Digital Economy Council of Australia

Submission to ASIC

Date: 12 November 2025

Response to CS 32 Proposed relief for certain stablecoins and wrapped tokens, and extension of omnibus accounts for digital asset custody

About DECA

The Digital Economy Council of Australia is the peak industry body representing Australian businesses and professionals in blockchain, digital assets, decentralised finance and tokenisation. DECA advocates for responsible adoption and regulation of these technologies and works closely with government, regulators and industry stakeholders to support a competitive and innovative digital asset sector in Australia.

DECA acknowledges the contributions of its members across the digital asset industry to this response.

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Digital Economy Council of Australia

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Executive Summary

The Digital Economy Council of Australia supports ASIC's intent to provide transitional relief that enables stablecoin and wrapped token activity to continue safely while Treasury finalises the digital asset and payments reform program. The proposed class relief is a constructive step but requires several clarifications to ensure it operates coherently with INFO 225, the class no action position and the forthcoming licensing regime for digital asset platforms and tokenised stored value facilities.

First, the current drafting does not fully resolve the sequencing issue between the relief instrument and the class no action position. Issuers treated as compliant once they lodge an AFSL application may still be unable to satisfy the condition that the issuer already hold an AFSL. This leaves distributors without a workable pathway during the transition. Allowing distributors to rely on the relief where an issuer has lodged a complete licence application would resolve this gap.

Second, distributors have a distinct role from issuers and should not be subject to issuer level requirements. Clearer boundaries are needed so that entities that do not issue or hold client property can rely on the relief without uncertainty. Aligning this position with relevant INFO 225 examples would support proportional regulation.

Third, the extension of omnibus custody to digital assets is sensible, but it must be supported by clear expectations on reconciliation, record keeping and independent assurance. This is consistent with established case law emphasising the importance of accurate tracing and adequate systems for protecting client assets, and aligns with existing expectations under RG 133 and APRA prudential standards.

Finally, coordinated guidance from ASIC and APRA would help reduce duplicated oversight for entities that hold reserve assets or provide digital asset custody, and would promote a consistent supervisory approach during the transition to Treasury's reforms.

These adjustments would improve operational certainty, support an orderly transition and maintain the integrity of Australia's financial regulatory framework while broader structural reforms are implemented.

Introduction

DECA supports ASIC's intention in CS 32 to provide transitional relief for stablecoin and wrapped token distribution and to extend omnibus custody arrangements to digital assets that are financial products. This submission focuses on the practical and transitional issues that arise from the interaction between the relief instrument, the class no action position and Treasury's forthcoming reforms. Our aim is to ensure consistency, certainty and minimal disruption while the long term regulatory framework is finalised.

Issues

1. Definition and eligibility of "eligible stablecoins" and "eligible wrapped tokens"

Key Point

The draft ASIC Corporations (Stablecoin and Wrapped Token Relief) Instrument 2025/XXX provides class relief for intermediaries distributing *eligible stablecoins* and *eligible wrapped tokens* issued by Australian Financial Services (AFS) licensees or exempt foreign issuers. Eligibility depends on three cumulative criteria: (a) the token must maintain a one-for-one redemption right against a fiat currency, (b) the reserves must be held in cash or cash equivalents in a regulated financial institution, and (c) an independent audit or attestation report must confirm the adequacy of the reserves annually.[1]

However, the current drafting does not clarify whether algorithmic stablecoins, tokenised deposits, or multi-asset-backed stablecoins fall outside this scope, nor does it define the standard of "equivalent foreign issuer".

Response

ASIC should publish guidance clarifying the scope of eligible instruments under section 5, including:

[1] Draft ASIC Corporations (Stablecoin and Wrapped Token Relief) Instrument 2025/XXX, ss 5–8 (Attachment 1 to CS 32).

(a) applying the criteria based on function rather than technology

(b) defining equivalent foreign issuer by reference to foreign regimes with comparable prudential and disclosure rules such as the United Kingdom Financial Services and Markets Act 2023 and the Singapore Payment Services Act[2]

(c) maintaining an administrative register of recognised eligible stablecoins.

Commentary

A functional approach to defining eligibility reflects international precedent. The European Union's Markets in Crypto-Assets Regulation (MiCA) 2023 adopts a substance-over-form test, classifying any digital token referencing a single fiat currency as an "e-money token" regardless of its technical design.[3] Similarly, the UK Treasury's 2023 stablecoin framework distinguishes between algorithmic tokens and fiat-backed assets but allows transitional recognition where equivalent reserve assurance is demonstrated.[4]

Australian authority confirms a substance based approach to classification. In ASIC v OneTech Media Pty Ltd the Federal Court held that the economic substance of an arrangement determines whether a financial product exists. Applying this reasoning, any asset backed stablecoin with genuine redemption and transparent reserves should fall within the policy intent of the relief even where the collateral structure differs from traditional cash backed models.

Without these clarifications, the current drafting risks excluding legitimate digital representations of fiat value, undermining the relief's objective to facilitate low-risk innovation during the transitional period preceding Treasury's Tranche 1B reforms. ASIC's approach should therefore be principles-based, technology-neutral, and grounded in the substance of the financial rights conferred.

The offshore equivalence concern identified in Tranche One A remains relevant. Many stablecoin and wrapped token issuers are domiciled overseas. The relief instrument requires that foreign issuers be regulated by an equivalent foreign authority, yet there is no guidance on how equivalence will be assessed. ASIC should publish a list of recognised equivalent

[2] UK Financial Services and Markets Act 2023 (UK) Part 1 Ch 3; Singapore Payment Services (Amendment) Act 2021 (SG) s 100.

[3] Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on Markets in Crypto-Assets (MiCA), Arts 3 and 48.

[4] HM Treasury, *Regulation of Fiat-Backed Stablecoins* (UK Government Response, October 2023).

jurisdictions or allow industry to propose candidates. This prevents uncertainty and avoids excluding issuers regulated under credible foreign frameworks.

Recent analyses by Hall and Wilcox and Thomson Geer confirm that the proposed relief remains narrow and does not displace the broad application of financial product definitions under INFO 225. Additional clarity would minimise unnecessary or premature AFSL applications and ensure that the relief operates coherently during the transition to Treasury's forthcoming reforms.

2. Scope and limits of distributor relief

Key Point

Sections 6 to 8 of the draft ASIC Corporations (Stablecoin and Wrapped Token Relief) Instrument 2025/XXX exempt distributors of eligible stablecoins and wrapped tokens from the requirement to hold an Australian Financial Services Licence (AFSL), market licence, or clearing and settlement licence where their activities are confined to distribution and secondary facilitation.[5] The relief is designed to address transitional uncertainty pending the introduction of Treasury's Tranche 1B stablecoin licensing framework. However, the instrument does not clearly delineate whether ancillary activities such as liquidity provision, automated payment routing, or cross-chain transfer facilitation remain within the exemption's scope.

Response

ASIC should clarify the operational boundaries of distributor relief by confirming that:

(a) intermediaries that facilitate secondary market settlement without issuing or holding client value remain within the exemption

(b) relief applies only to the distribution component where a service provider also performs custody and the custody activity remains governed by ASIC Custody Instrument 2024 17

(c) automated or smart contract distribution falls within the exemption where the provider does not control client assets.

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Commentary

This clarification is essential to prevent dual-licensing uncertainty. The Corporations Act 2001 defines "providing a financial service" broadly under s 766A to include dealing, issuing, and arranging transactions. Without explicit interpretive guidance, ordinary liquidity or settlement activities could be construed as "arranging" the issue of a financial product, triggering unintended AFSL obligations. The Federal Court has previously held that the question of whether a person is "arranging" depends on the degree of agency and involvement in the transaction's execution rather than its technological means (Australian Securities and Investments Commission v Park Trent Properties Group Pty Ltd [2015] FCA 373).[6] Consistent with this principle, stablecoin intermediaries that merely facilitate automated routing or settlement should not be deemed to be "arranging" financial products.

Comparable regimes such as the United Kingdom and Singapore provide transitional exemptions for intermediaries that do not issue tokens or hold reserves. This is consistent with a functional approach and avoids dual licensing for low risk settlement activities.

Adopting a comparable delineation would ensure that Australia's regime remains globally interoperable and proportionate. It would also align with the objectives of the Council of Financial Regulators' Token Mapping Framework (2023), which advocates a functional approach to classification of digital assets. By recognising that secondary-market distributors provide essential liquidity and settlement functions rather than financial intermediation, ASIC can uphold consumer protection while maintaining regulatory neutrality and supporting market efficiency during the transition period to Tranche 1B.

Consistent with Tranche One A, ASIC should confirm that technical infrastructure providers and non custodial service layers are not captured as distributors. Wrapping services, bridging infrastructure, indexing tools and smart contract routers that do not control client value should not be treated as distribution activities. This prevents unnecessary licensing exposure for entities whose activities do not create consumer protection risk.

3. Reporting and audit requirements for reserve attestations

Key Point

Section 12 of the draft ASIC Corporations (Stablecoin and Wrapped Token Relief) Instrument 2025/XXX requires eligible stablecoin issuers to publish a reserve report

[6] Australian Securities and Investments Commission v Park Trent Properties Group Pty Ltd [2015] FCA 373 at [52]–[63].

within four months of issuance and an audited reserve report annually, verified by a registered company auditor or an equivalent foreign assurance authority.[7] While this requirement establishes a baseline for transparency, it may be insufficient to maintain continuous market confidence for high-volume stablecoin issuers. The proposed frequency of annual audits and four-monthly publication cycles could leave material periods where reserves are unverified or potentially misaligned with circulating supply.

Response

ASIC should require quarterly reserve attestations verified by independent assurance practitioners, support optional blockchain based proof of reserve mechanisms and require disclosure of jurisdictions and custodial arrangements for reserve assets.

Commentary

Enhanced audit frequency and transparency are consistent with international best practice. The Monetary Authority of Singapore (MAS) requires issuers of regulated stablecoins under the 2023 Stablecoin Regulatory Framework to publish monthly attestations and quarterly independent audits.[8] The New York Department of Financial Services (NYDFS) imposes similar obligations on stablecoin issuers licensed under the New York Banking Law, requiring monthly reserve verification and quarterly CPA attestations.[9] These models demonstrate the importance of continuous assurance for maintaining price stability and market integrity.

The Australian context supports this approach. Under section 912A of the Corporations Act 2001, AFS licensees must maintain adequate financial and operational risk controls. The Federal Court in Australian Securities and Investments Commission v RI Advice Group Pty Ltd [2022] FCA 496 held that licensees have a positive obligation to implement "adequate systems" to identify and mitigate foreseeable risks, including operational and technological ones.[10] Applying that reasoning, a stablecoin issuer's failure to verify reserves in a timely and transparent manner could be considered a breach of general licensee obligations.

[7] Draft ASIC Corporations (Stablecoin and Wrapped Token Relief) Instrument 2025/XXX, s 12 (Attachment 1 to CS 32).
[8] Monetary Authority of Singapore, Stablecoin Regulatory Framework (September 2023) ss 12–14.
[9] New York Department of Financial Services, Guidance on the Issuance of U.S. Dollar-Backed Stablecoins (June 2022).
[10] Australian Securities and Investments Commission v RI Advice Group Pty Ltd [2022] FCA 496 at [52]–[58].

4. Duration and transition of relief instruments

Key Point

Part 3 of the draft ASIC Corporations (Stablecoin and Wrapped Token Relief) Instrument 2025/XXX provides that the instrument will be repealed on 1 January 2029.[11] The instrument's explanatory statement does not outline a review mechanism or renewal process, and it remains uncertain whether the repeal date will align with the commencement of Treasury's Tranche 1B payment and stablecoin licensing regime. This creates the risk of a regulatory vacuum should the legislative timetable extend beyond the intended horizon. Transitional uncertainty of this nature may discourage investment, delay licensing applications, and lead to inconsistent compliance strategies among distributors.

Response

ASIC should include a review clause before the sunset date, retain discretion to extend the instrument where Treasury reforms are delayed and coordinate with Treasury to ensure a seamless transition into the stablecoin licensing framework.

(c) coordinating with Treasury to ensure that entities benefiting from the current relief will automatically transition into the forthcoming stablecoin licensing regime without disruption, subject to equivalent compliance and prudential criteria.

Commentary

There is a structural sequencing issue between the relief instrument, the class no action position and the Treasury DAP and payments reforms. This reflects a broader concern raised during Tranche One A, where absent transitional planning led to the risk of regulatory gaps. Without clear commencement and cessation dates and explicit compatibility rules, entities distributing eligible stablecoins or wrapped tokens may face abrupt or inconsistent changes in obligations that do not reflect the underlying risk.

The absence of a review or rollover mechanism is inconsistent with best practice for transitional financial regulation. The ALRC has stressed that transitional instruments should include evaluation points and aligned sunset dates to avoid compliance gaps. Because

[11] Draft ASIC Corporations (Stablecoin and Wrapped Token Relief) Instrument 2025/XXX, Part 3 (Attachment 1 to CS 32).

Treasury's Tranche 1B commencement may not coincide with ASIC's sunset date, a rigid repeal clause risks unintended regulatory discontinuity.

Foreign regulators have adopted staggered transitional arrangements to avoid compliance gaps. A similar approach would support legal certainty and market stability in Australia.

From an Australian perspective, ensuring continuity aligns with the principle of legal certainty underpinning the Corporations Act 2001. In Australian Securities and Investments Commission v Camelot Derivatives Pty Ltd (in liq) [2012] FCA 414, the Court stressed that market participants must be able to rely on predictable regulatory settings when determining compliance obligations.[12] Abrupt regulatory expiry would therefore undermine confidence in ASIC's transitional approach and could expose intermediaries to inadvertent breaches.

To maintain regulatory coherence, ASIC should explicitly cross-reference its relief instruments in Treasury's Explanatory Memorandum for Tranche 1B. This would confirm that class relief remains operative until equivalent legislative mechanisms replace it. Such an approach would uphold regulatory continuity, reduce administrative duplication, and preserve Australia's competitive position as a jurisdiction that supports orderly digital-asset reform.

ASIC should also clarify how the Relief Instrument for Stablecoins and Wrapped Tokens operates alongside the class no action position issued under INFO 225. Under the class no action position, issuers of financial products who have lodged an AFSL application by 30 June 2026 may continue operating, while the Relief Instrument requires an issuer to already hold an AFSL before distributors can rely on it. This sequencing gap means distributors cannot lawfully rely on relief while an issuer remains in the no action window. To address this, ASIC should deem any issuer that has lodged a complete AFSL application and qualifies for the class no action position to meet the AFSL holder condition for the purpose of distributor relief. This would maintain coherence between the two instruments and ensure continuity during transition to Treasury's forthcoming reforms.

5. Omnibus custody arrangements for digital assets

Key Point

The draft ASIC Corporations (Amendment) Instrument 2025/XXX expands the ASIC Corporations (Custody Standards for Providers of Custodial and Depository Services) Instrument 2024/17 to expressly include "digital assets that are financial products"

[12] Australian Securities and Investments Commission v Camelot Derivatives Pty Ltd (in liq) [2012] FCA 414 at [73]–[77].

within the scope of permissible omnibus custody arrangements.[13] While this amendment modernises Australia's custody regime, it does not define the minimum reconciliation frequency, segregation standards, or audit assurance requirements that must apply to omnibus custody structures. Nor does it establish how beneficial ownership of digital assets should be evidenced in cases where pooled custody involves sub-custodians or multi-signature arrangements.

Response

ASIC should publish operational guidance specifying reconciliation requirements, annual independent audits under ASAE 3402, disclosure of sub custodian arrangements and optional use of proof of reserve techniques.

Commentary

The extension of omnibus custody to digital assets that are financial products is a useful update, but the amendment is procedural rather than substantive. Omnibus structures still require reconciliation, tracing and record keeping obligations equivalent to those expected under RG 133. Market feedback confirms that omnibus treatment does not simplify digital asset custody and does not change the underlying obligations for licensees.

Major legal analyses have noted that proportional reconciliation and audit requirements may be necessary for wholesale only and limited purpose custody providers. Clearer guidance from ASIC would provide greater operational certainty and help maintain consistency with emerging global standards.

6. Alignment with APRA and cross-agency coordination

Key Point

The draft ASIC Corporations (Amendment) Instrument 2025/XXX allows omnibus custody of digital assets that are financial products under section 912AAC of the

[13] Draft ASIC Corporations (Amendment) Instrument 2025/XXX, Schedule 1 Items 1–3 (Attachment 2 to CS 32).

Corporations Act 2001.[14] However, the amendment operates alongside Treasury's forthcoming tokenised stored-value facility (TSVF) and stablecoin framework, which will subject certain issuers and custodians to prudential oversight by the Australian Prudential Regulation Authority (APRA). This dual coverage raises questions about whether omnibus custody arrangements approved by ASIC will meet APRA's safeguarding and reserve-asset standards once the Tranche 1B reforms commence.

Response

ASIC and APRA should issue joint guidance confirming when omnibus custody arrangements satisfy both conduct and prudential expectations and should coordinate supervisory approaches for entities that hold both fiat reserves and digital assets.

Commentary

Cross agency coordination is essential to preserve the integrity of Australia's financial regulatory framework. ASIC's remit focuses on conduct and disclosure under Chapter 7 of the Corporations Act, while APRA's authority under the Banking Act 1959 and the Financial Sector Collection of Data Act concerns prudential stability. Federal Court authority such as ASIC v Camelot Derivatives Pty Ltd confirms that regulated entities must maintain systems and controls that appropriately manage foreseeable risks. APRA's prudential standards, including CPS 234 and CPS 231, impose complementary expectations for operational resilience, information security and outsourcing. Clear coordination between ASIC and APRA would ensure that digital asset custody arrangements meet both conduct and prudential objectives without unnecessary duplication.

7. Record-keeping, audit assurance, and operational transparency for omnibus custody

Key Point

[14] Draft ASIC Corporations (Amendment) Instrument 2025/XXX, Schedule 1 Items 1–3 (Attachment 2 to CS 32).

The draft ASIC Corporations (Amendment) Instrument 2025/XXX extends omnibus custody arrangements under the ASIC Corporations (Custody Standards for Providers of Custodial and Depository Services) Instrument 2024/17 to digital assets that are financial products.[15] Although the amendment references "appropriate record-keeping and reconciliation procedures," it does not specify the required level of detail, frequency, or verification standards. This omission creates uncertainty for custodians as to what constitutes adequate assurance, nor does it establish how independent auditors should verify the existence or allocation of digital assets held under omnibus accounts. The absence of explicit operational benchmarks risks inconsistent audit practices and undermines investor confidence in the integrity of pooled custody systems.

Response

ASIC should prescribe minimum reconciliation frequencies, require immutable time stamped records, mandate independent annual control assurance reports under ASAE 3402 and provide standardised reporting templates for custodians.

Commentary

Clear record keeping standards are essential for the protection of client property, particularly where omnibus custody structures are used for digital assets. The Federal Court in Re Lehman Brothers Australia Ltd confirmed that precise and verifiable records are central to safeguarding client entitlements and ensuring that assets can be accurately traced and returned in an insolvency event. This reasoning applies with equal force to digital asset custody, where incorrect or incomplete records can quickly result in loss of client value.

To support these principles, custodians should maintain reconciliation processes that are time stamped, independently verifiable and supported by appropriate systems and controls. Minimum reconciliation frequencies, mandatory annual independent assurance and clear requirements for the treatment of sub custodian records would align the relief instrument with existing Corporations Act obligations. This would promote consistency across providers, reduce operational risk and give clients confidence that their digital assets are held securely and can be accurately accounted for at all times.

[15] Draft ASIC Corporations (Amendment) Instrument 2025/XXX, Schedule 1 (Attachment 2 to CS 32).

8. Definition scope and treatment of third-party technology and compliance service providers

Key Point

The proposed ASIC Corporations (Stablecoin and Wrapped Token Relief) Instrument 2025/XXX and the related Custody Amendment Instrument 2025/XXX adopt a broad, technology-neutral approach to defining entities engaged in digital-asset custody and distribution. However, neither instrument clarifies whether third-party providers of technological infrastructure, identity verification, or compliance automation fall within the regulatory perimeter. This ambiguity risks capturing RegTech vendors, blockchain analytics firms, and payment enablement providers that do not issue, hold, or control client assets but merely provide software or data services to regulated intermediaries. Without explicit exclusion, these technology and compliance providers could inadvertently be classified as financial service providers under section 766A of the Corporations Act 2001.[16]

Response

ASIC should clarify that providers of technology, analytics and compliance tools that do not control client value are not dealing or arranging financial products and fall outside the relief instrument.

Commentary

The purpose of ASIC's relief instruments is to facilitate low-risk transitional operations for distributors and custodians of digital assets, not to expand regulatory coverage to technology infrastructure providers. Overly broad interpretation could stifle innovation and contradict the functional intent of the Corporations Act. In Australian Securities and Investments Commission v Financial Circle Pty Ltd [2018] FCA 968, the Federal Court emphasised that whether an entity provides a financial service depends on the substance of its conduct and whether it exercises control over a client's financial product, not merely its involvement in facilitating compliance processes.[17] This reasoning supports excluding third-party technology providers who have no discretion over client assets.

[16] Corporations Act 2001 (Cth), s 766A and s 766C(3).
[17] Australian Securities and Investments Commission v Financial Circle Pty Ltd [2018] FCA 968 at [49]–[53].

International practice reflects similar boundaries. The European Union's Markets in Crypto-Assets Regulation (MiCA) 2023, Article 3(9), expressly excludes "entities providing information technology or back-office services" from the definition of a crypto-asset service provider.[18] The UK Financial Conduct Authority's Perimeter Guidance Manual (PERG 8.24) likewise confirms that software providers and messaging services that transmit transaction data without holding or controlling value are not deemed to be "arranging" or "executing" regulated activities.[19] The Monetary Authority of Singapore (MAS) has adopted the same principle under the Payment Services Act 2019, excluding "pure technology providers" from the licensing perimeter while maintaining AML/CTF oversight where relevant.[20]

[18] Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on Markets in Crypto-Assets (MiCA), Art 3(9).
[19] UK Financial Conduct Authority, Perimeter Guidance Manual (PERG 8.24), updated January 2023.
[20] Monetary Authority of Singapore, Payment Services Act 2019 (SG), ss 5(3)(a)–(b) and accompanying Guidelines PS-G01 (2021).