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Tokenisation in Australia

Common Structures and How They Are Interpreted Under Australian Law

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On 8 April 2026, the Corporations Amendment (Digital Assets Framework) Act 2026 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. In our earlier commentary, we addressed the key features of the legislative framework itself. 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", "RWA 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 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.[1]

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 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:

(a) Tokenised special purpose vehicle (SPV) structures, where the token represents rights in a vehicle holding the underlying asset

(b) Tokenised feeder or pooled investment structures, where token holders obtain exposure to a fund or common enterprise

(c) Tokenised debt instruments, where the token evidences rights to repayment of principal and usually interest

(d) Direct asset tokenisation models, where the token is intended to correspond more directly to the underlying asset or asset-backed entitlement

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 Australian Financial Services Licence (AFSL)-related issues, including under the new Digital Assets Framework laws, but also whether its activities amount to custody, dealing, arranging or even operating a financial market.

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. If it gives a right to repayment of money, it may look like a debenture. 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.

1 Australian Securities and Investments Commission, "Digital assets, financial products and services", Information Sheet 225, March 2026.

That is a key Australian point. 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.

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. 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, i.e. 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.

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.

In practical terms, tokenised debt may become one of the strongest early institutional use cases in Australia precisely because it fits relatively comfortably within an existing legal category.

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 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.

The Real Regulatory Question: Function Not 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.

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?"

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