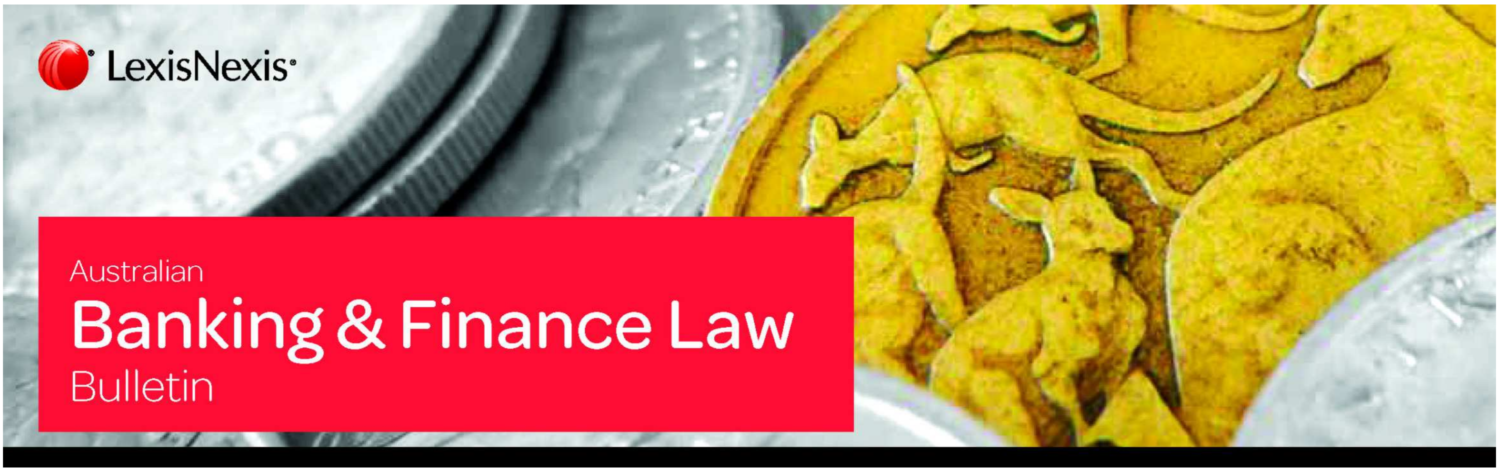

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Contents

Information contained in this newsletter is current as at June 2026

General Editor's note

Karen Lee *LEGAL KNOW-HOW*

Welcome to this edition of the *Australian Banking and Finance Law Bulletin*.

As winter settles in, I am pleased to bring you another edition of the bulletin featuring a diverse range of topics from across the banking and finance landscape. Whether your interests lie in enforcement, consumer credit or emerging digital asset markets, this edition offers plenty of thought-provoking reading for the colder months ahead.

We begin with an article by Editorial Panel member **Benjamin Shaw** (Dunham Shaw), titled "The invalidly appointed receiver: securing relief from liability". Ben examines the consequences of an invalid receiver appointment and the circumstances in which relief may be available under s 419(3) of the Corporations Act 2001 (Cth). Drawing on recent authority, he provides practical guidance on the steps receivers should take to establish reasonable grounds for believing that their appointment is valid, highlighting the importance of careful due diligence and contemporaneous records.

Our second article, "Money3 Loans Pty Ltd fined $1.55 million for responsible lending breaches: Australian Securities and Investments Commission (ASIC) v Money3 Loans Pty Ltd (No 3)", is contributed by **Brian Kennedy** and **Martha Banda** (Victorian Bar). The authors analyse the Federal Court's findings concerning responsible lending obligations under the National Consumer Credit Protection Act 2009 (Cth), including the distinction between deficiencies in individual lending assessments and broader allegations regarding training, supervision and compliance systems. The case provides valuable insights into the court's approach to responsible lending enforcement and the factors relevant to penalty assessment.

We conclude with **Adam Versaci** (Squire Patton Boggs) and his article, "Tokenisation in Australia: when does a token become a financial product? A legal analysis of common structures". As tokenisation continues to attract significant attention across financial markets, Adam examines how common tokenisation structures may be characterised under Australian law. The article explores the distinction between technological innovation and legal characterisation and considers when tokenised arrangements may constitute shares, debentures, interests in managed investment schemes or other financial products, together with the regulatory consequences that may follow.

Together, these articles reflect both the enduring legal issues facing banking and finance practitioners and the new challenges emerging as markets, products and technologies continue to evolve.

I hope you enjoy this edition.

As always, I welcome feedback from readers and would be delighted to hear from anyone interested in contributing to a future edition of the bulletin. The continued support of our authors, Editorial Panel and readers is what makes the bulletin possible and I thank you all for your ongoing engagement.

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The invalidly appointed receiver: securing relief from liability

Benjamin Shaw *DUNHAM SHAW*

The emergence of private credit as a force in the commercial lending market and a slowing economy, is a combination which is likely to see a greater number of lenders in unfamiliar territory; the enforcement of their security by the appointment of receivers.

This article examines issues that arise in connection with the validity of such appointments, particularly for the receiver appointed. The haste with which appointments are often made can preclude the calm interrogation of the grounds upon which a valid appointment relies. There might also be commercial pressures at play, giving rise to a reluctance on the part of practitioners to be seen to be too pernickety in the face of reassurances proffered by would be appointors.

The frequency with which challenges to the validity of private appointments arises in practice, which might be expected to increase as the prevailing economic conditions degrade, makes the issue of the liability of the improperly appointed receiver and how they may relieve themselves of that liability worth revisiting.

Consequences of improper appointment

Issues relevant to the validity of an appointment include whether the security interest or loan agreement secured is valid, whether an event of default stipulated in the security agreement has occurred and whether the secured party has validly exercised the power to appoint a receiver. Questions as to the occurrence of an event of default can become challenging where the event relied on is a non-monetary default, such as a "material adverse change".

The dealings with the property of a corporation of a receiver appointed in the absence of proper grounds under the terms of a security interest in that property will, unsurprisingly, give rise to liability on the part of the receiver. For example, the taking of control of the company property without authority may amount to trespass or conversion.

While the commercial implications of an improper appointment can usually be managed by a deed of indemnity with the receiver's appointor there will be other important reasons, including reputational, why a receiver would take care to avoid an improper appointment.

Where there is doubt about the validity of an appointment, the company or any of its creditors may apply to the court seeking declaration as to the validity of the appointment. Such applications are a common vehicle for the seeking of relief against the receiver appointed in relation to the acts they have purported to undertake on the company's behalf.

A receiver or the appointing creditor may also avail themselves of s 418A of the Corporations Act 2001 (Cth) (Corporations Act) to confirm the validity of the appointment.

Relief from liability

Section 419(3) of the Corporations Act operates to relieve an invalidly appointed receiver in certain circumstances. It operates where:

- a receiver has entered into possession or control of the company's property purporting to do so as an appointed receiver, but where the appointment is invalid and
- civil proceedings arising out of an act alleged to have been done by the receiver are brought

The provision confers on a court a discretion to relieve the receiver of liability and instead attribute liability to the receiver's appointor, where the court is satisfied that the receiver believed on reasonable grounds that the controller had been properly appointed.

Saafin Constructions

Some guidance as to the steps a practitioner should take to obtain the relief may be found in the decision of *Saafin Constructions Pty Ltd (In liq) v MAG Financial and Investment Ventures Pty Ltd*[1] (*Saafin Constructions*).

In that case, the question of the validity of the appointment of receivers arose because the loan agreement which was asserted to give rise to the debt secured by the security under which the receivers were appointed was found to be unenforceable under s 39 of the Consumer Credit (Victoria) Act 1995 (Vic), which rendered the related security void. While this finding was overturned on appeal,[2] the first instance decision remains a useful guide as to the steps expected of a receiver to establish reasonable grounds for a valid appointment, with the court ultimately declining to exercise its discretion to relieve the receivers from liability.

Further complicating the appointment in *Saafin Constructions* was the fact that the defaults relied on under the (void) security were three non-monetary defaults. The first was the failure to execute a sale contract required by a settlement deed related to the (unenforceable) loan agreement. The second relied on the termination of a building contract as a "material adverse change" under the security. The third involved the giving of "incorrect, misleading or untrue information" as to the value of a commercial unit.

Of these three grounds relied on, the court held that only the first would have been a relevant event of default had the security been valid.

The receivers' evidence of their belief as to the validity of their appointment and the existence of reasonable grounds to support it, focused on a pre-appointment meeting with their appointor and his solicitor. During that meeting relevant loan and security documents and defaults thereunder were discussed, as were the difficulties associated with the development, disputes arising therefrom and the financial difficulties the company was experiencing. The receivers' belief as to the validity of their appointment was based on the view that the termination of the building contract amounted to a material adverse change. They adverted to having received legal advice following the meeting, following which they were "comfortable to take the appointment". They relied further on not having been alerted to anything which might have put them on notice that their appointment was invalid.

While the court accepted the receivers' evidence as to their belief that the appointment was invalid, it rejected their argument that there were reasonable grounds to support that belief on a number of bases. First, their evidence of the steps taken was too vague to enable the court to assess their belief. There was no evidence of what documents were provided to them at the meeting prior to their appointment. Secondly, there was no evidence of the substance of the legal advice obtained. These gaps in the receivers' evidence precluded the court from assessing the reasoning that supported the receivers' belief. Thirdly, while the receivers relied on the termination of the building contract as amounting to a material adverse change, the termination did not occur until the day after the receivers' meeting with their appointor and lawyer. Moreover, the receivers did not depose to having obtained legal advice on whether the termination amounted to a material adverse change, including their appointor's formation of his opinion to that effect.

The court's doubts as to the existence of reasonable grounds were enhanced by the absence of any contemporaneous notes concerning the background matters disclosed at the meeting, the advice received or the event of default relied on as the basis for their appointment. Finally, the receivers' failure to respond to requests to identify the basis for their appointment was also found to be consistent with the receivers not having formed an independent view on the basis for their appointment.

Conclusion

The court's approach in *Saafin Constructions* is instructive as to the steps practitioners should take to obtain the protection conferred by s 419(3). Clearly, the onus is on practitioners to take positive steps to independently satisfy themselves as to the grounds for their appointment. There is no presumption of the existence of grounds for an appointment which could entitle a proposed appointee to accept an appointment unless put on notice of a defect.

Of course, some appointments, grounded on a monetary default under a loan agreement with a reputable financial institution, will not require much interrogation to identify reasonable grounds for belief that the appointment is proper. However, even appointments based on monetary defaults can require close scrutiny if there is reason to doubt the validity of the loan agreement. Where timing allows, independent legal advice prior to the acceptance of an appointment will, unless that advice is plainly wrong, presumably justify the exercise of the discretion to relieve a receiver of liability.

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Footnotes

1. *Saafin Constructions Pty Ltd (In liq) v MAG Financial and Investment Ventures Pty Ltd* [2021] VSC 489; BC202107519.
2. See B Shaw "A sense of purpose: when is credit caught by the Code?" (2023) 39(1) *BLB* 3.

Money3 Loans Pty Ltd fined $1.55 million for responsible lending breaches: Australian Securities and Investments Commission (ASIC) v Money3 Loans Pty Ltd (No 3)

Brian Kennedy *and* ***Martha Banda*** *VICTORIAN BAR*

Background

Money3 Loans Pty Ltd (Money3) offered, to consumers whose income consisted entirely of government benefits, a car finance product called the "micro motor" loan. This comprised of an amount of $8000 advanced to purchase a vehicle, as well as additional amounts approximating $3000 in respect of application fees, broker fees and insurance warranties.[1] The product came to Australian Securities and Investments Commission (ASIC)'s attention through consumer advocates and litigation in the Federal Court followed, with ASIC contending that Money3 contravened its responsible lending obligations and general conduct obligations in respect of five credit contracts that it entered with six consumers (the credit contracts). The proceedings fall under ASIC's enforcement priority targeting misconduct in lending that carries what it deems a high risk of significant consumer harm and exploitation of financial vulnerability.

Money3, like any credit licensee, operates subject to responsible lending provisions under the National Consumer Credit Protection Act 2009 (Cth) (Act), which imposes a structured sequence of responsible lending obligations to (inter alia) make reasonable inquiries into and verify a consumer's financial situation before determining suitability. There are also general conduct obligations on licensees to ensure that representatives comply with the Act through adequate training and competency evaluation.

A summary of salient provisions is included as an annexure to this article. References to legislation refer to the Act.

The proceedings

The court found that each of the six consumers suffered financial hardship shortly after entering a credit contract. This was supported by findings that Money3's credit analysts failed to make reasonable inquiries to ascertain and to take reasonable steps to verify the consumer's financial situation while assessing the bank statements against declared living expenses.[2] The court found that in each case, a cursory consideration of the bank data would have revealed that the consumer's actual living expenses exceeded the declared weekly (or monthly rounded) amounts and that Money3 had reliable data to undertake reasonable inquires and verification but failed to use it. Instead, the credit analysts had applied an arbitrary amount for living expenses, contrary to Money3's internal policies and procedures.[3]

The court found that Money3 contravened two responsible lending provisions:[4]

- by entering the credit contracts without having first completed the suitability assessment, enquiries and verifications steps required and
- by failing to make reasonable inquiries about the consumers' requirements and objectives, their financial situation and to take steps to verify the consumers' financial situation

Failures in assessment not attributable to senior management and not systemic

This was argued with limited success, as illustrated by the following findings in Money3's favour.

First, the court rejected a substantial part of ASIC's case — that Money3 had failed its obligation under s 47, to ensure that its representatives complied with their statutory obligations through adequate training and competency evaluation. The court found that Money3 had adequate internal procedures and guidelines in place requiring analysts to review bank statements and a strong compliance culture. It found that Money3 was not in breach of its training and compliance obligations.[5]

Secondly, ASIC failed to establish that Money3's senior management was aware of the nature and scope of the conduct that led to the contraventions.[6] ASIC had contended that the practices of the credit analysts issue had been raised at team meetings at least seven times without effective action[7] and further, that analysts were trained by shadowing existing ones — a practice which, ASIC submitted, could reasonably be expected to perpetuate non-compliant behaviour.[8]

Thirdly, the court's finding that Money3's internal procedures mandated the thorough review of bank statements and appropriate further inquiries defeated ASIC's contention that Money3 derived a benefit from the contravening conduct, through saving time and costs by avoiding its statutory obligations.

ASIC's case framed broadly with narrow success

In closing submissions, ASIC identified 17 contraventions founded on 81 separate findings of fact and the court was critical of the scope and alternative contentions, suggesting that the most serious examples of the alleged conduct ought to have been selected and prosecuted, rather than pressing multiple permutations of each contravention in respect of each of the six consumers:

> Stepping back and through an objective lens, the question that s 37M(1) of the FCA Act requires a party to consider, before commencement of a proceeding, is how it may be framed, arranged and prosecuted as quickly, inexpensively and as efficiently as possible. In a civil penalty proceeding, the issue is not how many contraventions (often a related course of conduct) can be established, but how many are material to achieve the purpose of specific and general deterrence? Another question is whether it is efficient to press multiple claims of the same type of conduct where selection of the best (or worst example) run as a separate case will achieve the regulator's objective? Relatedly, will proceeding by reference to an example case with a limited number of the more egregious contraventions, if established, likely result in an agreed penalty proceeding for the balance of the claims?[9]

The court, observed that working through ASIC's "sprawling"[10] case had consumed an inordinate and disproportionate amount of the judicial and administrative resources of the court.[11]

Final comment: relief and considerations on penalty where justification for defence

ASIC had sought declaratory relief, injunctions, compliance orders and pecuniary penalties.[12]

Money3 argued (inter alia) that because no consumer suffered financial harm and the court found none of the loans were unsuitable, there was no real loss and this should result in a lower penalty. The court disagreed, stating that the absence of actual loss or damage is neutral in this case as the inquiry and verification obligations are not causally related to subsequent loss.[13]

To ASIC's submission that Money3 contested every allegation and never admitted responsibility for its wrongdoing — and that this should be considered in assessing relief — the court emphasised ASIC's limited victory, noting that Money3 successfully defended the majority of the contraventions alleged, along with the overarching s 47 obligations claim.

Money3 was ordered to pay a pecuniary penalty of $1,550,000 in respect of its contraventions of ss 128 and 130(1), with a single penalty imposed in respect of each credit contract.

Annexure

Section 128(c): requires a licensee to make an unsuitability assessment before entering into a credit contract, as prescribed by s 129.

Section 128(d): requires a licensee, before entering into a credit contract, to have first completed the inquiries and verification steps required by s 130(1).

Section 130(1) which requires a licensee, before making the unsuitability assessment under s 128(c), to:

- make reasonable inquiries about the consumer's requirements and objectives (s 130(1)(a))
- make reasonable inquiries about the consumer's financial situation (s 130(1)(b)) and
- take reasonable steps to verify the consumer's financial situation (s 130(1)(c))

Section 131(1) requires a licensee to assess a credit contract as unsuitable where it is likely the consumer would be unable to meet their financial obligations without substantial hardship, or where the contract would not meet the consumer's requirements or objectives.

Section 133(1) prohibits a licensee from entering into a credit contract that is unsuitable for the consumer.

Section 47(1)(e) requires a licensee to take reasonable steps to ensure that its representatives comply with the credit legislation.

Section 47(1)(g) requires a licensee to ensure that its representatives are adequately trained and competent to engage in the credit activities authorised by its licence.

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Footnotes

1. *Australian Securities and Investments Commission (ASIC) v Money3 Loans Pty Ltd (No 3)* [2025] FCA 1086; BC202513993 at [4].
2. *Australian Securities and Investments Commission (ASIC) v Money3 Loans Pty Ltd (Penalty)* [2026] FCA 506; BC202606003 at [17].
3. Above, at [18].
4. Above n 1, at [676].
5. Above n 2, at [41].
6. Above n 2, at [42].
7. Above n 2, at [40].
8. Above n 1, at [723].
9. Above n 1, at [8].
10. Above n 2, at [66].
11. Above n 1, at [7].
12. Above n 1, at [1].
13. Above n 2, at [39].

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Tokenisation in Australia: when does a token become a financial product? A legal analysis of common structures

Adam Versaci *SQUIRE PATTON BOGGS*

Introduction

On 8 April 2026, the Corporations Amendment (Digital Assets Framework) Act 2026 (Cth)[1] (Digital Assets Framework) received royal assent. The Act has accordingly moved beyond the proposal stage and is now enacted law, with the new regime to commence 12 months after royal assent and industry participants then expected to navigate the applicable transition and compliance timetable. This article turns to a related but distinct question: the common tokenisation structures we have seen being used in practice and how those structures may be analysed under Australian law.

Tokenisation is often described as the process of putting real-world assets on-chain. That is commercially helpful, but legally it can be misleading, particularly in Australia.

Under Australian law, tokenisation is not a standalone legal category. It is a method of representing, transferring and administering rights using digital infrastructure. The real question is not whether an asset has been tokenised, but what legal rights the token holder actually receives.

That distinction matters. Much of the global commentary on real-world asset tokenisation still uses broad labels such as "security token", "real-world asset token" or "direct asset tokenisation", often drawing on US or offshore concepts. In Australia, those labels do not do the legal work. The Australian Securities and Investments Commission (ASIC) says that international digital asset categories, such as security tokens, utility tokens and exchange tokens, do not necessarily translate to equivalent products in Australia and that the definition of a financial product in Australia is often broader than comparable concepts in other jurisdictions.[2]

Here, the same tokenised arrangement may be characterised as a share, debenture, interest in a managed investment scheme (MIS), derivative, noncash payment facility, or not a financial product at all, depending on how it is structured.

That characterisation exercise is not merely technical. It drives the regulatory consequences such as, who needs to hold an Australian Financial Services Licence (AFSL), what disclosure is required under offer documentation and at law, whether custody rules apply and whether a secondary trading venue may require market infrastructure permissions under Australian financial services law.

That is the lens through which Australian issuers, platforms, custodians and investors should be analysing tokenisation projects.

Practical structuring and regulatory consequences

A more useful approach is, therefore, to begin with the common tokenisation structures currently seen in the market and then assess how Australian law is likely to analyse each. In broad terms, those structures include:

- Tokenised special purpose vehicle (SPV) structures, where the token represents rights in a vehicle holding the underlying asset.[3]
- Tokenised feeder or pooled investment structures, where token holders obtain exposure to a fund or common enterprise.[4]
- Tokenised debt instruments, where the token evidences rights to repayment of principal and usually interest.[5]
- Direct asset tokenisation models, where the token is intended to correspond more directly to the underlying asset or asset-backed entitlement.[6]

Each structure can produce a different regulatory outcome under Australian law. Depending on the rights attached and the surrounding legal arrangement, the tokenised product may amount to a share, debenture, interest in a MIS, derivative or noncash payment facility, or may fall outside the financial product perimeter altogether. Likewise, the platform or service provider involved may need to consider not only AFSL-related issues, including under the new Digital Assets Framework laws,[7] but also whether its activities amount to custody, dealing, arranging or even operating a financial market.

The practical point is that tokenisation projects should usually begin with analysis regarding proper legal characterisation of the token, not the technology behind it. The legal analysis should identify the issuer, the asset, the token holder's rights, the transfer mechanism, the custody model, the platform functions and the intended investor base. Those matters will usually determine the regulatory pathway.

Tokenised SPVs or nominee structures

One of the most common tokenisation models is to place an asset into a company, trust or SPV and issue tokens representing an interest in that structure.

Commercially, this is attractive. It can help with ring-fencing, governance and isolating risk. But in Australia, using an SPV does not answer the regulatory question. It simply changes where the legal analysis starts.

If the token carries equity-style rights, it may amount to a share. For example, if the token gives the holder rights to dividends, voting, participation in surplus assets or other membership-style rights in a company, the analysis may point toward a share or an interest in shares.

If it gives a right to repayment of money, it may look like a debenture. This is particularly relevant where the token represents a debt claim against the issuer, even if that claim is recorded on-chain and transferable through a digital wallet.

If investors contribute funds into a pooled arrangement and do not have day-to-day control, it may instead be an interest in a MIS. That may be the case even where the commercial materials describe the token as conferring "fractional ownership" of an underlying asset. The substance of the arrangement, not the label, will be critical.

That key point from an Australian perspective is that an SPV may be a useful structuring mechanism, but it is not, by itself, a regulatory solution.

For businesses building in this space, the practical issue is that the legal wrapper and the token terms need to be analysed together to ascertain what, if any, licensing requirements arise. It is not enough to say that the asset sits in a separate vehicle.

Specifically for issuers, this means the constitution, shareholders' agreement, token terms, custody arrangements and platform rules need to be consistent. For platforms and intermediaries, the key question will be whether they are merely providing technology or whether they are arranging, dealing in, distributing or facilitating secondary trading in a financial product.

Tokenised feeder funds

Tokenised feeder structures are increasingly being used to bring traditional fund exposures on-chain. Investors subscribe into a feeder vehicle and that vehicle invests into a master fund or another upstream structure. The token represents the investor's exposure to the feeder.

In Australia, many of these structures will need to be analysed under the MIS regime.[8] If investors contribute money into a pooled or common enterprise to generate benefits and they do not have day-to-day control, the fact that their interest is tokenised does not change the core legal character, ie it may, in fact, be a MIS interest.

That means tokenisation does not displace the normal Australian funds analysis. Retail structures may trigger scheme registration, responsible entity and AFSL requirements. Even wholesale-only structures still require careful thinking around licensing, disclosure perimeter, distribution controls and custody.

This is particularly important for platforms that distribute tokenised fund interests. Even if the issuer is responsible for the fund structure, the platform may separately need to consider whether it is arranging or dealing in MIS interests, providing financial product advice, or operating a secondary transfer facility.

In many cases, tokenisation in Australia is better understood not as the emergence of a new asset class, but as a new technological rail for the issuance, distribution, administration and transfer of existing legal rights and products.

Tokenised debt

Tokenised debt instruments are one of the more straightforward categories conceptually. If the instrument embodies a promise to repay principal, usually with interest, it is likely to be analysed in Australia as a debenture.

That does not make it legally simple in every respect. It means the core product analysis is familiar.

The blockchain layer may improve settlement, transfer processes, coupon administration and register management. But it does not change the legal substance of the product. A tokenised bond is still likely to be treated as a debt security first, and a digital instrument second.

For issuers, that means ordinary securities law questions still matter. For platforms and intermediaries, the harder issues may be whether they are issuing, arranging, dealing, making a market or providing custody in relation to those tokenised debt products.

For banking and finance lawyers, tokenised debt is likely to be one of the more familiar and potentially practical early use cases. The legal questions will often look like conventional debt capital markets or structured finance questions, such as, who is the issuer, what is the repayment obligation, what is the ranking, is the instrument secured, who maintains the register, how are transfers restricted, how are amendments approved and what happens on default?

Tokenisation adds an operational layer to those questions. The documentation needs to address whether the on-chain record is definitive or merely evidentiary, how lost private keys are dealt with, whether transfers can be frozen or reversed in limited circumstances and how investor communications, consents and payments are administered.

Direct asset tokenisation

Direct asset tokenisation is often marketed as the cleanest structure, as the token is said to represent the asset itself, with no SPV or fund wrapper in between.

In Australia, this is usually where complexity returns.

A blockchain record does not automatically replace the underlying title system, statutory register or relevant property law requirements that apply to the asset. Whether a token transfer actually transfers legal or beneficial ownership depends on the surrounding legal arrangements, not merely on the fact that the token moves on-chain.

For assets that are fungible, a direct tokenisation model may be more workable, particularly where there is a robust custody and allocation framework. By contrast, for real property, registrable interests and other assets dependent on formal title systems, "direct" tokenisation is often more difficult in practice than the marketing may suggest.

That is why many so-called direct tokenisation models still end up relying on some off-chain legal architecture, whether that is a trust, custody arrangement, nominee model or contractual rights framework.

This is a particularly important point for asset-backed tokenisation. It is not enough to say that a token is "backed" by an asset. The legal analysis needs to identify who owns the asset, whether it is held on trust or on custody terms, whether it is segregated or pooled, what redemption rights exist and what token holders receive if the issuer, custodian or platform becomes insolvent.

For financiers, those questions also affect security and enforcement. A lender taking security in a tokenisation structure will need to understand whether its collateral is the token, the underlying asset, a contractual claim, a custody entitlement, a bank account, a wallet or some combination of those rights. Control of a wallet may be commercially useful, but it will not necessarily answer questions of legal title, perfection or priority.

The characterisation question: substance over form

In Australia, legal risk often lies less in the token itself than in the surrounding functions it enables or supports, including custody, wallet operation, payment functionality, secondary trading, settlement and market operation.

A platform may describe itself as merely facilitating transfers, but where it brings together buyers and sellers of tokenised financial products in an organised way, the better view may be that it is operating regulated market infrastructure. Likewise, a tokenisation provider may present as a technology business while, in substance, undertaking regulated activities such as issuing, arranging or providing custody.

The same point applies to intermediaries. A broker, arranger, adviser, marketplace, custodian or wallet provider may have a different regulatory exposure from the issuer itself. The relevant question is not only "what is the token?" but "what role is each party performing in relation to the tokenised product?".

In practice, this is where many tokenisation businesses will require the closest legal scrutiny. The critical question is often not "what is the token?" but "what function is each participant in the tokenisation stack actually performing?".

That is also where the Digital Assets Framework will need to be considered alongside the existing financial services regime. A business may need to consider whether it is operating a digital asset platform or tokenised custody platform,[9] but that does not necessarily exhaust the analysis. If the underlying product is a share, debenture, MIS interest, derivative or non-cash payment facility, the existing Corporations Act 2001 (Cth) financial product analysis remains relevant.

Practical observations for market participants

For issuers, the starting point should be product characterisation. The token terms, disclosure materials, investor onboarding, custody arrangements and marketing language should all align with the legal rights actually being issued. If the legal rights are debt rights, they should be documented and described as such. If the structure is a pooled investment, the MIS analysis should be confronted directly rather than avoided through tokenisation language.

For platforms, the key issue is role clarity. A platform that only provides technology may have a different regulatory profile from one that arranges offers, receives applications, facilitates secondary trading, holds client assets or controls settlement. The more the platform controls the economic lifecycle of the tokenised product, the more likely it is that financial services licensing, market licensing or custody issues will arise.

For intermediaries, including brokers, arrangers, custodians and advisers, tokenisation should not be treated as a regulatory gap. If the underlying tokenised product is a financial product, ordinary dealing, arranging, advice and custody concepts may apply. This is particularly important where intermediaries are involved in distribution to Australian investors or facilitating liquidity after issuance.

For banking and finance lawyers, the opportunity is to bring familiar structuring discipline to a new technological rail. Tokenisation does not remove questions about ranking, recourse, security, insolvency, transferability, enforcement, payment mechanics and investor consent. In many cases, it makes those questions more important because the on-chain and off-chain arrangements need to work together.

Conclusion

Tokenisation does not remove the need for legal characterisation. In Australia, it usually makes that analysis more important.

The better view is not that tokenisation creates a new legal category. Rather, tokenisation creates a new way of issuing, transferring, administering and settling legal rights that Australian law already knows how to classify.

For some structures, the position may be clear. The token may simply represent a share, debenture, managed investment scheme interest, derivative or payment facility. For others, the legal analysis will depend on how the structure works in practice, including the rights attached to the token, the asset it relates to and the roles of the issuer, custodian, platform and investor.

The practical challenge for issuers, platforms and intermediaries is therefore to ensure that the legal structure, regulatory analysis, disclosure, custody model and technology stack all point in the same direction. The token may be new. The characterisation exercise is not.

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Footnotes

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2. Australian Securities and Investments Commission, Digital assets: Financial products and services (Information Sheet 225), April 2026, accessed 10 June 2026, www.asic.gov.au/regulatory-resources/digital-transformation/digital-assets-financial-products-and-services.
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5. Hong Kong Monetary Authority “HKSAR Government’s inaugural tokenised green bond offering” media release (16 February 2023) www.hkma.gov.hk/eng/news-and-media/press-releases/2023/02/20230216-3/.
6. Tether Gold, Frequently Asked Questions, accessed 10 June 2026, available at https://gold.tether.to/faq.
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8. Corporations Act 2001 (Cth), Chs 5 and 7.
9. Above n 1.

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