

Response to CP 381 Updates to INFO 225: Digital assets: Financial products and services
Digital Assets Team Australian Securities and Investments Commission

Submission via email to digital.assets@asic.gov.au

Date: 25 February 2025

From: Michael Bacina

1. I write as a lawyer of nearly 20 years legal practice and nearly 10 years of deep technology and web3 / crypto experience and the author of an upcoming book on Blockchain law in Australia. I served on the board of what is now the Digital Economy Council of Australia and as Chair for 2 years and have testified to the Australian Senate and contributed to ASIC working groups on matters relating to digital assets. I have advised many leading crypto projects in Australia and overseas.
2. I have had the benefit of reading the submission of the Digital Economy Council of Australia submission dated 19 December 2024 and agree strongly that the updates to INFO225 are a regressive and controversial application of current law and represents a material expansion of the regulatory perimeter. I have also had the benefit of reading the submission of Associate Professor Darcy Allen and Professor Chris Berg and agree completely with their submissions, particularly in that:
 - a. ASIC guidance is not a good substitute for clear legislation;
 - b. There are very practical and fundamental limits on regulatory enforcement and that regulation by enforcement is a failed approach;
 - c. Attempting to fit cryptocurrencies into regulatory frameworks designed for centralized products does not achieve sensible outcomes;
 - d. The cryptocurrency space requires bespoke rules that accommodate and acknowledges the benefits and risks that cryptocurrencies present; and

- e. ASIC should use their position to advocate for this, to the extent ASIC considers it is unable or unwilling to use their own powers to provide that clarity.
- 3. The industry has called for clear and achievable rules of the road for over ten years, when ASIC's submissions to the 2014 Senate Inquiry into Digital Currency was that cryptocurrencies were not financial products.¹ Since then, ASIC's position has changed without clear explanation or rationale, and continuing to assert that token projects fall within licensing, while providing no pathway to compliance, risks amounting to a ban on cryptocurrency in Australia.
- 4. The present suggested amendments to INFO225 do not meet the goals of protecting consumers or investors, they rather send a message to the industry that various examples of projects will require licensing for which there is no pathway to compliance or practical ability for operators of these project to obtain licensing.
- 5. Australian consumers and investors will continue to be forced to deal with offshore providers and at risk of scams and abuse. If Australian providers could deliver those same services under a fit for purpose regulatory regime then consumer protection goals can be met more effectively.
- 6. While I am no longer practicing law in Australia, I would like to see Australia move with the global trend in providing fit for purpose regulation which is supportive of innovation while protecting consumers and which properly accommodates the unique aspects of cryptocurrency businesses.
- 7. I would be pleased to discuss any of the above.

Sincerely,

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Admitted to practice in the High Court of Australia and Federal Court of Australia
and the Supreme Court of New South Wales (non-practicing)
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¹ Australian Securities and Investments Commission, Submission No 44 to Senate Standing Committees on Economics, *Inquiry into digital currency* (December 2014) 14–5 [65].