br>(b) using, transferring or otherwise disposing of the digital object; and<br>(c) identifying themself as capable of doing the things in paragraphs (a) and (b).<br>(3) In working out whether a person is capable of doing a thing in paragraph (2)(a), (b) or (c):<br>(a) have regard to what the person is capable of doing as a matter of fact rather than law; and<br>(b) it does not matter if another person is also capable of doing the thing.<br>(4) A person possesses a digital token if the person is capable of controlling the digital object that is the digital token unless:<br>(a) the person can only do so with the cooperation of one or more other persons; and<br>(b) one of those other persons is unilaterally capable of controlling the digital object.<br>(5) In this section:<br>digital object includes:<br>(a) an electronic record; and<br>(b) an intangible thing (including a notional thing), information about which is recorded in an electronic record.</td><td>Broad definition of "digital token" and proposed alternative<br>We note the exceptionally broad nature of the "digital token" definition.<br>Specifically, the definition carries no boundaries in terms of the information that may be the subject of an electronic record.<br>Further, while paragraph (2) supports a degree of narrowing by making control of the record rivalrous, paragraph (1) refers to more than one person being able to control the record.<br>We provide a snapshot of examples of the types of records that could be caught by this definition depending on the facts, illustrating its breadth:<br>• Tickets, such as Taylor Swift concert tickets or tickets to the Australian Open<br>• Unique identifiers across multiple applications such as tokenised credit card data, vehicle serial numbers, luxury goods identifiers, the serial number on gold bullion etc<br>• Mobile phone data stored locally, such as images and locally stored facial ID data<br>• Philatelic stamps<br>• Sports fan memorabilia, such as Australian Football League (AFL) Collector Cards<br>• In-game features such as a character "skin", vehicle or tool that can be used<br>• Loyalty arrangements including points, status credits, lounge passes, bonus arrangements, etc<br>• Security-related information, for example, a security access pass credentialled to specific person, or a token-generator for access to banking services<br>• Literary copyright work (such as this submission) expressed in an electronic Word document<br>• Music recorded on an MP3 player<br>• Information on a server that may be switched on/off by a data centre operator<br>• Information within a data packet that is transmitted by a telecommunications service provider<br>• Various blockchain transaction data that is transmitted by a Bitcoin miner<br>The term "unilateral control" does not necessarily assist given the definition contemplates that multiple people can be involved and that control can occur at multiple different levels (from the push of a button on a user interface, to the flick of a physical switch that can turn off a server).<br>This has several practical implications when the Digital Asset Platforms ("DAP") and Tokenised Custodian Platforms ("TCP") definitions are applied, as noted below.<br>Our view is that the breadth of the "digital token" definition exceeds the remit of financial services regulators and the illustrative historical harms highlighted in the Draft EM. While acknowledging the significant</td></tr>
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| | | | breadth of the ASIC's statutory functions and powers,[17] ASIC's website[18] demonstrates its role, vision and strategic priorities heavily focussed on financial services and financial markets. Similarly, the concept of an "Australian **financial services** licence" itself suggests a focus on these areas.<br><br>Similarly, the FATF's standards and several individual jurisdictions have taken the position of:<br><br>• focusing on the regulation of intermediaries interacting with tokens that have the purpose of **payment**, **investment** or (in some jurisdictions) **governance**; and<br><br>• **limiting or expressly excluding** the application of new laws on tokens that are limited purpose or limited ecosystem tokens, which represent other already-regulated (eg. bank deposits) or which otherwise do not meet the tests above.<br><br>This approach seems to have been taken by the updates to the AML/CFT Act in the new definition of "virtual asset" in section 5B, which tracks the FATF definition more closely and excludes in-game assets, loyalty points, money etc.<br><br>We respect any Australian policy position on the breadth of Australian laws, but raise some possible impacts:<br><br>• Australia will conceptually be casting a far broader net than various jurisdictions.<br><br>• ASIC's licensing, supervisory and enforcement duties and the concomitant demand on its resources will be far higher.<br><br>• Significant awareness-raising will be required, particularly among everyday businesses that may interact with electronic records but not see themselves as "digital asset" or "crypto" firms.<br><br>• Market entry will be less attractive for offshore businesses in a range of fields. Similarly, Australian consumer choice will likely diminish if offshore entities are caught in the very broad jurisdictional net of the Corporations Act, but are unwilling to submit to licensing and conduct requirements not commensurate with those in other markets. |
| | | | Our primary suggestion is to focus on the application and enforcement of Australia's already vast regulatory permitter. ASIC's newly updated INFO 225 provides significant clarity to the industry and we suggest that it would be far to see this clarity play out before a radical overhaul of the regulatory environment for digital assets. This is also the case given the in-tandem proposed reforms relating to payments.<br><br>If the "virtual asset" definition from the AML/CFT Act is adopted, we suggest it be accompanied by the following:<br><br>• an exclusion for anything that is already a "financial product" under the Corporations Act to avoid duplicative regulation; and<br><br>• a clarification that "governance" for the purposes of the Corporations Act, would be limited to governance participation that also carries with it a right to passive financial profits. We consider governance participation alone (eg. to support core technical upgrades) should not itself be a sufficient feature to trigger licensing obligations. |
| | | | If adopting the "digital token" definition (which we do not recommend, as indicated above), we also consider it would be valuable to explain the intended distinction (and rationale) for applying a different definition to the AML/CFT Act "virtual asset" definition. This would assist in providing further guidance on the legislative intent of the Draft Law (please see paragraph III of Part A above). |

[17] For example, per section 11 of the *Australian Securities and Investments Commission Act* 2001 (Cth).
[18] Available at: https://www.asic.gov.au/about-asic/.

| | Topic | Extract | Our comments |
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| | | | In such case, we would also suggest including some limitations similar to section 5B(4) of the AML/CFT Act, which expressly states what is not considered a "digital token", plus our recommended exclusions above (to exempt financial products and governance tokens that do not carry a passive financial profit element). This may assist with narrowing the scope, which is preferred for the reasons set out above.<br><br>***Meaning of "electronic records"***<br><br>We also take this opportunity to flag that:<br>• there may be multiple different records available in respect of a digital token (eg. public address, private key, transaction hash etc);<br>• a (meaningful) electronic record may be in counterparts (eg. if it is sharded); and<br>• there may be multiple copies of the same record.<br><br>Accordingly, if the "digital token" concept is retained, it will be important to limit the information that may be the subject of an electronic record, and be clear about:<br>• whether it matters that a record may have multiple copies;<br>• if not, whether establishing "control" relates to *each* instance of an electronic record; and<br>• how to apply this concept to a record that may be fragmented. For example, for a private key that is sharded, whether the "electronic record" should be read as the *private key as a whole*, each individual *shard*, or *all of these*.<br><br>***Possession and control***<br><br>Finally, we note that in a multi-signatory arrangement, several participants could be caught by the concept of possession in the definition of "digital token", particularly noting sub-paragraph (4). This could include those participating purely in an administrative or technical capacity.<br><br>Furthermore, it could be argued that a client themselves is able to unilaterally control a digital token by sending an instruction to the platform, if what occurs factually (as contemplated by the "digital token" definition in sub-paragraph (3)) is that the digital token moves on instruction. This arguably places the platform outside the scope of sub-paragraph (4). |
| **2.** | Scope of proposed regulated activities | **761GC Meaning of *digital asset platform***<br><br>(1) A digital asset platform is a non-transferable facility under which a person (the operator) possesses one or more digital tokens (the underlying assets) in trust for, or on behalf of, either:<br>(a) another person (the client); or<br>(b) another person nominated by the client (the client nominee).<br><br>(2) The facility may also authorise the operator or one or more other persons to engage in conduct in relation to an underlying asset for, or on behalf of, the client or the client nominee. | ***"Non-transferable facility"***<br><br>A platform typically involves code, which also typically comprises intellectual property that is licensed and may also be transferred.<br><br>We suggest this could be addressed by replacing "a non-transferable facility under which…" to a far simpler reference to "a service pursuant to which…".<br><br>***On trust / on behalf of***<br><br>We assume "or on behalf of" is intended to capture situations where a trust arrangement may not apply under a foreign law but a similar concept applies, or where something falls under an agency arrangement. This would be valuable to clarify. The word "<u>otherwise</u> on behalf of…" could also be useful.<br><br>***Engaging others***<br><br>We suggest sub-section (2) introduces undue complexity. It is written as a permission, but we assume it is intended as a deeming arrangement.<br><br>It should be very clear who is caught and when. If the intention is to deem that an exchange, which may use a third-party custodian, is still intended to be caught, that deeming arrangement could be far clearer. |

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| | | However, it does call into question whether the definition of "possession" is appropriate and needs to be clarified.<br><br>***Out of scope platforms***<br><br>We understand the drivers behind the Draft Law reforms include centralised custodial platforms. We consider several platforms will not be caught by this concept. For example:<br><br>• Brokers that sell digital tokens as principal. This would be on the basis that they do not hold assets on trust for, or otherwise on behalf of, clients.<br>• Platforms that may facilitate peer-to-peer transactions, or communications that lead to peer-to-peer transactions, between users that control their own assets.<br>• Other platforms that clearly and expressly state that assets sent to the platform are the assets of the relevant operator, with contractual rights only to the client.<br><br>If that is the case, we would suggest clarifying that:<br><br>• such platforms are intentionally not caught by the Draft Law; and<br>• merely providing a user interface for or API connectivity to such a platform would not be in breach; and<br>• merely having a technical role in the platform (eg. as a node or participating in governance) would not change the regulatory outcome of the platform and that person being outside the regulatory perimeter.<br><br>***Commensurate treatment of custodians***<br><br>Closely linked with our comments on the "digital token" definition, we highlight note that the treatment of custodians may not be commensurate with the treatment of their real-world counterparts in each case to which this proposed regulated activity may apply.<br><br>For example, the following would presumably not be DAPs, but their counterparts holding digital records of precisely the same thing would be:<br><br>• A trustee holding a physical bailment ticket for physical gold bullion for a client.<br>• A safe deposit box provider holding documents of title.<br><br>This highlights the importance of our recommended change to the "digital token" concept, but we also suggest considering whether the differential treatment of technology-enabled services is truly justified, and also truly technology-neutral.<br><br>***Digital tokens considered to require consumer protection***<br><br>Besides our general comments in relation to the scope of "digital token", we also suggest considering whether this regulated service should therefore apply only in relation to *certain* digital tokens. That is, further narrowing the application of this regulated activity to the types of digital tokens that are considered to require consumer protection. This could be dynamic – commencing with well-known digital token types, with a designation power to add to this over time.<br><br>Alternatively, if the policy intent is to proceed with the full scope of possible digital tokens, some suggested potential options to limit the impact on everyday businesses could include the following:<br><br>• Expanding the scope of the proposed exemption for low volume platforms (currently $10 million across all group entities with $5,000 cap on each client's assets).<br>• Including a similar exemption for TCPs (please also see comments below).<br>• Exempting those already regulated in respect of custody. |

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| **3.** | | **761GD Meaning of *tokenised custody platform***<br><br>(1) A tokenised custody platform is a non-transferable facility under which:<br><br>(a) a person (the operator) identifies one or more assets (the underlying assets); and<br><br>(b) for each underlying asset:<br><br>(i) the operator creates a single digital token; and<br><br>(ii) possessing the digital token confers a right to redeem, or direct the delivery of, the underlying asset; and<br><br>(c) the operator holds each underlying asset in trust for, or on behalf of, each person who possesses the digital token.<br><br>(2) The facility may also authorise the operator or one or more other persons to engage in conduct in relation to an underlying asset for, or on behalf of, a person who:<br><br>(a) possesses the digital token; and<br><br>(b) is a client of the facility.<br><br>Note: If the facility is an arrangement, a person who is not the first to possess the digital token can become a client by entering into the arrangement (see item 5 of the table in subsection 761E(3)).<br><br>(3) In this section:<br><br>***asset*** includes a digital token.<br><br>Note: As well as a digital token, an underlying asset could, for example, be a legal right or interest, or an equitable right or interest in another asset (see the definition of asset in section 9AB).<br><br>***holds***: for an underlying asset of a facility that is a digital token, the operator of the facility holds that digital token if the operator possesses that digital token. | ***Clarity on the regulated entity where there are multiple participants involved***<br><br>Tokenisation often involves multiple participants. Some platforms mint tokens like stock tokens and hold the underlying asset, but more commonly, the underlying asset may well be held by another person.<br><br>While paragraph (2) of the definition acknowledges that more than one person may be involved, it is not clear which entity would be the regulated entity – the custodian, the minting technology provider, the issuer of the digital token or otherwise. It also calls into question why this regulated activity is required, which we address in the following paragraphs.<br><br>***Rationale for the broad range of underlying assets***<br><br>More fundamentally, TCP regulation appears to be triggered when there is custody of any type of underlying asset (eg. a diamond, an IP right, a physical artwork, etc):<br><br>• in the context of minting a digital token; *but*<br><br>• not in other contexts.<br><br>This appears to:<br><br>• materially expand the concept of "custodial and depositary services" currently regulated under the Corporations Act, which apply to such services in relation to financial products; <u>but</u><br><br>• only in the context of *minting and redeeming digital tokens.*<br><br>The upshot appears to be that a platform that issues a *paper* ticket enabling redemption of the relevant underlying asset (eg. a cloakroom ticket for laundry, a receipt for bailed gold) would not be caught, but a platform that issues a *digital token* to redeem it, may well need to be licensed.<br><br>This gives rise to several material considerations, including:<br><br>• the breadth of the "digital token" definition, as we have noted above;<br><br>• the breath of the concept of "possess" and "hold". We would ideally see these more clearly drafted to target intermediaries with Programmatic Functions more clearly out of scope whether through drafting of these concepts or targeted exemptions;<br><br>• whether this is an identified area of harm, over and above what the DAP regime seeks to address. The Draft EM does not appear to address this; and<br><br>• ultimately, whether a more onerous regulatory approach to the creation and handling of electronic records vis à vis their paper counterparts is unduly prejudicial.<br><br>***Non-transferability facility***<br><br>We also repeat our comments on the words "non-transferable facility" as set out in our comments on the DAP definition. |

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| **4.** | Exclusion for public digital token infrastructure | ***Public digital token infrastructure*** means any software, hardware, or combination of software or hardware, (the infrastructure) if:<br>(a) the infrastructure is used for transmitting, processing, or recording data relating to digital tokens; and<br>(b) any person may contribute to the integrity, functionality and reliability of the infrastructure by transmitting, processing and recording such data transmitted by others without requiring permission from any person or persons; and<br>(c) neither the use nor functionality of the infrastructure substantially depends on the actions or influence of any person or persons; and<br>(d) the infrastructure is not set up so as to enable a person or group of persons to unilaterally control all the digital tokens maintained by the infrastructure; and<br>(e) the infrastructure is not subject to rules governing its operation or use that can be unilaterally altered by a person or group of persons. | ***All infrastructures should be exempt from being a "managed investment scheme"***<br>We understand the intent is for public digital token infrastructures to be excluded from the definition of a "managed investment scheme", with various other regulatory streamlining consequences.<br>However, we raise the likelihood that no blockchain will satisfy this definition based on a literal reading of the exemption. For example:<br>• in relation to sub-paragraph (b), several blockchain networks have implemented governance features to narrow the scope of those who may contribute to the network; and<br>• in relation to sub-paragraph (e), even the dominant highly decentralised platforms have groups of persons that may be able to alter the rules governing its operation of use, even if they do not know one another, and even if they are not acting in concert as such. These may be core developers, governance token holders or nodes etc.<br>Our view is that this exemption should apply irrespective of whether the infrastructure is decentralised, which is what we understand this definition aims to capture. Infrastructure should be considered as infrastructure (whether decentralised or not) and *not* a managed investment scheme. Please also refer to our comments in paragraphs IV and V of Part A above.<br>Blockchain governance should also not be disincentivised by requiring pure decentralisation to be treated as infrastructure. The role of centralisation is necessary in some circumstances to enable effective infrastructure.<br>***Suggested approach***<br>We understand this exclusion has been proposed given the breadth of the concept of a "managed investment scheme".<br>We propose another way to achieve this could be to pinpoint more precisely the aspects of the "managed investment scheme" concept that unduly capture blockchain infrastructure, or infrastructure generally. For example, if the issue is the reward of participants who contribute their efforts (for example, in the form of validating transactions), a more surgical refinement to the managed investment scheme definition could be considered to enable a "fee for service" or "reward for contribution" (eg. validating transactions, staking assets for network stability etc). In such case, such fee / reward should be a direct financial benefit only and not any indirect or intangible benefit, to avoid being overly broad.<br>***Intermediated staking arrangement***<br>We also make substantially the same point in relation to the proposed exclusion of "intermediated staking arrangements", on the basis that these could simply be considered software as a service (SaaS) arrangements, and which we agree should not be regulated as managed investment schemes generally.<br>A further benefit of a more comprehensive review of the managed investment scheme definition, pinpointing at the source the issues to be solved, is that other Programmatic Functions can be more clearly beyond scope. |

**Statutory discretions**

Finally, to support the practical operation of both existing laws and any reforms pursued, we suggest that statutory discretions granted to an authority or ministerial function be exercised in a manner that supports industry confidence and the enablement of innovation. To this end, we commend recent pragmatic relief granted and proposed to be granted by ASIC in relation to stablecoins as well as other areas. We also suggest that the Ministerial discretions in the Draft Law, should they be retained, also be re-cast not as mere unilateral decisions (for example, to require a platform operator to obtain an Australian markets and/or clearing and settlement facility licence), but also determinations that a market participant may specifically seek to aid the smooth running of their business or for a technology operator to have legally binding clarity. This may be particularly advantageous to streamline the activities for which an operator is licensed. For a technology operator, it can also provide the clarity and confidence needed to provide critical services to the market. To support such decisions, a clear principles-based decision-making framework would also be helpful.

**Next steps**

Thank you again for the opportunity to provide comments on the Draft Law. We are happy to discuss these points further and answer any questions you may have. You may direct any inquiries to me, the General Counsel of Ava Labs (lee@avalabs.org). Thank you for your attention to this matter.

Sincerely,

Signed by:
Lee A. Schneider
EBA43E0DF74346A...

Lee A. Schneider
General Counsel

**Annexure – Avalanche institutional use cases**
As at November 2025

**Tokenization & Finance**

- Dinari Global
  Tokenized Securities platform, launched the S&P Digital Markets 50 with S&P Dow Jones Indices
  Source
- FRNT / Wyoming Frontier Stable Token
  First fully backed, state-issued stablecoin in the US designed for real-world use
  Source
- KRW1 & BDACs
  Fully collateralized stablecoin pegged 1:1 to the South Korean won, issued by Busan Digital Asset Custody Services (BDACS) on Avalanche
  Source
- Inversion Capital

  Custom blockchain focused on crypto-native private equity acquisitions and go-to-market
  Source
- Apollo Global Management & Securitize
  Partnership to tokenize access to a credit fund using Avalanche and other chains.
  Source
- BlackRock (via Securitize)
  Launched the BlackRock Digital Liquidity Fund (BUIDL) on Avalanche for tokenized money market funds.

  Source
- Franklin Templeton
  Tokenized U.S. Government Money Market Fund (Benji Investments) on Avalanche.
  Source
- KKR (through Securitize)
  Private equity fund tokenization via Avalanche subnets.
  Source
- Diamond Standard
  Turning diamonds into an investable asset class on Avalanche.
  Source
- Republic Note
  Profit-sharing digital asset on Avalanche.
  Source
- Wine Capital Fund
  Tokenization of fine wine portfolios for investment purposes.
  Source
- Homium
  Issued first home equity loans on Avalanche, enabling fractional real estate ownership.
  Source
- Intain
  Launched a dedicated Avalanche L1 to digitize and streamline structured finance transactions.
  Source
- Citi (On-chain Pricing Smart Contracts)
  Experimentation with blockchain-based bilateral trade execution using Avalanche smart contracts.
  Source
- Watr

Avalanche L1 to unlock composability and capital efficiency at scale for global commodities trading

Source

- Colombian Neobank Littio with OpenTrade
  Offering interest-bearing USD accounts to Colombian users via Avalanche.
  Source
- ParaFi
  Tokenized investment funds on Avalanche using Securitize.
  Source
- Balcony Real Estate
  Real estate tokenization
  Source
- Misyon Bank
  Tokenization solution for banking products on Avalanche.
  Source
- Lemonade Insurance
  Smart contracts powering climate insurance in rural regions
  Source
- Re (Decentralized Reinsurance Marketplace)
  Built on Avalanche for on-chain reinsurance solutions.
  Source

**Cross-Border Payments**

- StraitsX
  Simplifying cross-border payments in Southeast Asia via Avalanche and AvaCloud.
  Source
- Fonbnk
  Building Avalanche on-ramps for cross-border payments in Sub-Saharan Africa.
  Source
- Visa-Powered Avalanche Card
  A cryptocurrency card integrated with Avalanche for global transactions.
  Source
- Nonco

  (FX) On-Chain initiative, bridging institutional FX liquidity and activity with the growing stablecoin market

  Source

**Privacy, Security & Data Integrity**

- California DMV
  Using Avalanche for digital vehicle titles and fraud prevention.
  Source
- Deloitte
  Building solutions for disaster recovery and fraud prevention using Avalanche.
  Source
- Chainlink & Balcony
  Leveraging Avalanche for secure data oracles and real estate tokenization compliance.
  Source
- Bergen County, New Jersey
  Land records management with Avalanche for transparency and security.
  Source

- Kinexys and J.P. Morgan
  Experimenting with Avalanche for privacy-preserving finance and settlement infrastructure.
  Source
- Blockticity
  Issues tamper-evident Certificates of Authenticity (COAs) to authenticate and verify real-world goods across global trade flows
  Source

**Gaming, Ticketing & Consumer Apps**

- Off the Grid by Gunzilla Games
  Blockchain-based FPS game available on PC and Consoles
  Source
- Maplestory
  Nexon Group, the global game giant and pioneer of the free-to-play model, launched an Avalanche L1 for the Maplestory IP
  Source
- Zero one
  All-in-one onchain ecosystem for artists and collectors, available on mobile
  Source
- Uptop
  The Fan Rewards Superapp, powering Pistons and Cavs fan programs
  Source
- Youmio
  Custom blockchain for tokenization of AI agents
  Source
- Independent filmmaking
  Fundraising for filmmaking projects
  Source
- Sports Illustrated Tickets
  NFT ticketing platform powered by Avalanche.
  Source
- Tixbase
  NFT-based ticketing solution migrating to Avalanche with global event partnerships.
  Source
- SK Planet
  Loyalty rewards and consumer engagement programs on Avalanche.
  Source
- FIFA Chain
  Powering FIFA's digital-collectibles platform, event ticketing and global fan engagement ecosystem
  Source
- Bowmore & Suntory
  The distillery's first tokenized whisky collection, merging rare spirits with digital ownership
  Source
- Fanhub
  Mobile-first, gamified app transforming fan engagement into a transaction layer with tangible rewards, while democratizing access to these fans for smaller businesses
  Source