# Legal 500
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## Australia

## Blockchain & Crypto Assets

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This country-specific Q&A provides an overview of blockchain & crypto assets laws and regulations applicable in Australia.

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# Australia: Blockchain & Crypto Assets

## 1. Please provide a high-level overview of the blockchain market in your jurisdiction. In what business or public sectors are you seeing blockchain or other distributed ledger technologies being adopted?

Australia's blockchain market has experienced rapid expansion and is moving from fintech experimentation towards regulated institution-level adoption and implementation. Adoption has been dominantly in financial services and payments sectors. For example, Australia's major banks comprising CBA, ANZ, NAB, and Westpac have joined Open USD, a global stablecoin consortium backed by Visa, Mastercard and Stripe, to enable companies to move money between jurisdictions with greater efficiency whilst maintaining underlying reserves at major financial institutions. Outside of financial services, distributed ledger technology has been explored by supply chain provenance, energy and carbon markets, gaming, digital identity, healthcare, real estate and public sector record-keeping including tax administration, welfare payments and law-enforcement analytics. However, large-scale production deployments remain more limited than the level of pilot activity suggests.

The market has shifted away from retail customer speculation and initial coin offering activity in late 2017 to early 2018, towards use of blockchain and distributed ledger technology in infrastructure, payments, custody, tokenisation and compliance. In particular, Australian banks, digital currency exchanges, fund managers and fintechs have focussed on use cases that fall within or adjacent to the existing financial services regulatory perimeter. KPMG's Pulse of Fintech reports that in H1'26 Australia recorded $456 million of investment in the fintech sector.[1] In Australia, crypto asset ownership among retail investors remains material with 33% of Australians owning crypto assets according to the Independent Reserve Cryptocurrency Index 2026.[2]

As the blockchain landscape has evolved fintech businesses have seen a unique opportunity to develop and position themselves in Australia's economy. The expansion of the fintech sector has (in part) been led by businesses in the payments, lending, investment and wealth management, custodial services and new crypto asset spaces. In the context of blockchain, this has primarily revolved around the creation of new and innovative trading platforms and exchanges and it is clear that there is significant opportunity for the use of blockchain as businesses move towards a state of technological maturity.

[1] https://kpmg.com/au/en/insights/industry/pulse-of-fintech.html

[2] https://www.independentreserve.com/blog/news/press-release-aussie-crypto-ownership-hits-record-highs-despite-rising-bank-payment-blocks-survey-reveals

## 2. Please outline the principal legislation and the regulators most relevant to the use of blockchain technologies in your jurisdiction. In particular, is there any blockchain-specific legislation or are there any blockchain-specific regulatory frameworks in your jurisdiction, either now or envisaged in the short or mid-term?

Australia does not have a standalone blockchain-specific legislative regime. Australia's policymakers have adapted existing legislative structures to emerging blockchain technologies rather than seeking to develop entirely new legal frameworks. The Australian Government (**Government**) and regulators have generally taken a technology neutral approach to regulating the conduct of service providers and the economic activities performed rather than the blockchain technologies or crypto assets themselves. This approach seeks to promote competitive neutrality ensuring that the same regulatory outcomes generally apply to functionally equivalent services, regardless of their delivery through conventional infrastructure or blockchain technologies.[1]

ASIC's technology neutral approach to the regulation of blockchain technology and solutions is outlined in ASIC Information Sheet 219: Evaluating distributed ledger technology (**INFO 219**). ASIC states that businesses considering operating market infrastructure or providing financial or consumer credit services using blockchain will be subject to the currently existing compliance requirements under the applicable licensing regimes. This includes the requirement to have adequate organisational competence, technological resources and risk

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management systems in place.[2]

Legislation

The existing regulatory framework includes:

- **Consumer protection:** General consumer protection laws include the Australian Consumer Law as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and the equivalent financial services regime under the *Australian Securities and Investment Commission Act 2001* (Cth), which apply to misleading or deceptive conduct, unfair practices and unconscionable conduct. These are baseline protections that apply regardless of whether a product is financial in nature – see section 15.
- **Financial services regulation:** Broad financial services regulation under the *Corporations Act 2001* (Cth) (**Corporations Act**) applies where a crypto asset or related arrangement performs the economic function of a financial product such as making a financial investment, managing financial risk or making non-cash payments. Specified financial products and services are also regulated under the Corporations Act, including through licensing, registration and disclosure obligations. The Digital Asset Framework reforms under the *Corporations Amendment (Digital Assets Framework) Act 2026* (Cth) (**DAF Act**) introduced digital asset platforms (**DAPs**) and tokenised custody platforms (**TCPs**) as specific financial products – see sections 3 and 5.
- **Consumer credit regulation:** Certain crypto asset lending activities may fall within the scope of the credit activities and services under the *National Credit Consumer Protection Act 2009* (Cth) – see section 5.
- **Anti-money laundering and counter-terrorism financing (AML/CTF):** The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (**AML/CTF Act**) and associated rules regulate providers of designated services. Following the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2024* (Cth), the AML/CTF regime has been expanded to cover additional virtual asset services, including virtual asset exchange, transfer, safekeeping or administration services and to expand the scope of value transfer designated services to cover the transfer of virtual assets – see section 6.
- **Prudential regulation:** Prudential regulation is relevant where the activity involves institutions whose failure may have systemic consequences, and is supported by capital, liquidity, governance and risk management requirements.[3] Stored value providers are currently regulated under the *Payment Systems (Regulation) Act 1998* (Cth) and regulated financial institutions such as banks are subject to further requirements under legislation like the *Banking Act 1959* (Cth) and applicable prudential standards. The *Treasury Laws Amendment (Payments System Modernisation) Act 2025* (Cth), which received Royal Assent on 19 September 2025, has also expanded the payment systems perimeter by broadening the definitions of 'payment system' and 'participant', enabling the RBA to regulate a broader range of payment systems and participants (including new and emerging payment technologies), and introducing a ministerial power to designate payment systems in the national interest. Further payments licensing and stored value reforms remain at exposure draft stage – see section 5.
- **Tax:** General income tax, capital gains tax (**CGT**), goods and services tax and record-keeping rules may apply to crypto asset activities depending on how the asset is acquired, held, used or disposed of. The Australian Tax Office generally treats crypto assets held as investments as CGT assets with CGT events potentially arising on sale, exchange, conversion to fiat currency, gifting or use to acquire goods or services – see section 7.
- **Privacy:** Australia's privacy laws under the *Privacy Act 1988* (Cth) regulate the handling of personal information by Australian Government agencies and covered private sector organisations. Blockchain and crypto asset businesses should consider these obligations where they collect, use, disclose, store or secure personal information, including identity data, wallet-linked data, transaction metadata and information used for compliance or data-matching purposes – see section 15.
- **Sanctions:** Australian sanction laws implement the United Nations Security Council sanctions regimes and Australian autonomous sanctions regimes under the *Autonomous Sanctions Act 2011* (Cth) and the *Autonomous Sanctions Regulations 2011* (Cth). Crypto asset service

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providers should screen customers, counterparties, wallets and transactions for sanctions exposure, including dealings involving designated persons or entities, controlled assets or prohibited transfers – see section 6.

Regulators

No regulator has been specifically tasked with supervising and regulating crypto assets in Australia and Australian regulators and agencies are each mandated with administration of laws applicable to a particular industry or legal area.

The principal regulators are:

- **Australian Securities and Investment Commission (ASIC):** ASIC is Australia's corporate, markets, financial services and consumer credit regulator. It is the primary conduct regulator for financial products, financial services, markets and digital asset arrangements that fall within the financial service perimeter. ASIC also has delegated powers from the ACCC to administer the Australian Consumer Law with respect to crypto assets.
- **Australian Transaction Reports and Analysis Centre (AUSTRAC):** AUSTRAC is Australia's financial intelligence agency and AML/CTF regulator. AUSTRAC regulates reporting entities that provide designated services (including virtual asset service providers) and collects financial intelligence to detect and disrupt financial crime.
- **Australian Prudential Regulation Authority (APRA):** APRA is Australia's prudential regulator for the financial services industry. APRA supervises banks, insurers and most of the superannuation industry and sets prudential standards for APRA-regulated entities engaging in crypto asset activities.
- **Reserve Bank of Australia (RBA):** The RBA is Australia's central bank and principal payment systems regulator. The RBA is relevant to blockchain technologies where they intersect with payments, settlement, market infrastructure, financial stability and wholesale central bank money initiatives.
- **Australian Treasury (Treasury**): Treasury is the Australian government's lead economic adviser and central financial policy agency. It has led consultation and policy development on digital asset platforms, payment stablecoins, payments modernisation and related regulatory reforms.
- **Australian Tax Office (ATO):** The ATO administers Australia's tax and superannuation systems. It issues crypto asset guidance and operates a crypto asset data-matching program relevant to crypto asset transactions and accounts.[4]
- **Office of the Australian Information Commissioner (OAIC):** The OAIC is Australia's independent national privacy and freedom of information regulator. It is relevant where blockchain and crypto asset arrangements involve the handling of personal information.
- **Australian Competition and Consumer Commission (ACCC):** The ACCC is Australia's national competition, consumer, fair trading and product safety regulator. It is relevant to competition, scams and consumer harms involving crypto assets and digital platforms.

[1] https://treasury.gov.au/sites/default/files/2025-03/p2025-628504-s.pdf

[2] https://www.asic.gov.au/regulatory-resources/digital-transformation/evaluating-distributed-ledger-technology/

[3] https://www.asic.gov.au/about-asic/news-centre/articles/when-history-rhymes-regulating-digital-assets

[4] https://www.ato.gov.au/about-ato/commitments-and-reporting/in-detail/privacy-and-information-gathering/how-we-use-data-matching/crypto-assets-data-matching-program-protocol

## 3. What is the current attitude of the government and of regulators to the use of blockchain technology in your jurisdiction?

The Australian Government and regulators are broadly supportive of the use of blockchain technology, viewing digital asset technology as having many potential benefits across financial markets and the broader Australian economy.

On 21 March 2025, the Government released its "Statement on Developing an Innovative Australian Digital Asset Industry" (**Digital Asset Statement**) which outlines its approach to transforming regulation of the digital asset industry. The Government aims to position

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Australia as a global leader in the digital asset ecosystem while balancing innovation, consumer protection and market integrity. The Government's digital asset regulatory reforms provide greater certainty to digital asset providers and extends existing financial services laws to key digital asset platforms. The four primary elements to Australia's digital asset reforms are:

- a licensing framework for Digital Asset Platforms (**DAPs**);
- a framework for payment stablecoins under the new stored value facility (**SVF**) regime;
- a review of Australia's enhanced regulatory sandbox environment; and
- various initiatives to investigate ways to gain the benefits of digital asset technology.

The Government's proposed digital asset reform has been accompanied by a series of reviews, consultation papers and legislative proposals across the cryptocurrency, financial services, payments and consumer protection landscape.

Australian regulators have also been supportive of blockchain innovations while simultaneously pursuing their regulatory priorities. The RBA has been actively supporting research and controlled experimentation with blockchain technology, particularly in wholesale tokenised asset markets and digital money. ASIC appears generally supportive of innovation while seeking adequate consumer and investor protections and pursuing enforcement. ASIC has said that DLT and tokenisation are reshaping global finance and that regulatory clarity should allow firms to innovate confidently, while providing updated regulator guidance on how existing laws apply to digital assets including setting out that it considers many digital assets (eg, stablecoins, wrapped tokens, tokenised securities and digital asset wallets) are financial products requiring licensing and consumer protections.[1] AUSTRAC takes an enforcement and financial-crime focussed approach, noting virtual assets can present high money-laundering risk and requiring virtual asset service providers to register and comply with AML/CTF obligations.[2] APRA is cautious from a prudential perspective and expects regulated entities engaging in crypto-asset activities to conduct due diligence, complete comprehensive risk assessments and ensure operational, investment, credit, fraud, cyber, conduct and AML/CTF risks are well managed before launching material initiatives.[3]

[1] https://www.asic.gov.au/about-asic/news-centre/find-a-media-release/2025-releases/25-250mr-updated-asic-guidance-supports-digital-asset-innovation-and-boosts-investor-protection/

[2] https://www.austrac.gov.au/new-and-media/news/public-register-makes-it-harder-criminals-launder-money-through-crypto

[3] https://www.apra.gov.au/news-and-publications/crypto-assets-risk-management-expectations-and-policy-roadmap

## 4. Is there a central bank digital currency ('CBDC') project in your jurisdiction? If so, what is the status of the project?

The RBA and Digital Finance Cooperative Research Centre (**DFCRC**) have led CBDC projects but have not launched a permanent CBDC in Australia. The 2022-23 Australian CBDC Pilot Project involved the RBA issuing a limited scale pilot CBDC in a ring-fenced environment as a real legal claim on the RBA. At the conclusion of the project, all pilot CBDC was redeemed and the pilot CBDC platform was shut down. The CBDC Pilot Project highlighted a range of use cases where tokenised money could improve the capabilities of the payments system, including by facilitating programmable payments, atomic settlement in tokenised asset markets and offline payments. It also highlighted opportunities for CBDC to support the development of new forms of privately issued digital money (including tokenised bank deposits or CBDC-backed stablecoins).[1]

Currently, CBDC work remains in the research and experimentation phase focused particularly on wholesale use cases. In May 2026, the RBA and DFCRC released the final report for Project Acacia which examined how digital money and settlement infrastructure could support the development of wholesale tokenised asset markets, including through a pilot wholesale CBDC (**wCBDC**) in Australia. Project Acacia tested 20 wholesale tokenised asset market use cases and explored settlement using several forms of money, including pilot wCBDC on private and public third-party DLT platforms. Project Acacia found that there was strong interest from industry in a wCBDC as a safe backing asset for private forms of tokenised money, such as stablecoins, and to support the safe and efficient interchange between different forms of tokenised private money.

The RBA has not committed to issuing a retail CBDC in Australia. The RBA noted there has not been a strong business case for the use of tokenisation in retail service largely due to the strength and efficiency of existing

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payment services. The RBA also stated that it is not obvious how tokenisation could be successfully implemented in the retail market. However, the RBA foresees potential in the fixed income and private equity markets as they are reliant on old technology.[2]

The RBA continues to explore how different forms of wholesale CBDC and associated settlement infrastructure might support settlement of wholesale tokenised asset markets. The RBA's future work program includes further applied research on wholesale CBDC to explore the policy and operational issues associated with wholesale CBDC issuance in a digital financial market infrastructure sandbox. The RBA's Corporate Plan 2025/26 also states that the RBA and the Australian Treasury are shaping the future of money by exploring the case for new digital forms of money, including determining whether a policy case for a CBDC exists by assessing the potential benefits and risks associated with issuing a CBDC in Australia.[3]

[1] https://www.rba.gov.au/payments-and-infrastructure/central-bank-digital-currency/pdf/australian-cbdc-pilot-for-digital-finance-innovation-project-report.pdf

[2] https://www.aph.gov.au/Parliamentary_Business/Committees/House/Economics/PaymentsSector/Report/Chapter_5_-_New_and_emerging_payment_technologies

[3] https://www.rba.gov.au/about-rba/corporate-plan/2025/pdf/corporate-plan-2025.pdf

## 5. What is the current approach in your jurisdiction to the treatment of cryptoassets and decentralised finance ('DeFi') for the purposes of financial regulation?

The current position in Australian law is that crypto assets are generally to be treated as an asset and not as fiat currency or money. Amendments to existing legislation have generally focused on transactional relationships (ie, issuing, exchanging and holding) and centralised offerings.

Financial services regulation

*Current regime*

Entities carrying on a financial services business in Australia must hold an Australian financial services licence (**AFSL**) or be exempt. Entities providing financial services in relation to crypto assets that constitute financial products will trigger the AFSL requirement and associated disclosure, registration and conduct requirements. Crypto assets are not automatically financial products under Australian law and must be evaluated on a case by case basis. Operators of peer to peer crypto asset exchanges may be required to hold an Australian market licence if the supported assets are financial products.

The definitions of "financial product" and "financial service" under the Corporations Act are broad, as confirmed by the High Court of Australia in *Australian Securities and Investments Commission v Web3 Ventures Pty Ltd* [2026] HCA 21.[1] The legal status of a crypto asset will depend on the rights and benefits attached to the asset and the surrounding service. A crypto asset or arrangement may fall within the regulatory perimeter where it functions as a security, derivative, interest in a managed investment scheme (collective investment vehicle), facility for making a financial investment, non-cash payment (**NCP**) facility, or other financial product.

ASIC takes a functional and technology neutral approach to determine the legal status of crypto assets and services according to their substantive characteristics rather than their technological form. ASIC's Information Sheet 225: Digital assets: Financial products and services (**INFO 225**) was reissued on 29 October 2025 to provide detailed guidance on the application of Australian financial services laws to common examples of digital asset arrangements, including Bitcoin, stablecoins, NFTs, exchange in-house tokens, staking, tokenised real estate, derivatives, wrapped tokens and digital asset wallets. ASIC's INFO 225 expressly addresses exchanges, intermediaries, digital asset wallet providers, asset managers and custodians.[2] ASIC has also issued an industry wide no action position for digital asset financial service providers subject to having taken certain actions by 30 September 2026.[3]

ASIC has granted class order relief for intermediaries engaging in the secondary distribution of a 'Named Stablecoin' issued by an AFSL holder under *ASIC Corporations (Stablecoin Distribution Exemption) Instrument 2025/631*, made on 17 September 2025 and amended with effect from 8 October 2025. This relief exempts eligible intermediaries from the requirement to hold an AFSL, a market licence or a clearing and settlement licence in relation to a Named Stablecoin. The relief is conditional on the intermediary taking reasonable steps to give or make available to retail clients a product disclosure statement (**PDS**) for the Named Stablecoin. Currently, the Named Stablecoins covered by the instrument are AUDM issued by Catena Digital and AUDF

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issued by Forte Securities.

ASIC has also provided class order relief for distributors of "eligible stablecoins" and "eligible wrapped tokens" under ASIC Corporations (Stablecoin and Wrapped Token) Instrument 2025/867, issued on 9 December 2025. The relief exempts distributors from the need to hold a separate AFSL, Australian market, or clearing and settlement facility licence and provides limited disclosure and transaction confirmation relief, subject to eligibility criteria and safeguards.

In addition to the existing financial products and services, regulatory reform is underway in the areas of digital assets and payments licensing.

*Digital assets licensing reform*

Australia's new Digital Assets Framework, as enacted by the DAF Act, will commence on 8 April 2027. A six-month transition period applies from commencement, during which existing operators that apply to ASIC for an AFSL (or a variation) may continue to operate while their application is determined. The DAF Act introduces two new categories of financial products:

- **Digital asset platforms (DAPs):** facilities under which an operator possesses digital tokens for or on behalf of clients (or their nominees) and records clients' interests in an account (for example, digital asset exchanges and custodians).
- **Tokenised custody platforms (TCPs):** facilities where an operator holds assets other than money, issuing a single token for each asset, which grants the holder the right to redeem or direct delivery of that asset.

Operators of these platforms will be required to hold an AFSL subject to certain exemptions, and comply with existing general obligations and new obligations targeted at digital asset custody and transaction services. The targeted obligations include compliance with ASIC's minimum standards for asset-holding and transaction/settlement processes, platform rule establishment and enforcement, tailored disclosure document (ie, DAP/TCP guide) requirements. In practice, operators should expect to revisit custody structures (including sub-custody and wallet arrangements), reconciliation and settlement processes and financial resourcing before commencement.

On 15 October 2026, ASIC released Consultation Paper 392 *Digital asset law reform implementation: Proposed standards and guidance* which outlines ASIC's proposed approach to standards and regulatory guidance about complying with the new digital asset framework under the DAF Act.[4] The consultation package includes draft guidance on how to comply with the new laws, proposed asset-holding standards, transactional and settlement standards, and financial requirements for DAP and TCP licensees. ASIC's roadmap for digital assets law reform implementation and consultation materials indicate that it intends to release DAP/TCP regulatory guides in Q1 2027.[5]

*Payments licensing reforms*

On 12 March 2026, Treasury released Tranche 1 exposure draft legislation for consultation, which proposes a new payments licensing framework under the Corporations Act. The *Treasury Laws Amendment Bill 2026: Payment Systems Modernisation* proposes to replace the existing NCP facility concept with new categories of payments-related financial products and services:

- **Products:** stored value facilities (**SVFs**) (eg, ewallets and prepaid accounts), tokenised SVFs (eg, stablecoin offerings) and payment instruments (eg, debit and prepaid cards, direct debit facilities); and
- **Services:** payment initiation services (ie, services that have the effect of initiating a non-cash funds transfer, such as services provided to merchants that enable them to request and receive payments from customers' bank accounts), payment facilitation services (ie, services where funds are transferred to the provider in connection with a non-cash funds transfer, on the basis that the provider will further transfer them – this is intended to capture acquirers and remitters) and payment technology and enablement services (ie, activities undertaken for the dominant purpose of enabling non-cash funds transfers, including digital wallet services and payment gateways).

For tokenised SVFs, the digital tokens attached to rights under tokenised SVFs are not themselves financial products. The explanatory materials also indicate that stablecoins backed 1:1 with fiat currency are viewed as digital representations of the underlying money, and would fall within the definition of 'funds' (being money, a prescribed medium of exchange, or a right to redeem either). Under this interpretation, the circulating payment stablecoin itself is not a financial product.

Consultation closed 9 April 2026. The regime is expected to commence 12 months following Royal Assent (which

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occurs once the Bill has passed both Houses of Parliament). Legislation has not yet been introduced to Parliament.

*DeFi*

DeFi is not subject to a standalone regulatory regime however the use of offshore or decentralised structures does not mean that key obligations under Australian financial services laws do not apply. Where an identifiable person or entity exercises practical control over a digital asset arrangement, whether through custody, governance rights or economic incentives, existing obligations may apply notwithstanding technological decentralisation.

Credit regulation

Certain credit activities will trigger the requirement to hold an Australian credit licence unless an exemption applies under the *National Consumer Credit Protection Act 2009* (Cth) (**NCCP Act**) (including the National Credit Code (**Credit Code**)), and requirements under the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) and associated regulations as administered by ASIC. Principal issuers of consumer credit contracts will trigger the requirement to hold an Australian credit licence (**ACL**). The ACL requirement also captures a broad range of businesses that provide credit services such as credit assistance (eg, suggesting or assisting a person in relation to credit) or credit intermediation (eg, acting as an intermediary in relation to credit).

Crypto asset lending activities may fall within the scope of credit activities and services caught under the NCCP Act. For example, in the context of borrowing or lending where loans are made using fiat currency and secured by crypto assets, or where crypto-to-crypto lending arrangements are structured in ways that may create debt-like obligations under Australian law. Where this is the case, such entities may need to hold an Australian credit licence or otherwise be exempt from this requirement.

Recent case law provides some guidance on the intersection between crypto assets and credit regulation. In *Australian Securities and Investments Commission v Bit Trade Pty Ltd* [2024] FCA 953, the Federal Court held that an obligation to repay crypto assets (such as Bitcoin) does not constitute an obligation to repay money and therefore does not give rise to a debt for regulatory purposes. However, the Federal Court also noted that there is legal uncertainty as to whether crypto assets are rightly construed as property rather than money, and a case-by-case assessment of the features and use of a particular crypto asset is necessary. See also section 14.

Stored value regulation

*Current regime*

Crypto asset issuers and service providers must also consider whether they are subject to prudential regulation. Generally, entities that are carrying on a banking business (eg, taking money on deposit and making advances of money) in Australia are required to be authorised by APRA as an authorised deposit-taking institution (**ADI**) and comply with associated obligations and prudential standards.

Entities that are holders of stored value in connection with a purchased payment facility (**PPF**) are required under the *Payment Systems (Regulation) Act 1998* (Cth) to become an ADI authorised by APRA. A PPF is a facility (other than cash) where the customer is able to make payments up to the amount available under the facility and those payments are made by the provider of the facility (or another person acting in accordance with instructions). This may be relevant for digital wallet providers that offer customers digital wallets as a means of payment and storing value for customers.

*Stored value reforms*

On 12 March 2026, Treasury released Tranche 1 exposure draft legislation for consultation which establishes a new payments licensing framework under the Corporations Act. The *Payment Entities (Prudential Regulation) Bill 2026* proposes to replace the existing PPF regime with a new framework requiring registration with APRA of 'major SVF providers' who hold A$200 million or more in stored value (on a corporate group aggregate basis) and enable customers to redeem funds in Australian currency. Major SVF providers will also need to comply with certain prudential requirements and additional end user money protections. Consultation closed 9 April 2026. The regime is expected to commence 12 months following Royal Assent (which occurs once the Bill has passed both Houses of Parliament). Legislation has not yet been introduced to Parliament.

Cross-border considerations

Carrying on a financial services business in Australia will require a foreign financial service provider (**FFSP**) to hold an AFSL, unless an exemption applies. The Corporations Act may apply to crypto asset sales regardless of whether they are created and offered from Australia or overseas. Current transitional licensing relief for FFSPs in Australia has been extended by ASIC until 31 March 2027. This allows eligible FFSPs to operate under sufficient

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equivalence relief or limited connection relief without an AFSL when providing financial services to Australian wholesale clients. A new FFSP exemption regime introduced under the *Treasury Laws Amendment (Genetic Testing Protections in Life Insurance and Other Measures) Act 2026* (Cth) will commence on 9 April 2027. The previous FFSP exemptions will be replaced with the professional investor exemption, comparable regulator exemption and market maker exemptions under the new regime.

Foreign companies taken to be carrying on a business in Australia, including by issuing crypto assets or operating a platform developed using token sale proceeds, may be required to either establish a local presence (ie, register with ASIC and create a branch) or incorporate a subsidiary. Broadly, the greater the level of system, repetition or continuity associated with an entity's business activities in Australia, the greater the likelihood that registration will be required. Generally, a company holding an AFSL will be carrying on a business in Australia and will trigger the requirement.

Promoters should also be aware that if they wish to market their crypto assets to Australian residents, and the crypto assets are considered financial products under the Corporations Act, those promoters must be licensed and meet the relevant disclosure and conduct requirements to market the products unless an exemption applies. Generally, a service provider from outside Australia may respond to requests for information and issue products to an Australian resident if the resident makes the first unsolicited approach and there has been no conduct or activities engaged in by the issuer that could be construed as inducing the investor to make contact.

Market licensing and clearing and settlement facilities

An operator of a crypto asset trading platform may be required to hold an Australian market licence or a clearing and settlement facility licence.

- **Australian market licence:** A person who operates a financial market in Australia – defined broadly as a facility through which offers to acquire or dispose of financial products are regularly made or accepted – must hold an Australian market licence or rely on an exemption. This definition is technology-neutral and can capture digital platforms that facilitate regular trading of crypto assets that are financial products. A market has a connection with Australia where it is denominated in Australia currency, provides a market for financial products based on something located or issued in Australia, or one or more current or expected participants is resident or based in Australia.
- **Clearing and settlement facility licence (CSFL):** A person who operates a clearing and settlement facility (**CS Facility**) in Australia – being a facility that provides a regular mechanism for parties to transactions relating to financial products to meet their obligations to each other, must hold a CSFL or otherwise rely on an exemption. This is relevant to any technical infrastructure that systematically allows counterparties to settle obligations in relation to a crypto asset financial product. A person operates a CS Facility in Australia where, it is located in Australia, has Australian users or participants or the volume and value of transactions cleared and settled by Australian participants is material. In practice, whether a crypto asset trading venue or settlement system triggers these requirements depends on the same functional analysis applied to traditional markets: whether the crypto assets traded or settled are financial products, the regularity of transactions and the platform's connection with Australia.

*ASIC Corporations (Stablecoin Distribution Exemption) Instrument 2025/631* provides an exemption for eligible intermediaries from the requirement to hold certain licences, including an Australian market licence and a CSFL, in relation to the secondary distribution of Named Stablecoins.

[1] https://www.hcourt.gov.au/cases-and-judgments/judgments/judgments-1998-current/australian-securities-and-investments-commission-v-web3-ventures-pty-ltd

[2] https://www.asic.gov.au/regulatory-resources/digital-transformation/digital-assets-financial-products-and-services/

[3] https://www.asic.gov.au/about-asic/news-centre/news-items/asic-extends-no-action-position-for-digital-asset-businesses-to-30-september-2026

[4] https://www.asic.gov.au/about-asic/news-centre/find-a-media-release/2026-releases/26-245mr-asic-consults-on-implementation-of-new-digital-asset-laws

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[5] https://www.asic.gov.au/about-asic/news-centre/news-items/asics-roadmap-for-digital-assets-law-reform-implementation

## 6. What is the current approach in your jurisdiction to the treatment of cryptoassets and DeFi for the purposes of anti-money laundering and sanctions?

AML/CTF

Australia's AML/CTF regime was amended in 2024 to ensure, among other changes, that it applies to a broad range of virtual asset related activities, with the reforms largely commencing on 31 March 2026 (subject to transitional rules). Under the AML/CTF Act, virtual assets are defined as digital representations of value that can be transferred, stored or traded electronically and are not government issued, and functions as a medium of exchange, store of economic value, unit of account, or an investment. This definition captures all cryptocurrency, stablecoins, governance tokens and certain NFTs but excludes money, CBDCs, digital representations of value used exclusively within an electronic game (eg, Candy Crush), customer loyalty or rewards points (eg, FlyBuys) and similar digital representations of value that are not intended by the issuer to be convertible to another similar digital representation of value or money (eg, purely collectible NFTs, avatars).

The AML/CTF Act applies to five types of virtual asset related designated services:

- exchanges between virtual assets and fiat currencies (and entities making arrangements for such exchanges);
- exchanges between forms of virtual assets (and entities making arrangements for such exchanges);
- transfers of virtual assets on behalf of a customer;
- safekeeping or administration of virtual assets; and
- participation in or provision of financial services related to an issuer's offer or sale of a virtual asset.

Key obligations under the AML/CTF Act for providers of designated services include:

- enrolment and registration with AUSTRAC;
- conducting initial and ongoing customer due diligence;
- transmitting payer and payee information with transactions;
- reporting transfers of value involving unverified self-hosted virtual asset wallets to AUSTRAC (deferred under the AML/CTF transitional rules until 31 March 2029 for providers that begin providing the relevant services before that date);
- reporting suspicious transactions;
- adopting and maintaining AML/CTF programmes including AML/CTF risk assessment and AML/CTF policies; and
- record-keeping.

Updated travel rule obligations apply to all entities providing value transfer designated services, including virtual asset transfers, although for new virtual asset services these obligations were deferred under the transitional rules until 1 July 2026. Businesses will also need to engage an onshore AML/CTF Compliance Officer.

AUSTRAC treats DeFi as an emerging and significant money-laundering risk. AUSTRAC's 2026 money laundering update acknowledges that DeFi platforms and offshore VASPs are increasingly used to move and layer value through environments where supervisory reach is limited. AUSTRAC also identifies reduced transactional transparency, rapid settlement and cross-border fragmentation as weakening attribution and traceability.[1] AUSTRAC recognises that crypto-native and decentralised activity can sit outside traditional fiat on- and off-ramps, creating regulatory visibility gaps and blind spots for detection and supervision.

Sanctions

Australian sanction laws implement the United Nations Security Council sanctions regimes and Australian autonomous sanctions regimes under the *Autonomous Sanctions Act 2011* (Cth) and the *Autonomous Sanctions Regulations 2011* (Cth). Digital asset service providers generally should screen customers, counterparties, wallets and transactions for sanctions exposure, including dealings involving designated persons or entities, controlled assets or prohibited transfers.

Cryptocurrency is treated as an asset for the purposes of Australian sanction laws. The Department of Foreign Affairs and Trade (**DFAT**) guidance states that it is an offence to make cryptocurrency available to, or for the benefit of, a designated person or entity (ie, sanctioned person or entity). Other offences include asset holders using or dealing with cryptocurrency owned or controlled by a sanctioned person or entity, or allowing or facilitating its use or dealing. DFAT notes that virtual

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asset exchange providers have responsibility to take reasonable precautions and due diligence to ensure sanctioned cryptocurrency payments are not facilitated and recommends strategies including pre-transaction wallet or customer screening, post-transaction screening to determine the ultimate source and destination of funds, awareness of high-risk wallets advertised in fundraising efforts of sanctioned entities, wallets linked to cyber-criminal activities (eg, ransomware payments).[2]

[1] https://www.austrac.gov.au/industry-and-business/education-and-resources/publications-and-resources/money-laundering-update-2026

[2] https://www.dfat.gov.au/international-relations/security/sanctions/guidance/digital-currency-exchanges

## 7. What is the current approach in your jurisdiction to the treatment of cryptoassets and DeFi for the purposes of taxation?

The taxation of crypto assets in Australia is an area of much debate. For income tax purposes, the Australian Taxation Office (**ATO**) views crypto assets as assets that are held or traded (rather than as money or a foreign currency). Australia's tax legislation clarifies that crypto assets are not foreign currencies for income tax purposes.

The tax implications for holders of crypto assets depend on the purpose for which the crypto asset is acquired or held. The summary below applies to holders who are Australian residents for tax purposes.

Sale or exchange of crypto assets in the ordinary course of business

If a holder of crypto assets is carrying on a business that involves sale or exchange of the crypto assets in the ordinary course of that business, the crypto assets will be treated as trading stock. Gains on the sale of the crypto assets will be assessable and losses will be deductible (subject to integrity measures and "non-commercial loss" rules).

Whether or not a taxpayer's activities amount to carrying on a business is a question of fact and degree, and is ultimately determined by weighing up the taxpayer's individual facts and circumstances. Generally (but not exclusively), where the activities are undertaken for a profit-making purpose, are repetitious, involve ongoing effort, and include business documentation, the activities would amount to the carrying on of a business.

Isolated transactions

Even if a holder of crypto assets did not invest or acquire the crypto assets in the ordinary course of carrying on a business, profits or gains from an "isolated transaction" involving the sale or disposal of crypto assets may still be assessable where the transaction was entered into with a purpose or intention of making a profit, and the transaction was part of a business operation or commercial transaction.

Crypto asset investments

If crypto assets are not acquired or held in the course of carrying on a business, or as part of an isolated transaction with a profit-making intention, a profit on sale or disposal should be treated as a capital gain. In this regard, the ATO has indicated that crypto assets are capital gains tax (**CGT**) assets. Capital gains may be discounted under the CGT discount provisions, so long as the taxpayer satisfies the conditions for the discount (for example, the crypto assets are held for at least 12 months before it is disposed of). However, from 1 July 2027, the 50% CGT discount for individuals, trusts and partnerships will be replaced by cost base indexation, and a 30% minimum tax on net capital gains will apply to individuals. Transitional arrangements will preserve the 50% CGT discount for gains accrued before that date.

Although crypto assets may be a CGT assets, a capital gain arising on their disposal may be disregarded if the crypto assets are "personal use assets" and it was acquired for A$10,000 or less. Capital losses made on crypto assets that are personal use assets are also disregarded. A crypto asset is more likely to be a personal use asset if it was acquired and used within a short period of time for personal use or consumption (that is, to buy goods or services).

Note that the ATO's view on the income tax implications of transactions involving cryptocurrencies is in a state of flux due to the rapid evolution of both crypto asset technology and its uses. On 21 March 2025, the Government announced the publication of the tax treatment of crypto assets and transactions report based on a review conducted by the Board of Taxation. Importantly, the Board of Taxation generally found that Australia's current taxation laws are 'fit for purpose' to deal with transactions involving crypto assets, and new legislation specifically for crypto assets should not be introduced at this time. The Government agreed that no crypto-specific taxation legislation should be introduced

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at the current time. The ATO's Crypto Industry Working Group is now conducting targeted, phased consultation on proposed public advice and guidance for crypto issues raised in the Board's report, with consultation expected to be completed in December 2026.

Other transactions involving crypto assets

Other transactions involving crypto assets that may have taxation implications include the following:

- Staking – An entity may stake their crypto assets to facilitate the validation and verification of transactions on a blockchain. The entity may be rewarded with additional tokens for its role in this process. The market value of the additional tokens at the time they are received will be ordinary income which the entity will be taxed on at marginal tax rates.
- Airdrops – The ATO's preliminary view in TR 2026/D1 is that where a recipient is carrying on a business of crypto asset trading, the market value of any airdropped crypto assets received is included in assessable income, even if the receipt is unsolicited or a windfall gain. Where a recipient receives an airdrop in return for goods or services provided to the issuer, the money value of the airdropped crypto asset is included in assessable income as ordinary income. TR 2026/D1 is a draft ruling currently open for public consultation, with comments due 16 October 2026.
- DeFi – An entity may lend their crypto assets via DeFi apps protocols or platforms. Any "interest" that the entity receives in the form of tokens should be assessable as ordinary income. However, it is important to note that entering into the DeFi arrangement may trigger a capital gain or loss. This is because the DeFi arrangement may result in a disposal of the crypto assets to the borrower. The key question is whether the entity, as a lender, maintains beneficial ownership of the crypto assets that have been lent. If there is a change in beneficial ownership, this will constitute a disposal for CGT purposes. Relevantly, wrapping crypto assets (for example, converting ETH to WETH to interact with DeFi protocols) will itself trigger a CGT event – see below.
- Wrapping and unwrapping crypto assets – The ATO's draft Taxation Determination TD 2026/D2 states that CGT event C2 occurs on both wrapping and unwrapping a crypto asset. Each wrapped or unwrapped token is treated as a new CGT asset, and no rollover relief is available. TD 2026/D2 is a draft determination currently open for public consultation, with comments due 2 October 2026.

Australian goods and services tax (**GST**)

The normal GST rules apply to using or receiving crypto assets to pay for goods and services as if the digital currency is money, but the remittance of GST to the ATO must be in Australian currency.

However, supplies of digital currency in exchange for money or digital currency (i.e., trading in digital currency) are not subject to GST on the basis that the supplies will be:

- input-taxed financial supplies, if supplied to another Australian resident located in Australia; or
- GST-free supplies, if supplied to a non-resident who is not located in Australia.

Consequently, such suppliers of digital currency will not be required to pay to the ATO GST on these supplies. However, the suppliers of digital currency may be charged GST on costs that relate to their sale of the digital currency (i.e., a transaction fee charged by a digital currency exchange (**DCE**) platform), and may be restricted from claiming input tax credits for such costs.

The term "digital currency" is defined under the *A New Tax System (Goods and Services Tax) Act 1999* as a digital unit of value that has all of the following characteristics:

- it is fungible and can be provided as consideration for a supply;
- it is generally available to the public without any substantial restrictions on their use as consideration;
- it is not denominated in any country's currency, or it is denominated in a currency that is not issued by, or under the authority of, an Australian government agency or a foreign government agency;
- its value is not derived from or dependent on the value of anything else;
- it does not give an entitlement to receive, or to direct the supply of, anything unless the entitlement is incidental to holding the digital currency or using it as consideration; and
- if supplied, it would not be an input-taxed financial supply for a reason other than being a supply of a digital currency or money.

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The classification of crypto assets for GST purposes depends on their specific features and underlying rights. Where a crypto asset does not meet the definition of "digital currency", its GST treatment will depend on whether it is a financial supply, a derivative, or another type of asset.

In relation to a holder carrying on an enterprise of crypto asset mining, whether or not GST is payable by the miner on its supply of new crypto assets depends on a number of factors, including its specific features, whether the miner is registered (or required to register) for GST, and whether the supply is made in the course or furtherance of the miner's enterprise.

For example, if the miner supplies mining services, i.e., to a mining pool operator in Australia, the supply of mining services may be taxable if the supply is made in the course or furtherance of an enterprise that is registered for GST.

A miner would generally be required to register for GST if, over a 12-month period, the miner has a GST turnover (i.e., gross income from all businesses minus GST, excluding the value of any input-taxed supplies of digital currencies and other input-taxed supplies) of A$75,000 or more. A miner who is not required to register for GST may nevertheless elect to register for GST in order to claim input tax credits from the ATO for certain GST costs related to its supplies of mining services.

A miner will carry on an enterprise where the miner conducts the activity, or a series of activities, in the form of business or in the form of an adventure or concern in the nature of trade. However, this does not include activities conducted for a private recreational pursuit, a hobby, activities carried on as an employee or office holder, or activities carried on by individuals or partnerships without a reasonable expectation of profit. The scope of carrying on an "enterprise" can be broader than carrying on a "business" and some miners may unintentionally be carrying on an "enterprise" for GST purposes.

Enforcement

The ATO has created a specialist task force to tackle crypto asset tax evasion. The ATO also collects bulk records from Australian crypto assets designated service providers to conduct data matching to ensure that crypto asset holders are paying the right amount of tax. On 15 October 2026, Treasury released exposure draft legislation to implement the OECD Crypto-Asset Reporting Framework and a domestic crypto asset reporting regime requiring virtual asset service providers to report transaction information relating to Australian residents, together with updates to the Common Reporting Standard. Consultation closed 28 October 2026 and the measure is not yet law. With the broader regulatory trend around the globe moving from guidance to enforcement, it is likely that the ATO will also continue to tighten its scrutiny of crypto assets.

## 8. What is the current approach in your jurisdiction to retail and wholesale tokenisation projects?

Tokenisation projects are developing in both the retail and wholesale space. In relation to retail tokenisation, tokenised investment products, tokenised real world assets, fractionalised asset and platform-based offerings must be assessed against the existing financial services and consumer protection regimes. A tokenised interest in a fund, security, derivative, debenture, managed investment scheme or payment facility will not fall outside of the regulatory perimeter merely because it is recorded on a distributed ledger.

In relation to wholesale tokenisation, tokenisation is increasingly focussed on settlement efficiency, asset servicing, collateral mobility and the use of tokenised deposits, stablecoins or central bank money to settle tokenised instruments. ASIC's Corporate Plan 2025-26 notes that tokenisation is likely to have a broad impact on financial markets and that ASIC is working with government agencies, including overseas partners, to support these innovations.[1] For example, ASIC has supported the Australian CBDC pilot for digital financial innovation and supports financial innovation through the Innovation Hub and the Enhanced Regulatory Sandbox. Australian institutions have explored tokenised bonds, tokenised fund units, tokenised carbon and commodity assets, and delivery-versus-payment or payment-versus-payment functionality. These projects typically raise questions about licensing, custody, settlement finality, insolvency, operational resilience and interoperability with existing market infrastructure.

Examples of Australian tokenisation projects include:

- Imperium Markets' first tokenised corporate bond issued in Australia in February 2026 via its own ASIC licensed marketplace;[2]
- ANZ Bank announced testing of "tokenised deposits" for corporate treasurers in July 2026, enabling institutional clients to hold and transfer value using blockchain-based tokens representing bank deposits;[3]
- ANZ Bank in partnership with Visa in the Hong

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Kong Monetary Authority (HKMA)'s Phase 2 e-HKD Pilot Programme is investigating ways to use tokenised forms of money to help Australian based businesses invest in Hong Kong-based funds including through use of tokenised deposits, Hong Kong's central bank digital currency e-HKD, and ANZ's stablecoin A$DC.[4]

- Australia's major banks comprising CBA, ANZ, NAB and Westpac joined a global stablecoin consortium known as Open USD in an initiative backed by payments schemes including Visa, Mastercard and Stripe, to enable companies to move money between jurisdictions with greater speed whilst underlying reserves will be maintained at major financial institutions.
- Project Acacia is a joint initiative of the RBA and DFCRC supported by ASIC, APRA and Treasury to explore how digital money and settlement infrastructure could support wholesale tokenised asset markets in Australia. The final report was released in May 2026 and found that tokenisation could deliver up to A$24 billion in annual economic gains. The project tested 20 use cases between August 2025 and February 2026 across fixed income, managed funds, repos, structured products, private markets, carbon credits and trade payables.
- Following Project Acacia, the RBA is facilitating two industry groups, an Australian tokenisation advisory group which is a senior-level advisory forum and coordination body for supporting the development of wholesale tokenised finance in Australia; and a Deposit Token Working Group to continue exploration of the potential form, functioning and interoperability of deposit tokens issued by different Australian banks.[5]
- On 3 September 2026, the RBA released a consultation paper, *The Role of RITS in Supporting Settlement in a Tokenised Ecosystem*, seeking views by 30 October 2026 on how its settlement services (RITS and the Fast Settlement Service) could be synchronised with tokenised asset platforms to support delivery-versus-payment settlement in central bank money. The outcome is likely to influence platform design and the relative role of stablecoins, deposit tokens and central bank money as settlement assets in wholesale tokenised markets.
- The ASX has established a Tokenisation Industry Working Group and is preparing a public discussion paper on applications of tokenisation across financial market infrastructure. The working group has scheduled sessions from August to November 2026 covering fixed income, derivatives, cash equities settlement, IPO processes, asset issuance and trading/market access.[6]

The House of Representative Standing Committee on Economics' *A Level Paying Field Report*, published June 2026 recommended Treasury, as part of its strategic role in payment system modernisation, to establish a framework for the enablement of stablecoins as an alternate payment rail within the Australian payment system as a matter of urgency.[7]

Legal analysis of tokenisation projects should distinguish between the token as a record or control mechanism and the underlying legal rights represented by the token. Key issues include whether the token itself is the asset, whether it evidences an off-chain right, how title is transferred, who maintains the register, how errors are corrected, how investor communications occur, and how custody and insolvency protections operate if a platform operator or wallet provider fails.

Under the new digital assets licensing regime (see section 5), operators that enable clients to create a single digital token, possession of which confers a right to redeem or direct the delivery of an underlying asset held by the operator on behalf of the token holder, will need to hold an AFSL with TCP authorisations.

[1] https://download.asic.gov.au/media/xbtjrb4m/asic-corporate-plan-2025-26-published-27-august-2025.pdf

[2] https://imperium.markets/first-ever-tokenised-corporate-bond-issued-in-australia/

[3] https://www.afr.com/companies/financial-services/anz-wants-to-change-the-way-companies-shift-money-overseas-20260716-p60fy9

[4] https://www.anz.com.au/bluenotes/2025/june/dobson-technology-tokenisation-cross-border-transactions/

[5] https://www.rba.gov.au/payments-and-infrastructure/central-bank-digital-currency/wholesale-central-bank-digital-currency/call-for-interest.html

[6]

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https://www.asx.com.au/about/stakeholder-charter/tokenisation-industry-working-group

[7] https://www.aph.gov.au/Parliamentary_Business/Committees/House/Economics/PaymentsSector/Report/List_of_recommendations

## 9. Are there any prohibitions on the use or trading of cryptoassets in your jurisdiction? If permitted, is cryptoasset trading common?

There is no general prohibition on the use, holding or trading of crypto assets in Australia. Trading is permitted, subject to generally applicable laws and to financial services regulation where the relevant crypto asset or service is a financial product or otherwise regulated activity.

Crypto asset trading by retail investors is common, although the market has been impacted by failures of overseas exchanges, heightened scam activity and greater regulatory enforcement attention. The ATO's current crypto assets data matching program which covers the financial years 2023-24 to 2025-26 states that the ATO will obtain account identification and transaction data from crypto asset designated service providers and expects to collect records relating to approximately 700,000 to 1,200,000 individuals and entities each financial year.

Financial institution involvement is becoming more differentiated. Retail banks are focussed on scam and financial crime concerns. The ACCC's National Anti-Scam Centre reported that from mid-2023, Westpac, CBA, NAB, ANZ and others took steps to limit transactions to high-risk cryptocurrency exchanges which likely reduced direct scam payments and the incentives for criminals to operate in Australia.[1] Furthermore, de-banking of cryptocurrency-related accounts remains a live issue for digital asset and remittance businesses. Treasury acknowledges that high-risk sectors such as fintech and digital currency exchanges often experience de-banking and Treasury in conjunction with the Council of Financial Regulators recommended policy responses to de-banking in 2023.[2] The Government's Digital Assets Statement states that it is continuing to work with major banks and stakeholders on the extent and nature of de-banking. ASIC's consultation on guidance for the new digital assets licensing regime notes ASIC is aware of practical issues stemming from de-banking that may prevent AFSL holders from holding client funds in accounts required under client money laws. ASIC is considering providing guidance on alternative holding arrangements.

To the extent that crypto assets are financial products, trading or on-selling financial products fall within the existing regulatory regime. Issuers, distributors and traders should have regard to misleading and deceptive conduct prohibitions in relation to promotion and marketing activities and design and distribution obligations (**DDOs**) requiring the implementation of effective product governance arrangements (including a target market determination) prior to servicing retail clients. Issuers and distributors should also consider that ASIC may use its product intervention powers where there is a risk of significant consumer detriment in relation to certain crypto asset types and structures. ASIC's Corporate Plan 2025-26 states that it will review distribution practices for complex products, including acquisition of clients for contracts for difference (**CFDs**) and selling of emerging high-risk complex products such as fractionalised assets, over the counter (**OTC**) structured products, and trading in crypto derivatives on foreign exchanges to retail clients.[3]

ASIC has made a product intervention order under *ASIC Corporations (Product Intervention Order—Contracts for Difference) Instrument 2020/986* (**CFD PIO**) imposing conditions on the issue and distribution of CFDs to retail clients until 23 May 2027. The product intervention order generally restricts CFD leverage offered to retail clients to a maximum ratio depending on the asset referenced and the leverage ratio is 2:1 for CFDs referencing crypto assets.

On 12 October 2026, ASIC released a consultation paper proposing to extend and amend the CFD product intervention order together with the draft *ASIC Corporations (Product Intervention Order Amendment – Contracts for Difference) 2026/XX.* ASIC proposes to extend the CFD PIO for a further 10 years to 2037 (subject to Ministerial approval). The proposed amendments include a minimum initial margin for CFDs over options, no netting of margin across CFDs (ie, minimum initial must be applied separately to each CFD issued to retail clients), a modernised CFD definition capturing derivatives settled through transfer of digital assets, tightened exclusions for fee and cost discounts. As part of this consultation, ASIC is also seeking feedback on whether CFDs over options that expose retail clients to losses greater than the premium should be prohibited or otherwise restricted.

[1] https://www.accc.gov.au/system/files/targeting-scams-report-activity-2023.pdf, p 9.

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[2]
https://treasury.gov.au/sites/default/files/2023-06/p2023-404377-gr.pdf

[3]
https://download.asic.gov.au/media/xbtjrb4m/asic-corporate-plan-2025-26-published-27-august-2025.pdf, p 16.

## 10. To what extent have initial coin offerings ('ICOs') taken place in your jurisdiction and what has been the attitude of relevant authorities to ICOs? If permissible, what are the key requirements that an entity would need to comply with when launching an ICO?

ICOs were a popular mechanism to raise funds particularly in 2017–2018, but are less commonly used. Token generation events are now more likely to be structured as private token sales, exchange listings, airdrops, network incentives or tokenised product offerings.

ASIC's position has consistently been that an ICO may be regulated if the token or scheme has the features of a financial product. The regulations, if any, that apply to ICOs will depend on the nature of the ICO, the rights and obligations attaching to a token, how the tokens are advertised and what they purport to provide to investors in that ICO.[1]

For example, the rights attached to a digital asset issued in an ICO may amount to an interests in a managed investment scheme or a security (which includes a share or an option to acquire a share in the future, or a debenture) under the Corporations Act, which, in turn, defines those concepts in technology-neutral terms. Characterisation in these terms triggers financial services licensing and disclosure requirements –see section 5. However, ASIC states that if entities are taking the view that the digital assets issued in their ICO are not regulated financial products, the entity should be in a position to justify that conclusion.

Australia also operates an Enhanced Regulatory Sandbox scheme for FinTech start-ups that allows them to test certain innovative financial and credit services with a limited number of consumers for up to two years without being fully licensed. While uptake of the sandbox has been low to date, the Government's Independent Review of the Enhanced Regulatory Sandbox Final Report (**Final Report**) published in May 2026 found merit in a general sandbox to demonstrate support for financial innovation and experimentation, addressing regulatory uncertainty and supporting the growth of technologies and use cases in the public interest. The Final Report also provided recommendations to broaden the sandbox's scope, enhance flexibility, and improve integration with ASIC's broader licensing and supervision functions.[2]

Since 2018, ASIC has held delegated powers from the ACCC to take action under the Australian Consumer Law relating to crypto-assets. The delegation from the ACCC enables ASIC to take action against deceptive or misleading conduct in marketing or selling of ICOs, even if the ICO does not involve a financial product.[3]

[1]
https://www.asic.gov.au/regulatory-resources/digital-transformation/digital-assets-financial-products-and-services/

[2]
https://treasury.gov.au/sites/default/files/2026-06/p2026-781304.pdf

[3]
https://www.asic.gov.au/about-asic/news-centre/find-a-media-release/2018-releases/18-122mr-asic-takes-action-on-misleading-or-deceptive-conduct-in-icos/

## 11. Are there any legal or regulatory issues concerning the transfer of title to or the granting of security over cryptoassets?

Crypto assets as property

In Australia, there is emerging common law recognition of crypto assets as property.[1] In *Re Blockchain Tech Pty Ltd* (2024) 76 VR 578; [2024] VSC 690 (**Re Blockchain Tech Pty Ltd**), Attiwill J held that Bitcoin can be characterised as property under Australian law and, specifically, as a chose in action (an intangible asset). The court applied the test from *National Provincial Bank v Ainsworth* [1965] AC 1175, finding that cryptocurrency satisfies the following criteria:

- **Definable / identifiable subject matter:** Bitcoin's identifiability is provided by cryptocurrency data recorded in the distributed ledger.
- **Identifiable by third parties (power to exclude others):** Bitcoin's private key system inhibits involuntary transfers, giving the holder of the private key the ability to exclude others from the asset.
- **Capable of assumption by third parties:** Bitcoin

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has an active trading market and can clearly be transferred to third parties.
- **Degree of permanence or stability:** The underlying blockchain technology gives stability to crypto coins, as the entire life history is available in the public recording keeping of the blockchain.

This is the same test applied in *Australian Securities and Investments Commission v NGS Crypto Pty Ltd (No 3)* [2024] FCA 822, where the court also held that cryptocurrency should be classified as property within the definition of the Corporations Act. Similarly, in *Yeates (a pseudonym) v The King* [2025] VSCA 288, the Victorian Court of Appeal held that Bitcoin is (intangible) property capable of being stolen for the purposes of the *Crimes Act 1958* (Vic), rejecting the argument that it is mere information.

On 13 August 2026, the High Court of Australia heard Poulton v Conrad on appeal from the Full Court of the Supreme Court of Tasmania regarding whether Bitcoin is property at common law and, if so, what kind of property it is (including whether it is capable of possession). Notably, the Commissioner of Taxation was granted leave to intervene in the proceedings, providing oral submissions that Bitcoin should be found to be property at common law. The following day, the High Court heard the appeal in *Yeates v The King*. Judgment is reserved in both matters.

Legal and regulatory issues concerning the transfer of title

There are several legal issues regarding the transfer of title to crypto assets including:

1. **Irreversibility of transactions:** Transactions on a blockchain are irreversible unless the rules of the blockchain permit a payment to be reversed by a subsequent, opposite transaction.[2]This means that if a transfer is made in error, or there is a dispute, the payment may not be capable of reversal, which has significant implications for tracing remedies and restitution claims.[3]
2. **Jurisdictional difficulties:** The nodes of a public blockchain may be located anywhere in the world, creating uncertainty about which laws and courts have jurisdiction over the transaction.[4]Court orders for rectification of errors in the blockchain ledger may be practically impossible to enforce because the distributed nature of the ledger would entail enforcement against thousands of users, many outside the jurisdiction.[5]
3. **Anonymity/pseudonymity:** Users of public blockchains are generally pseudonymous, making it almost impossible to identify a person to sue or take action against.[6]This complicates enforcement of proprietary rights following a transfer.

Issues concerning granting security over crypto assets

In relation to granting security over crypto assets:

1. **Property classification enables security:** The recognition of cryptocurrency as a chose in action means that, in principle, one can grant a mortgage or charge over it. Justice Jackman's paper '*Is Cryptocurrency Property?*', Commercial Law Association, published 21 June 2024 notes that the question of whether one can grant a mortgage or charge over cryptocurrency is one of the "fundamentally important issues of legal principle" that follows from the property classification.[7]
2. **Security process:** The process for taking security over crypto assets in Australia remains unsettled. Under Australia's *Personal Property Securities Act 2009* (Cth) (**PPSA**), a security interest in 'personal property' will only be fully effective if the secured party has perfected the interest by possession or control of the personal property, or by registration on the Personal Property Securities Register (**PPSR**). Perfection by control is only available for specified classes of collateral (such as ADI accounts, investment entitlements and investment instruments), which will not generally include crypto assets, and perfection by possession has traditionally been understood as directed to tangible property. Accordingly, a secured party will generally need to perfect its interest by registration on the PPSR.
3. **Uncertainty regarding bailment:** While cryptocurrency can be held on trust (as confirmed in *Re Blockchain Tech Pty Ltd*), there is an open question as to whether an intangible asset can be "possessed" and therefore capable of bailment (see below). If this is not possible, possessory security interests (such as a pledge or lien over a physical asset) would not be available.
4. **Trust and custodial arrangements:** Cryptocurrency is capable of being held on trust, including through custodial intermediary exchanges and other holding arrangements

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that give relatively low-cost access to trading.[8]This is significant for security arrangements that depend on a trustee or custodian holding the asset.

5. **Practical control via private keys:** A private key confers practical control over the cryptocurrency.[9]Security arrangements would therefore need to address control of private keys to ensure the secured party can realise the security. However, the private key in isolation may be characterised as pure information rather than property itself, which introduces complexity in how security arrangements should be structured.[10]

Recent case law has created jurisdictional divergence on whether crypto assets can be "possessed" for PPSA purposes. In September 2025, the Full Court of the Supreme Court of Tasmania handed down *Poulton v Conrad* [2025] TASFC 7, endorsing the view (albeit obiter) that control over private keys is sufficient to establish that intangible property like Bitcoin can be possessed, and that crypto assets may constitute a third category of property beyond choses in possession and choses in action. The Full Court in *Poulton v Conrad* expressly disagreed with Attiwill J's characterisation of crypto asset as a chose in action (intangible property), with Estcourt J stating that Attiwill J's conclusion "does not go far enough to meet the exigencies of the digital age and should not be followed as to the way in which Bitcoin should be characterised". Notably, the ATO has relied on *Poulton v Conrad* in TD 2026/D2 to support its view that control of a crypto asset through a private key is the fundamental component of property in a crypto asset. The ATO suggests that sending a crypto asset to a wrapping contract ends ownership by abandonment because the connection between the asset and the user's private key is severed.

The Tasmanian Full Court's reasoning has potentially significant implications for taking security over Bitcoin and other crypto assets. Possession of crypto assets through control of private keys could provide secured parties with an alternative method to registration to perfect security interests by taking possession of the collateral. However, a common law characterisation will not necessarily determine the position under the PPSA, which applies its own statutory definitions (under which crypto assets are likely to be 'intangible property'), and it is doubtful whether the PPSA concept of possession extends to control of private keys. Due to ongoing judicial uncertainty and the lack of clear legislative guidance, there is no certainty that such an approach would be an effective method of perfection, and secured parties should continue to register. As above, *Poulton v Conrad* has also been appealed to the High Court of Australia though judgment is reserved.

[1] Re Blockchain Tech Pty Ltd [2024] VSC 690; Poulton v Conrad [2025] TASFC 7.

[2] PLAU Intellectual Property and Technology, Blockchain and smart contracts: https://anzlaw.thomsonreuters.com/w-015-4632, p 6.

[3] PLAU Intellectual Property and Technology, Blockchain and smart contracts: https://anzlaw.thomsonreuters.com/w-015-4632, p 6.

[4] PLAU Intellectual Property and Technology, Blockchain and smart contracts: https://anzlaw.thomsonreuters.com/w-015-4632, p 18.

[5] https://www.fedcourt.gov.au/digital-law-library/judges-speeches/justice-jackman/jackman-j-20240621, p 3.

[6] PLAU Intellectual Property and Technology, Blockchain and smart contracts: https://anzlaw.thomsonreuters.com/w-015-4632, p 19.

[7] https://www.fedcourt.gov.au/digital-law-library/judges-speeches/justice-jackman/jackman-j-20240621, p 1.

[8] PLAU Intellectual Property and Technology, Blockchain and smart contracts: https://anzlaw.thomsonreuters.com/w-015-4632, p 15; https://www.fedcourt.gov.au/digital-law-library/judges-speeches/justice-jackman/jackman-j-20240621, p 1.

[9] https://www.fedcourt.gov.au/digital-law-library/judges-speeches/justice-jackman/jackman-j-20240621, p 2.

[10] https://www.fedcourt.gov.au/digital-law-library/judges-speeches/justice-jackman/jackman-j-20240621, p 5-6.

## 12. How are smart contracts characterised within your legal framework? Are there any enforceability issues specific to the operation of smart contracts which do not arise in the case of traditional legal contracts?

Definition of smart contracts

There is no industry-wide agreed definition of a smart contract. The smart contract concept is attributed to Nick

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Szabo who published various essays and other writings on the topic during the 1990s. One of the original definitions of a smart contract provided by Szabo is: "A set of promises specified in digital form, including protocols which the parties perform on those promises."[1] This definition combines two elements:

- a party's contractual promises are specified in digital form; and
- the software includes protocols that give effect to the contractual promises.

Smart contracts (including self-executing contracts) are permitted in Australia under the *Electronic Transactions Act 1999* (Cth) (**ETA**) and the equivalent Australian state and territory legislation. The ETA provides a legal framework to enable electronic commerce to operate in the same manner as paper-based transactions. Under the ETA, self-executing transactions are permitted in Australia, provided that they meet all traditional elements of a legal contract, including an intention to create legally binding obligations; offer and acceptance; certainty; and consideration.

Enforceability issues

Challenges arise with smart contracts because development is taking place mostly independently of the legal system and the application of established legal concepts. The creation of a smart contract does not by itself create binding legal obligations. Smart contracts must still meet all the traditional elements required to establish a contract, to be binding on the parties.

Other issues include:

- Smart contracts are suited to binary conditions ("if X, then Y") but as currently envisaged are less suitable where there is a required element of discretion by either party, such as dispute mechanisms (eg, arbitration and mediation), good faith, reasonable endeavours, material adverse change, force majeure and non-deterministic provisions.
- The terms of the smart contract cannot be subsequently altered. This creates difficulties where, for example, there is a mistake in the code so that the smart contract does not perform as the parties had intended, or a change in circumstances. Similarly, a smart contract will continue to operate as intended even where consent is vitiated (for example, because it was entered to as a result of fraudulent misrepresentation, coercion or duress) or where the subject matter of the contract is, or later becomes, illegal.
- Smart contracts are self-executing which may result in an outcome that is different from the legal position. For example, if a smart contract will result in the transfer of property to another party, where that other party is not entitled to the property, it is not clear how obtaining an equitable remedy, such as an injunction, will operate to prevent the outcome.
- There may be difficulties with jurisdictional issues or even whether it is possible to identify the counterparty.

Smart contracts do not recognise the special protection given to some parties by the law (for example, minors, consumers and franchisees) and are not able to recognise whether a party has capacity or authority to enter into the agreement. Currently,the Australian Consumer Law requires consumer contracts to be expressed in reasonably plain language, be legible, presented clearly and readily available.

[1] PLAU Intellectual Property and Technology, Blockchain and smart contracts: https://anzlaw.thomsonreuters.com/w-015-4632, p 21-22

## 13. How are Decentralised Autonomous Organisations ('DAOs') treated in your jurisdiction?

Currently, Australian law does not expressly legislate decentralised autonomous organisations (**DAOs**) and there is no legal recognition of DAOs as a corporate structure meaning members do not have limited liability or other protections in place. There is an open question as to whether DAOs satisfy the definition of 'partnership' under Australian law however limitations on the number of members or partners means that this classification is not generally suitable.

In 2021, the Senate Select Committee's Technology and Financial Centre recommended that the Government formally recognise DAOs as a company structure, which would address the issues of legal personhood and liability. The Government agreed to the recommendation in principle but noted that further consultation would be needed on the "appropriate regulatory structure" for DAOs. No consultation has occurred to date.

In 2022, the ALRC, as part of its investigation into financial services laws in Australia, published a background paper on new business models, technologies and practices, including considerations of DAOs. The

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paper notes the advantages of allowing DAOs to adopt a corporate form as enabling DAOs to have legal personality to enter into contracts and hold property and so members of a DAO can enjoy limited liability protection in the DAO's dealings. However, the paper notes that a common limitation when regulating DAOs is registration often requires the appointment of agents or representatives on behalf of the DAO, which inherently contradicts a DAO's nature and forgoes crucial elements of anonymity and autonomy. The paper notes it may be possible for future regulatory design to distinguish a DAO that operates in a purely decentralised form to be treated as an unincorporated association and a 'wrapped' DAO (ie, where a DAO operates through a corporate structure).

ASIC recognises the classification uncertainty arising from DAOs. ASIC's Dr Rhys Bollen, Senior Executive Leader, FinTech published an article titled *'When history rhymes: regulating digital assets'* on 11 March 2026 which states that decentralised issuance and governance structures complicate the identification of entities responsible for the provision of products and services. Dr Bollen notes the challenge arising where decentralisation means that a product or service is not or even cannot be regulated and recommends that legal analysis should focus on practical control and benefit, rather than formal claims of decentralisation and where identifiable parties exercise influence over protocol design, governance, or economic outcomes, regulatory obligations can and should apply.[1] Dr Bollen's approach emphasises that decentralisation in itself does not determine regulatory outcome. Dr Bollen notes that where an identifiable person or entity exercises practical control over a digital asset arrangement – whether through custody, governance rights, or economic incentives – existing obligations may attach notwithstanding claims of technological decentralisation.[2]

[1] https://www.asic.gov.au/about-asic/news-centre/articles/when-history-rhymes-regulating-digital-assets

[2] ASIC v Cassimatis (No 8) (2016) 336 ALR 209.

## 14. Have there been any governmental or regulatory enforcement actions concerning blockchain in your jurisdiction?

Australian regulators (primarily ASIC) have been pursuing high-profile enforcement actions against crypto businesses. These actions have focussed on alleged unlicensed activities and the nature of associated conduct, such as investor and consumer risks with crypto-adjacent businesses, design and distribution obligations and consumer protection.

Key cases include:

- ***Australian Securities and Investments Commission v Web3 Ventures Pty Ltd* [2026] HCA 21:** On 17 June 2026, the High Court held that Web3 Ventures Pty Ltd's (**Block Earner**) fixed yield cryptocurrency product met the definition of a financial product under the Corporations Act, both as a facility through which a person makes a financial investment and as a derivative. As Block Earner did not hold an AFSL for the product, it was held to be in breach of the Corporations Act.

ASIC initially commenced action against Block Earner because of its concerns that Earner (and another variable yield product) was offered without a licence on 23 November 2022. The Federal Court held that the variable yield product did not require Block Earner to be licensed and that Earner was a facility through which a person makes a financial investment and a managed investment scheme. The Full Federal Court overturned the findings with respect to Earner.

The matter will now return to the Full Court of the Federal Court for ASIC's appeal against the penalty judgment of the Federal Court, which relieved Block Earner from liability to pay a penalty with respect to Earner.

- ***Australian Securities and Investments Commission v Oztures Trading Pty Ltd trading as Binance Australia Derivatives* [2026] FCA 609:** On 27 March 2026, the Federal Court ordered Oztures Trading Pty Ltd trading as Binance Australia Derivatives (**Binance**) to pay an A$10 million penalty after misclassifying more than 85% of its Australian client base as wholesale clients during the onboarding process. The misclassification exposed retail clients to high-risk crypto derivative products and resulted in more than A$8.66 million in losses and $3.89 million in fees over a 9 month period. Between July 2022 and April 2023, Binance admitted to failures to comply with general financial services obligations, its AFSL licence conditions, product governance and disclosure obligations.[1] In 2023, Binance also paid approximately $13.1 million in compensation to the affected clients following ASIC's review and the cancellation of its AFSL.[2] Binance is part of the Binance Group, the operator of the world's largest digital crypto exchange by trading volume.

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- ***Australian Securities and Investments Commission v BPS Financial Pty Ltd (Penalty)* [2026] FCA 18:** On 27 January 2026, the Federal Court ordered BPS Financial Pty Ltd (**BPS Financial**) to pay A$14 million for contraventions of the Corporations Act by engaging in unlicensed conduct and making false and misleading representations. In 2024, the Federal Court found that BPS Financial issued a regulated non-cash payment facility called the Qoin wallet and providing financial product advice in relation to the Qoin wallet without holding an AFSL and that BPS Financial made several false and misleading representations about the Qoin wallet. In 2025, the Full Federal Court found that BPS Financial engaged in unlicensed conduct because it could not rely on the authorised representative exemption when issuing the Qoin wallet.[3] ASIC initially commenced these proceedings in relation to BPS Financial on 25 October 2022.
- ***Australian Securities and Investments Commission v NGS Crypto Pty Ltd (No 5)* [2025] FCA 1611:** On 18 December 2025, the Federal Court found that the NGS Crypto Pty Ltd and other associated companies (**NGS Companies**) carried on financial services business in Australia without an AFSL. The Federal Court ordered injunctions to restrain the NGS Companies from promoting or issuing blockchain mining packages to any new investors, dealing in investor funds and otherwise carrying on a financial services business in Australia and winding up of the NGS Companies and unregistered managed investment scheme.[4]
- ***Australian Securities and Investments Commission v Finder Wallet Pty Ltd* [2025] FCAFC 93:** On 24 July 2025, the Full Court of the Federal Court dismissed ASIC's appeal relating to a crypto asset related product called Finder Earn provided by Finder Wallet Pty Ltd (**Finder**). This ruling upheld the original decision of the Federal Court which found that the Finder Earn product was not a debenture and therefore Finder had not breached the Corporations Act including the requirement to comply with DDOs, as alleged by ASIC. ASIC initially commenced proceedings in relation to Finder alleging that it provided unlicensed financial services, breached product disclosure requirements and failed to comply with DDOs on 15 December 2022
- ***Australian Securities and Investments Commission v Bit Trade Pty Ltd (No 2)* [2024] FCA 1422:** The Federal Court ordered Bit Trade Pty Ltd (**Kraken**), the operator of the Kraken crypto exchange to pay A$8 million for unlawfully issuing a credit facility to more than 1100 Australian consumers. The Federal Court found that Kraken had offered customers a margin extension product to be made and repaid in digital assets (eg, bitcoin) or national currencies (eg, US dollars), without a target market determination in breach of its design and distribution obligations. ASIC initially commenced proceedings against Kraken on 20 September 2023.

ASIC has pursued numerous enforcement actions to address poor design and distribution of products. In the blockchain and crypto assets sector, ASIC has made interim stop orders preventing the distribution of retail funds providing exposure to crypto assets (and those funds have since been wound up). The orders were made on the basis that ASIC does not consider that the target market in the TMD to be suitable.

AML/CTF enforcement

- On 9 August 2026, AUSTRAC suspended Cryptolink Pty Ltd's registration due to ongoing concerns about its compliance with AML/CTF obligations, including its ability to manage high-risk transactions. Cryptolink is a virtual asset service provider (**VASP**) that operates a network of cryptocurrency automatic teller machines (**CATMs**) across Australia which allow customers to exchange cash for cryptocurrency. Cryptolink's VASP registration was suspended for 3 months and it is no longer allowed to operate its 96 CATMs. Prior to suspension, Cryptolink met the conditions stipulated in its enforceable undertaking but subsequently failed to meet basic reporting obligations, particularly for threshold transaction reports. Cryptolink has also paid an A$56,340 infringement notice in relation to these failures.[5]
- On 22 August 2025, AUSTRAC directed Investbybit Pty Ltd (**Binance Australia**) to appoint an external auditor after identifying concerns with Binance Australia's AML/CTF controls.
- On 25 February 2025, AUSTRAC issued a A$75,120 infringement notice to a registered digital currency exchange service provider, Cointree Pty Ltd for alleged contraventions of suspicious matter reporting obligations under

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the AML/CTF Act on four occasions.[6]

It is generally expected that there will be an increased effort by ASIC and AUSTRAC to undertake enforcement activity in the blockchain and crypto sectors.

[1] https://www.asic.gov.au/about-asic/news-centre/find-a-media-release/2026-releases/26-055mr-binance-australia-derivatives-ordered-to-pay-10-million-penalty-for-onboarding-failures-causing-millions-in-client-trading-losses

[2] https://www.asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-298mr-asic-oversees-more-than-174-million-in-compensation-to-retail-investors-by-otc-derivative-issuers

[3] https://www.asic.gov.au/about-asic/news-centre/find-a-media-release/2026-releases/26-008mr-bps-financial-to-pay-14-million-in-penalties-over-crypto-qoin-wallet

[4] https://www.asic.gov.au/about-asic/news-centre/find-a-media-release/2025-releases/25-310mr-ngs-blockchain-mining-companies-and-unregistered-scheme-wound-up-found-operating-without-a-licence

[5] https://www.austrac.gov.au/news-and-media/news/austrac-orders-cryptolinks-crypto-atms-offline

[6] https://www.austrac.gov.au/sites/default/files/2025-05/Cointree%20Pty%20Ltd%20-%20Infringement%20Notice.pdf

## 15. Are there any other generally-applicable laws, case law or regulations that may present issues for the use of blockchain technology (such as privacy and data protection law or insolvency law)?

Consumer protection

A token or crypto-related offering to Australian consumers will be subject to consumer protection laws under the Australian Consumer Law. The Australian Consumer Law prohibits misleading or deceptive conduct in trade or commerce, including in the context of marketing and advertising. Promoters and sellers of crypto assets and crypto-related offerings must take care to ensure that promotional communications about crypto assets and crypto-related offerings do not mislead or deceive consumers and do not contain false information. In addition, crypto assets and crypto-related offerings provided must be fit for their intended purpose. Where crypto assets that are financial products, the ASIC Act and Corporations Act include similar prohibitions against misleading and deceptive conduct. ASIC's Regulatory Guide 234 *Advertising financial products and services (including credit)* was re-issued in June 2026 to help promoters comply with consumer protection obligations in relation to financial products and services.

ASIC has delegated powers from the ACCC enabling it to take action against misleading or deceptive conduct in marketing or issuing crypto assets regardless of whether a financial product is involved. ASIC has stated that it will use this power to issue further inquiries into crypto asset issuers and their advisers to identify potentially unlicensed and misleading conduct. A range of consequences may apply for failing to comply with the ACL or the ASIC Act, including monetary penalties, injunctions, compensatory damages and costs orders.

Privacy

Privacy and data protection laws can be relevant for blockchain and crypto asset related projects. The *Privacy Act 1988* (Cth) (**Privacy Act**) and Australian Privacy Principles require Government agencies and certain private sector organisations with a jurisdictional link to Australia to consider collection, use, disclosure, quality, correction, security, retention and destruction of personal information. Prior to collecting personal information, regulated entities must disclose the way in which personal information will be used, the purposes for which it will be used and third parties to which it is likely to be disclosed.

Blockchain arrangements can be structured in various ways, from information being readily visible to all participants on a network, to closed networks where information is limited to specific participants in specific instances. Entities wishing to collect and use personal information through blockchain implementations must ensure that they have gained appropriate consents for the contemplated use and disclosure. Privacy law issues may arise where personal information may only be used and disclosed for certain purposes related to its collection, however in many blockchains, all users can potentially access data stored across various distributed copies of the chain. Blockchain's immutability, replication across nodes and inability to be erased also raises privacy law issues in relation to obligations to correct inaccurate and out-of-date information and destroy or de-identify

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personal information in certain circumstances.

The notifiable data breaches (**NDB**) scheme under the Privacy Act also requires regulated entities to notify any affected individuals and the Office of the Australian Information Commissioner of a data breach which is likely to result in serious harm to those individuals. Data breaches include unauthorised access to or disclosure of information or loss of information which may result in unauthorised access or disclosure. Organisations will need to ensure that any blockchain implementations are sufficiently protected from security issues or operational failures which may result in unauthorised access or disclosure of personal information. Regulated entities must also ensure that they have adequate processes in place to comply with the NDB scheme.

Australia's privacy law is currently the subject of reform. The *Privacy and Other Legislation Amendment Act 2024* (Cth), which received Royal Assent on 10 December 2024, enacted the first tranche of reforms including, among other things, a new statutory tort for serious invasions of privacy (commenced 10 June 2025).[1] A second tranche of reforms is in preparation and may include a right to erasure, although the Productivity Commission's Harnessing Data and Digital Technology Interim Report released 5 August 2025 recommended against implementing a right to erasure on cost-benefit grounds.[2] These proposed reforms have direct implications for blockchain implementations: a right to erasure would create a fundamental tension with blockchain's immutability, as data recorded on a distributed ledger cannot be amended or erased by design, potentially requiring blockchain projects to adopt technical measures such as off-chain storage of personal data or encryption key destruction to achieve compliance.[3] The statutory tort for serious invasions of privacy, now in force, also provides individuals with a direct right of action where personal information is misused, which blockchain and crypto asset service providers handling personal data should factor into their privacy governance frameworks.[4]

Insolvency law

Crypto assets have been recognised as property and can be held on trust in Australian case law – see section 11. The Australian Financial Security Authority (**AFSA**) states that cryptocurrency is increasingly likely to form part of the assets that a bankruptcy trustee will be required to deal with upon appointment under the *Bankruptcy Act 1966* (Cth) (**Bankruptcy Act**). AFSA recognises that consideration needs to be given to identify cryptocurrency, preserving its value for the benefit of an insolvent estate, realising the assets in a volatile market and distributing proceeds to creditors. A trustee will require the relevant public and private keys to secure cryptocurrency.[5]

For cryptocurrency acquired prior to bankruptcy, a debtor must disclose ownership or interest in any asset including ownership of cryptocurrencies to the trustee of his or her bankrupt estate. Failure to disclose a cryptocurrency (similarly to failure to disclose cash at bank, shares etc.) may constitute an offence under the Bankruptcy Act.

[1] https://www.legislation.gov.au/C2024A00128/asmade/text

[2] https://www.ag.gov.au/rights-and-protections/publications/government-response-privacy-act-review-report; https://www.pc.gov.au/node/4799/

[3] https://landers.com.au/legal-insights-news/living-in-digital-harmony-immutable-blockchains-and-the-right-to-be-forgotten

[4] https://www.legislation.gov.au/C2004A03712/latest/text

[5] https://www.afsa.gov.au/professionals/dealing-cryptocurrency-bankrupt-estate

## 16. Are there any other key issues concerning blockchain technology in your jurisdiction that legal practitioners should be aware of?

Competition law

Competition law issues may arise under the *Competition and Consumer Act 2010* (Cth) in relation to transparency and ability to trust the accuracy of data added to a blockchain by competitors which may increase the likelihood of collusive behaviour. An industry participant-led consortium may use blockchain technologies to change the way that participants transact with each other and third parties. Such consortium activities may raise competition law issues including:

- **Cartel conduct:** If the project involves putting sensitive data, such as information relating to pricing, capacity or supply, on to a blockchain, this may lead to cartel conduct. Cartel conduct will arise if suppliers in competition with each other allocate customers, restrict supply or fix

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prices. There is also the risk that consortium meetings themselves provide a forum for competitors to engage in discussions that lead to the collusive conduct described.

- **Anti-competitive behaviour:** The use of a blockchain between consortium members forms part of a contract, arrangement or understanding (**CAU)** between them. The agreement may be prohibited if a provision of that CAU has the purpose, effect, or likely effect of substantially lessening competition in a market in which one participant acquires or supplies goods or services.
- **Misuse of market power:** Exclusion of a competitor from the consortium may raise issues of misuse of market power or constitute a boycott affecting trade and commerce or a secondary boycott.
- **Exclusive dealing:** Requiring consortium members to deal with a particular supplier or customer, or on particular terms, may amount to exclusive dealing.

Intellectual property

The key issues in relation to intellectual property rights in blockchain development are copyright and patentability:

- **Copyright:** In general terms, code is capable of protection under copyright as a literary work. Usually the source code that underpins cryptocurrencies and other public blockchains is open-source software. This means the source code is publicly available and may be copied, modified and used to create new blockchains, subject to the terms of the applicable open-source licence. Private blockchains may be capable of copyright protection, if the code that underpins such blockchains comprises an original literary work. However, in most cases, private blockchains consist of proprietary software development built as a layer on top of an open-source base. Any open-source materials incorporated in the private blockchain will remain protected by copyright owned by their authors or contributors, but are licensed on open-source terms which may impose attribution, notice or (for 'copyleft' licences) source code disclosure obligations on the developer.
- **Patentability:** There can be difficulty in securing patents for blockchain developments as it will usually be difficult to satisfy the novelty and inventiveness requirements where developments are open source software technology. However, its open-source nature does not preclude the innovation in concepts and technologies related to blockchain being the subject of patent applications.

Developer liability

Liability issues in respect of blockchain have not yet been tested. There is no reason in principle why the developer of a blockchain should be treated any differently, at law, to the developer of any other kind of software. For example, a user that loses tokens or value in their tokens as a result of a coding error may have a cause of action against the person responsible for such a coding error. This will particularly be the case for private blockchains, where jurisdictional issues are less likely to be at issue and the nature of the relationship between users of the blockchain and its administrators should be clearer.

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