

Session 6: Open Banking and Payments Regulation

Speaker: Daniel Knight, Partner

CPD Category: Substantive Law

2:00 PM – 3:00 PM (AEDT)



Everyone's lines are muted upon entry. We will open the lines up after the session for Q&A.



If you want to ask a question, use the chat icon (along the bottom of your screen) to send a message to the speakers.



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K&L GATES



Wednesday 21 February 2024

Open Banking and Payments Regulation

Daniel Knight, Partner | Asset Management and Investment Funds

Contents

- 01** Payments:
- Current Status
 - Regulatory Reform

- 02** Crypto:
- Current Status
 - Regulatory Reform

-
- 03** Financial Services Licensing:
- Applying for a Licence
 - Living with a Licence

-
- 04** Open Banking / Consumer Data Right:
- Technical Infrastructure
 - Legal Framework
 - Use Cases
-



Payments



Current Landscape

- AFSL required for "non-cash payment facilities"
- AML obligations apply to designated services:
 - "Remittance";
 - Issuing credit cards;
 - Acquiring card transactions; and
 - Making loans.

Reforms: Timetable

- Reforms have been "coming" for ~10 years
- Summary of proposed framework

<p>Prudential regulation Major stored-value facilities and designated PSPs</p>	<p>APRA</p>	<p>Manage financial and stability risks</p>
<p>Prudential regulation Common access requirements for payments clearing and settlement</p>		<p>Improve access to payment systems</p>
<p>Financial services regulation All PSPs performing a payment function</p>	<p>ASIC</p>	<p>Protect payment service users</p>
<p>Technical industry standards All payment system participants and payment system operators where a standard applies</p>	<p>Industry body authorised by RBA</p>	<p>Broad and consistent adoption of core standards</p>

Source: Payments System Modernisation: Regulation of payment service providers, Consultation Paper, December 2023

Reforms: Payment Functions

Payment Function	Description	Example
Stored-Value Facilities	Funds loaded onto an account or facility. Customers are able to direct the movement of these funds, for the purposes of paying for goods or services, transferring to another person, or withdrawing the funds.	Current Purchased Payment Facilities, digital wallets that store value, value stored on online accounts, virtual and physical pre paid cards.
Issuance of Payment Stablecoins	Issuers of payment stablecoins that store value and control the total supply of payment stablecoins through issuance and redemption activities.	Payment stablecoin issuers.
Payment Instruments	A personalised or individualised set of procedures that allows a payer to instruct an entity with which its funds are held to initiate a transfer of funds to a payee.	Issuers of digital and physical cards (e.g. debit and credit cards, Buy Now Pay Later cards), cheques.
Payment Initiation Services	The initiation of payments from a payer to a payee by a third-party entity, at the request of a customer. The entity initiating a payment is a third party to the payment account where the payer's funds are held.	PayTo services, recurring payments initiated by a third party, direct debit or credit services.

Reforms: Payment Functions Cont.

Payment Function	Description	Example
Payment Facilitation Services	The process of entering into the possession of funds for the purpose of facilitating a transfer between a payer and payee. This includes for the purpose of acquiring, aggregating, disbursing, or otherwise transferring of funds within Australia.	Merchant acquirers, payment facilitators and aggregators, certain marketplaces and platforms, payout providers, certain payment processors, domestic money transfer service providers.
Payment Technology and Enablement Services	Payment specific services provided by third parties that enable payments to be made. These services enable a transfer of funds to occur but do not enter into possession or control of the funds.	Passthrough digital wallets, payment gateways.
Cross-border Transfer Services	A service that transfers or enables the transfer of funds from Australia to a payee outside of Australia, and/or of funds from outside of Australia to a payee in Australia.	Certain remittance providers, or international money transfer service providers.

Proposed Reforms

Licensing

- Providers would need an AFSL:
 - Likely to capture a large number of entities not currently subject to licensing:
 - Including “marketplaces”.
- Providers of large Stored Value Facilities:
 - >AU\$100 million of stored value; and
 - APRA licensing.

Proposed Reforms Cont.

Transition

- Deeming for existing AFSL holders
- All others would need to apply
- Proposed transition:
 - six months for application to be "accepted";
and
 - +12 months for licence to be granted.
- Significant ASIC workload

Proposed Reforms Cont.

Obligations

- Client money:
 - 1:1 safeguarding.
- Financial obligations
- Disclosure:
 - PDS;
 - FSG; and
 - TMD.
- External dispute resolution

Reforms: Proposals

Additional Obligations for SVF Issuers

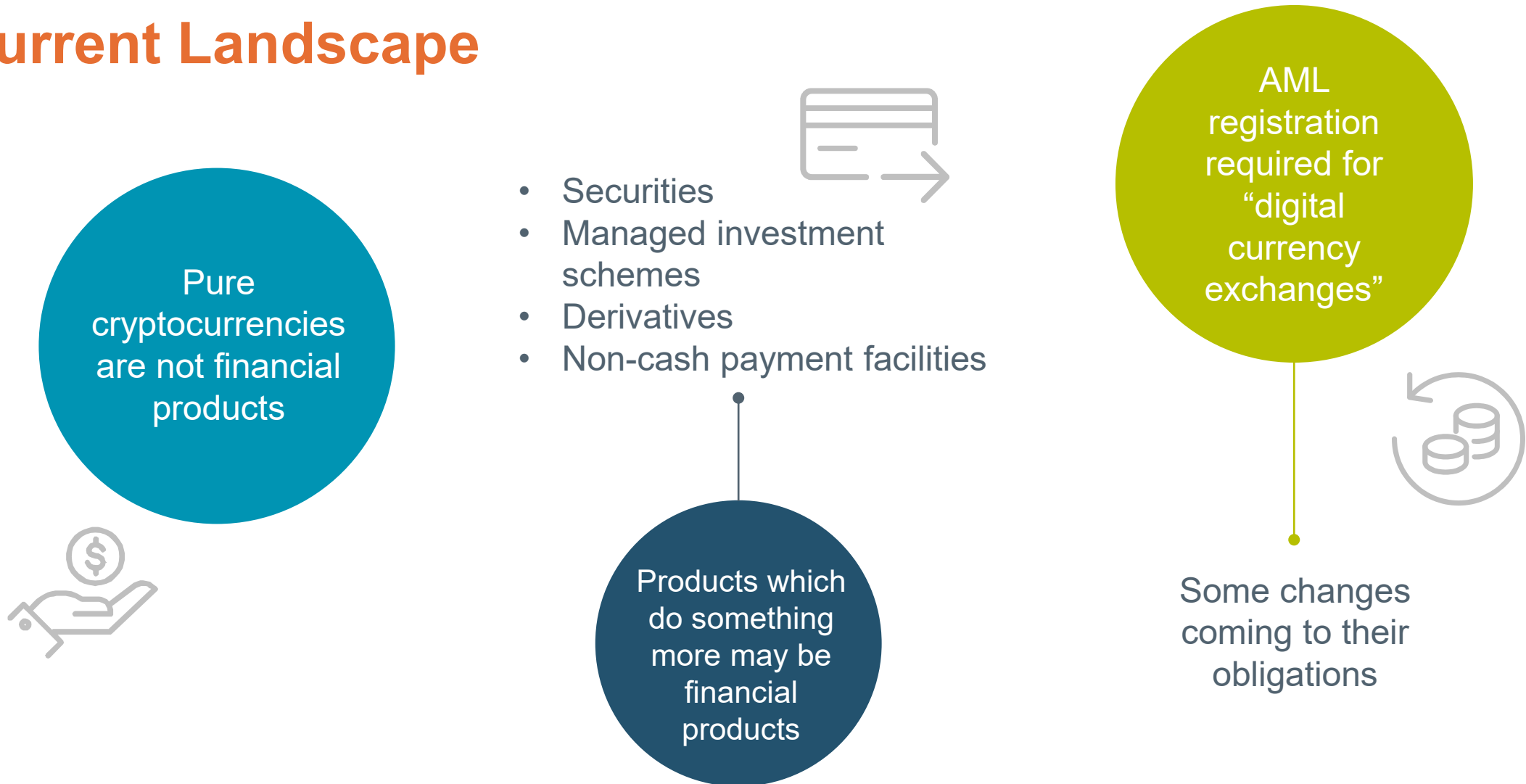
- Supervision by APRA:
 - Similar to a bank; and
 - Don't yet know what adjustments will be made.
- Regulatory capital
- Shareholder restrictions
- Prudential standards



Crypto



Current Landscape



Current Areas of Contention

Block Earner

- ASIC's first win against the crypto industry
- ASIC commenced proceedings in November 2022
- Argued Block Earner required an AFSL for its fixed yield earning crypto product
- On 9 February 2024, the Federal Court found the product should have been registered as a managed investment scheme and was an unlicensed financial product offered to retail investors
- Penalties have not yet been determined

Current Areas of Contention

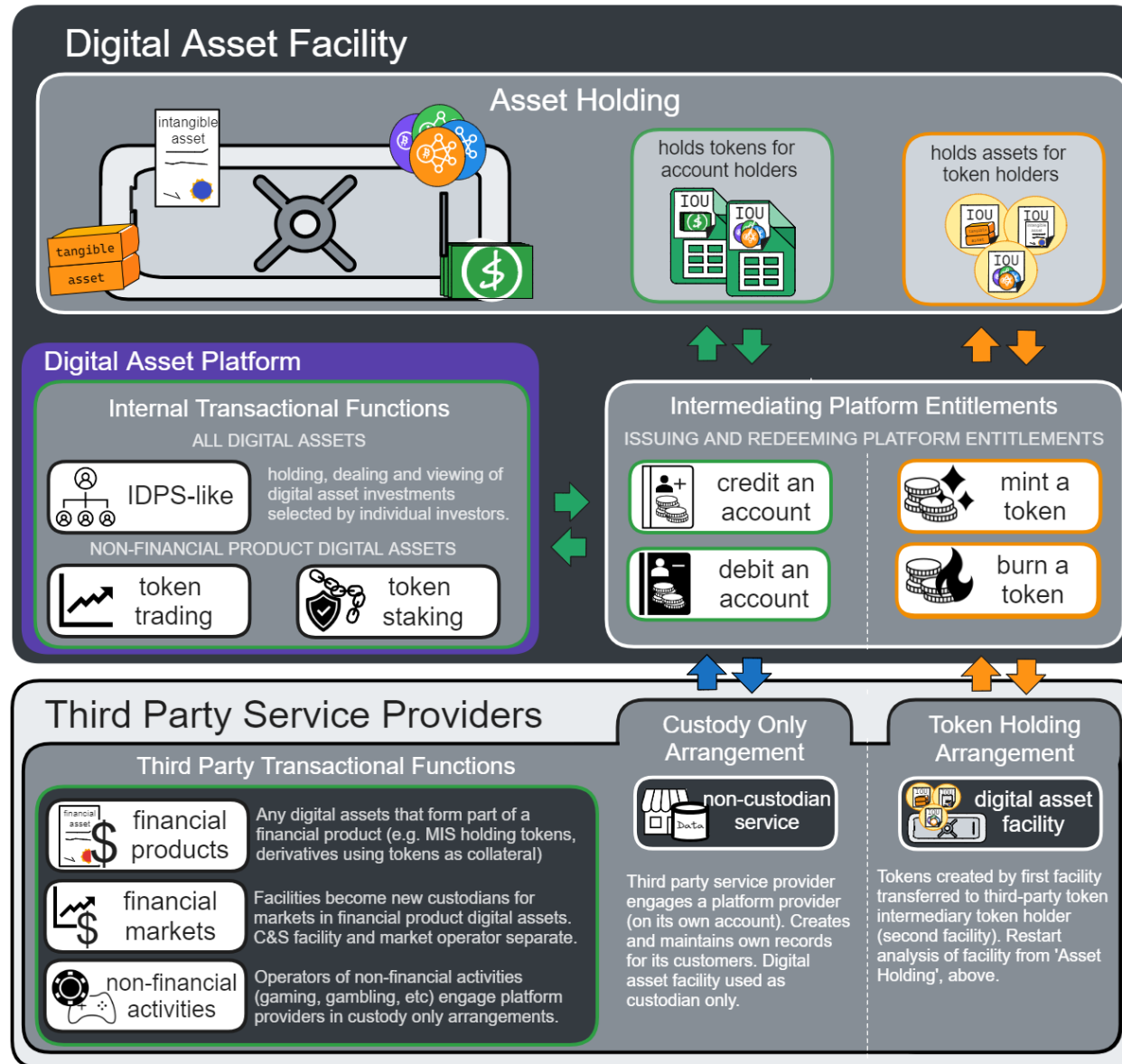
AFSL Holders Offering Crypto Trading

ASIC statement: “Crypto-assets are high-risk, volatile and complex. Brokers should think very carefully before offering crypto-assets through their share trading apps. The differences in risks and protections must be made clear to investors. We expect brokers to do the right thing by their clients.”

Proposed Reforms

- Licensing framework for digital asset service providers
- Key targets:
 - Crypto exchanges; and
 - Crypto custodians.
- Licensing coupled with tokenisation response:
 - NFTs;
 - DeFi products;
 - Stablecoins; and
 - Tokenisation of real world assets.

Proposed Reforms



Specific Obligations



Standard form
**platform
contracts**



Minimum
standards for
**holding
tokens**



Standards for
**custody
software**



Standards
when
**transacting in
tokens**



Licensing



Applying for a Licence

- ~12 month process
- Key documents:
 - Application form;
 - Core proof documents;
 - Supporting materials; and
 - Additional proof documents.
- Demonstrating organisational competence:
 - Importance of responsible managers.

Living with a Licence





Open Banking



What is it?

- APIs for securely sharing bank transaction data



Stephen Jones

Minister for Financial Services

“ “ We believe the Consumer Data Right can be used to make a real, lasting difference

I pointed out what I think is pretty obvious: that a lot of money has been spent on CDR, both by the Government and by the financial sector, for not a great amount of take-up, and not a great amount of use cases. ...

More broadly on CDR, the strategy that we have set out for the next two years is aimed at driving take up and driving use cases. It is an attempt to deepen CDR's place where it already exists, let the system mature, and create space for uses cases to grow. As I've said plenty of times, we all know the potential benefits of CDR. But for CDR to last, we need to see them become real. ” ”

Intersekt Conference, 30 August 2023

Where are we?

- API requirements for banks and other data holders
- Consent framework for sharing with fintechs and others
- Enhanced privacy regime
- Access models:
 - Intermediary / CDR representatives;
 - CDR insights; and
 - Issues with derived data.
- Energy CDR commenced October/November 2022

Where are we Going?

- Expanding to other industries:
 - Telecommunications and non-bank lending:
 - From November 2024.
 - Others may follow.
- Business consumer disclosure consent
- Softening once general privacy laws are upgraded

Use Cases



Loan Applications



Budgeting Apps

Consolidated views across telecommunications, utilities, banking, super, investments

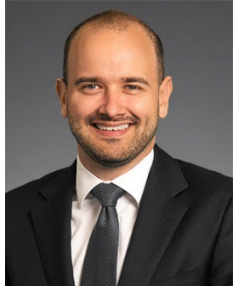


Taking Action Based on Insights



Others?

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