Digital Economy
Council of Australia

Digital Economy Council of Australia

Submission to The Treasury

Treasury consultation paper on the Scams Prevention Framework – exposure draft legislation.

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Scams Prevention Framework – Exposure Draft Legislation

4th October 2024
scamspolicy@treasury.gov.au

The Digital Economy Council of Australia (DECA) appreciates the opportunity to respond to the **Treasury consultation paper on the Scams Prevention Framework – exposure draft legislation.**

As the digital asset industry is expected to be included in future tranches of this framework, DECA and its members believe it is crucial to engage now to ensure our sector's unique challenges are considered in the policy formation process.

DECA and its members are active participants in the National Anti-Scam Centre (NASC), contributing through the Advisory Board and various Working Groups. Our members are fully committed to helping combat scams and ensuring that practical, fit-for-purpose Mandatory Industry Codes are developed and implemented to support both consumer protection and industry innovation.

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DECA Response to Treasury on the Scams Prevention Framework Consultation

The Scams Prevention Framework (SPF), introduced in the Treasury Laws Amendment Bill 2024, is a critical initiative in protecting Australians from the scourge of scams, which continue to cause substantial financial harm across various sectors. Scams are a serious and growing concern, affecting millions of Australians and causing significant financial harm. The digital asset industry is not immune to this challenge. While we acknowledge the presence of bad actors who exploit these technologies, it is crucial to distinguish them from the vast majority of responsible businesses committed to protecting consumers. Platforms like Swyftx[1], BTC Markets[2], Coinspot and CoinJar[3] are leading examples of the industry's proactive approach to addressing these issues, implementing robust systems and practices to combat fraud and scams.

While the digital asset industry is not part of the first tranche of the SPF, we anticipate it will be considered in future phases. As the sector evolves, it's essential that regulatory approaches strike the right balance—remaining flexible and technology-neutral to support responsible businesses while effectively addressing bad actors.

Collaboration as a Key to Preventing Scams

In our August 2023 response to Bendigo and Adelaide Bank's media statement, DECA emphasised the need for a coordinated approach involving government, law enforcement, banks, and the digital asset industry.[4] Scams are a systemic issue that involve various players—telecommunications providers, banks, and digital platforms—each of which plays a role in the scam lifecycle.

DECA stands ready to contribute to the development of industry standards and data-sharing initiatives that help detect, prevent, and mitigate scams in real-time. This includes working with blockchain intelligence companies and banks to ensure scam wallets and patterns are identified and shared across the ecosystem to protect Australian consumers.

1 https://www.trmlabs.com/post/trm-labs-announces-collaboration-with-swyftx-to-combat-scams-in-australia
2 https://www.chainalysis.com/customer-stories/btc-markets/
3 https://www.chainalysis.com/blog/chainalysis-australia-update-august-2020/
4 https://deca.org.au/blockchain-australia-responds-to-bendigo-bank-and-adelaide-bank-banning-high-risk-payments-to-dces/

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The Impact of Debanking on the Digital Asset Sector

An estimated 3.9 million Australians currently own digital assets[5], and the industry is predicted to contribute up to $60 billion a year to national GDP by 2030[6]. However, debanking poses a significant threat to this economic potential by limiting the ability of Australians and businesses to access essential banking services.

In our December 2022 response to the Council of Financial Regulators (CFR) regarding debanking, DECA (formerly Blockchain Australia) emphasised that the digital asset industry has been disproportionately affected by widespread debanking since at least 2014.[7] This long standing issue has severely impacted our members, including Digital Currency Exchanges (DCEs), their staff, customers, and suppliers, creating significant barriers to operating within the traditional financial system. As documented in our industry survey, 75% of respondents reported being debanked, often without clear reasons or recourse. Moreover, the lack of access to core banking services increases systemic risk, compromises the robustness of AML/CTF compliance processes, and inhibits the development of a secure and innovative digital asset ecosystem in Australia. These systemic barriers not only hinder the growth of the digital asset industry but also have a broader impact on the wider digital economy by limiting innovation, stifling competition, and reducing Australia's ability to remain competitive in the global digital marketplace.

It is no secret that the digital asset industry has been significantly impacted by debanking, as highlighted in Treasury's June 2023 report[8]. Digital Currency Exchanges (DCEs) and fintechs are frequently denied access to essential banking services due to perceived risks, including Anti-Money Laundering (AML) and Counter-Terrorism Financing (CTF) compliance. The situation has worsened over the years with the Big 4 Australian banks — CBA[9], NAB[10], Westpac[11], and ANZ[12] — all introducing additional restrictions for customers transacting with crypto exchange platforms, impacting over 2.3 million clients.

DECA has voiced concerns on multiple occasions about the disproportionate targeting of the digital asset industry, which is being subjected to stringent measures, often without clear justification[13][14]. As digital assets are increasingly linked to financial services, there is a pressing need to ensure that the SPF does not lead to further debanking and isolation of this emerging sector.

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[5] https://swyftx.com/wp-content/uploads/2024/09/swyftx-cryptocurrency-survey-2024.pdf
[6] https://techcouncil.com.au/wp-content/uploads/2022/11/Digital-Assets-in-Australia-report-2022.pdf
[7] https://deca.org.au/wp-content/uploads/2022/12/Treasury-Policy-Response-to-DeBanking.pdf
[8] https://treasury.gov.au/sites/default/files/2023-06/p2023-404377-gr.pdf
[9] https://www.commbank.com.au/articles/newsroom/2023/06/changes-on-payments-to-crytocurrency-exchanges.html
[10] https://www.nab.com.au/about-us/security/cryptocurrency-transaction-changes
[11] https://www.westpac.com.au/about-westpac/media/media-releases/2023/18-May/
[12] ttps://www.anz.com.au/plus/support/profile-security/fraud-and-scams/restrictions-on-payments-to-crypto-exchanges/
[13] https://deca.org.au/response-to-the-upcoming-payment-security-measures-from-innovative-payment-provider-and-cuscal/
[14] https://deca.org.au/response-to-banking-limits-on-crypto-payments/

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Key Concerns: Banking Access and Regulatory Impact

The SPF mandates stringent obligations for banks and other regulated sectors to detect, report and disrupt scams. While these objectives are essential for protecting consumers, they risk exacerbating conservative risk practices, further pushing banks away from servicing digital asset businesses. This process of de-risking has been noted to stifle innovation and competition by effectively debanking a growing and transformative sector of the economy.

Evidence from other jurisdictions shows how de-risking can harm broader economies. In Europe, for example, the European Banking Authority (EBA) has been working to address the risk of debanking through regulatory measures designed to balance risk management with financial inclusion[15]. Similarly, the Financial Conduct Authority (FCA) in the UK has taken steps to mitigate de-risking in sectors facing high AML/CTF risks, although not specific to digital assets.[16] In the US, research has highlighted the impact of de-risking on international payments and the closure of accounts across several high-risk sectors.[17] These examples demonstrate how de-risking can unintentionally reduce competition and drive economic activity into less regulated or unregulated spaces.

Providing banking services to organisations that are good actors—those with proper financial licensing, strong regulatory processes, and proactive tools to address scams—is a critical part of addressing these challenges. Blanket debanking of the entire crypto and digital asset sector will not stop Australians from accessing these services. Instead, it will allow bad actors to compete more freely with good actors, increasing the risk of scams and fraudulent behaviour. Consumers and businesses may be driven to engage with foreign entities that operate outside the oversight of Australian regulators and legal protections, ultimately reducing transparency and increasing systemic risk.

To mitigate these risks, we recommend that the Treasury conducts a thorough analysis of banking data to evaluate the impact of de-risking practices on the digital asset industry in Australia. Such analysis should investigate the number of bank account closures and the ripple effects on innovation, competition, and broader financial inclusion. As debanking has already become a significant issue in Australia, this data will provide evidence of the consequences of de-risking on the national economy and the capacity to combat financial crime effectively.

We recommend that the framework include provisions for continuous monitoring and guardrails to ensure that actions taken by banks under the SPF are appropriate, technology-neutral, and subject to regular review and appeal mechanisms. This will help prevent the unintended consequences of over-regulation and ensure that legitimate businesses and investors are not unfairly penalised.

The blanket debanking of the digital asset sector also forces legitimate investors to find workarounds, which inadvertently triggers suspicious activity, making it harder for regulators and banks to differentiate between

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[15] https://eba.europa.eu/publications-and-media/press-releases/eba-takes-steps-address-de-risking-practices
[16] https://www.fca.org.uk/firms/money-laundering/derisking-managing-risk
[17] https://globalcenter.org/resource/understanding-bank-de-risking-and-its-effects-on-financial-inclusion/

legitimate and bad actors. Bad actors are exploiting these restrictions as excuses when questioned about the reasons for suspicious transactions, further complicating detection efforts.

Banking Access and the Risks of Overreach

While the SPF's goal of protecting consumers from scams is commendable, its unintended consequences must be carefully managed. Banks, as key enforcers of scam detection, may adopt an overly conservative approach, further limiting their willingness to work with digital asset businesses. The rise in scam-related activities involving crypto assets, as mentioned by Sophie Gilder of Commonwealth Bank during the DECA Roundtable in June 2023, underscores the need for a balanced regulatory approach.[18]

Scams often intersect with digital assets, but this does not justify broad and indiscriminate restrictions on the entire industry.

DECA's participation in the National Anti-Scam Centre's Advisory Board reflects our commitment to supporting the fight against scams while ensuring the financial rights of Australians are not unduly restricted.[19] Our Digital Currency Exchange Working Group has been instrumental in advocating for industry-led standards that enable data sharing between exchanges and financial institutions to identify scam patterns without compromising innovation.[20]

The Role of the ACCC and Lack of Engagement with the Digital Asset Sector

The Australian Competition and Consumer Commission (ACCC), as the general regulator of the SPF, has not sufficiently engaged with the digital asset industry during the framework's development. This lack of dialogue raises concerns about the ACCC's understanding of the sector's specific risks and needs. Without proactive engagement, there is a risk that the digital asset industry will be disproportionately impacted by regulations designed for other sectors, such as banking and telecommunications.

A Risk-Based Approach: The Digital Asset Risk Management Framework (DARMF)

To address these concerns, DECA proposes the development of a Digital Asset Risk Management Framework (DARMF), tailored to the industry. This framework would allow digital asset businesses to comply with the SPF while maintaining access to banking services.

[18] https://deca.org.au/stopping-scams-blockchain-australia-roundtable/
[19] https://www.nasc.gov.au/what-we-do/how-were-run
[20] https://deca.org.au/wp-content/uploads/2024/02/BlockchainAustralia_Scams-MandatoryIndustryCodes.pdf

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Key elements of the DARMF include:

- **Sector-Specific KYC and AML Protocols:** Digital asset businesses require KYC and AML protocols that reflect the realities of blockchain technology and cryptocurrency transactions. These protocols would provide banks with the tools to assess risk without resorting to debanking.

- **Safe Harbour Provisions for Banks:** Banks should be granted safe harbour protections when they service compliant digital asset businesses. This would shield financial institutions from disproportionate penalties in cases where they act in good faith but still encounter fraud, allowing them to maintain relationships with digital asset firms rather than severing ties.

- **Transparency and Guidance:** Following Treasury's June 2023 recommendations, banks must provide transparent risk assessment standards for digital asset businesses. Clear, publicly available guidelines will ensure both banks and businesses can navigate risk management and scam prevention effectively.

- **Collaboration Between Industry and Regulators:** The SPF's multi-regulator model should be expanded to ensure regular collaboration between banks, DCEs, and regulators. By sharing actionable scam intelligence, the industry can actively participate in scam prevention efforts, while mitigating the risk of debanking.

Upholding Consumer Rights and Industry Growth

In our June 2023 media release, DECA emphasised the need for balanced security measures that do not unduly restrict consumer choice or the freedom to use digital assets. While it is essential to enhance the security of digital transactions, we must also safeguard consumers' rights to choose how they spend their money. Evidence-based decision-making is crucial to ensure that security measures provide real benefits without imposing unnecessary costs on the industry and consumers.

Singapore

Singapore has emerged as a global leader in the adoption and regulation of blockchain technology, setting an example for other countries, including Australia. The Monetary Authority of Singapore (MAS) has played a pivotal role in fostering a pro-innovation environment while maintaining stringent regulatory oversight. The MAS's Project Ubin is a notable initiative, exploring blockchain's potential in cross-border payments and securities settlement. By collaborating with major financial institutions and tech companies, Singapore has developed a framework that encourages innovation, while managing risks such as money laundering and terrorism financing.[21]

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[21] https://www.mas.gov.sg/schemes-and-initiatives/project-ubin

Australia's Treasury could follow Singapore's lead by adopting a balanced regulatory approach that fosters blockchain innovation while ensuring robust compliance with Anti-Money Laundering (AML) and Counter-Terrorism Financing (CTF) standards. Similar to MAS's approach, Australia's regulatory bodies, including the Australian Securities and Investments Commission (ASIC) and AUSTRAC, could explore pilot programs and public-private collaborations. These initiatives could enhance Australia's competitiveness in the digital finance sector while safeguarding financial stability.

By drawing inspiration from Singapore's regulatory model, Australia has the potential to create a more dynamic blockchain ecosystem that simultaneously supports innovation and addresses key regulatory concerns.

Conclusion

The Scams Prevention Framework is a crucial initiative for protecting consumers, however, it must not come at the cost of introducing unreasonable restrictions on the one in five Australian adults that invest in digital assets, nor stifle innovation in a sector that has the potential to contribute an estimated $60 billion annually to the national GDP by 2030. The debanking crisis, as acknowledged by the Treasury and the Council of Financial Regulators, must be addressed to prevent further isolation of the digital asset industry. Through the creation of a Digital Asset Risk Management Framework, safe harbour provisions for banks, and increased collaboration between industry and regulators, the SPF can meet its goals while promoting growth and innovation in Australia.

DECA remains committed to contributing to the ongoing development of Australia's digital economy and will continue to advocate for a balanced and inclusive approach to scam prevention. We look forward to engaging further with the Treasury, the ACCC, and other stakeholders to ensure the success of the SPF without compromising the future of the digital asset industry.

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About the Digital Economy Council of Australia (DECA)

The Digital Economy Council of Australia (DECA) is the peak industry body representing Australian businesses and professionals driving innovation in the digital economy through the use of blockchain technology, tokenised assets, and digital assets. DECA advocates for responsible adoption and regulation of these technologies, working closely with government and industry to ensure Australia remains a global leader in innovation, economic growth, and consumer protection.

The digital asset sector presents significant opportunities for economic expansion in Australia. According to the Tech Council of Australia, digital assets could contribute up to $68 billion annually to the economy by 2030 if Australia takes a leadership role in these technologies.[22] Moreover, tokenised assets could save Australian capital markets $17 billion annually, including savings of approximately $6 billion in equities, $4 billion in corporate debt, and $3 billion in government debt, as noted by Brad Jones, Assistant Governor (Financial System) at the Reserve Bank of Australia (RBA).[23] These figures illustrate the potential for blockchain technology and digital assets to streamline market operations, reduce costs, and stimulate broader economic growth.

In addition to driving economic activity, digital assets are becoming an essential part of personal investment portfolios. A Consumer Cryptocurrency Report (2024) highlights that 5.6 million Australians, or 27% of the population, have either owned or expressed interest in owning cryptocurrency.[24] Furthermore, Self-Managed Super Funds (SMSFs) hold $1.044 billion in crypto assets, emphasising the growing role of digital assets in retirement planning.[25] Australian-based cryptocurrency exchanges also custody approximately $14.6 billion in digital assets, underscoring the importance of secure custody standards to protect these investments and maintain market integrity.

However, the rise in scams—totaling over $2.74 billion in losses for Australians in 2023—demonstrates the urgent need for robust legislation to protect consumers and ensure the secure use of digital assets.[26] DECA is committed to working with regulators to establish a technology-neutral, fit-for-purpose regulatory framework that fosters innovation while safeguarding consumers and ensuring that Australia's digital economy thrives.

22 https://techcouncil.com.au/wp-content/uploads/2022/11/Digital-Assets-in-Australia-report-2022.pdf
23 https://www.rba.gov.au
24 https://www.statista.com/statistics/1244739/australia-cryptocurrency-ownership/
25 https://data.gov.au/data/dataset/self-managed-superannuation-funds
26 https://www.accc.gov.au/system/files/targeting-scams-report-activity-2023.pdf

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