

Article Information

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Blockchain Bites: Attorney-General's Office review into the Privacy Act, Verification of U.S. Election coverage by EOS and Ethereum, and Senate Inquiry into FinTech & RegTech

Michael Bacina, Tudor Filaret, and Jade McGlynn of the Piper Alderman Blockchain Group bring you the latest legal, regulatory and project updates in Blockchain and Digital Law.

Attorney-General's Department Review of Privacy Act 1988 (Cth)

On 30 October 2020, the Attorney General's office kick-started its review into whether the Privacy Act 1988 (Cth) (Privacy Act) is fit for the digital age. This drive for change reflects the global push towards consumer data privacy, with the department highlighting that its main concern is to discover their options to "better empower consumers, protect their data and best serve the Australian economy".

Experts have [commented](#) that the proposed makeover should be consumer-centric, urging a similar feel to the European Union's General Data Protection Regulation (**GDPR**).

In explaining the context of the review, the [issues paper](#) says:

A business's capability to interact with consumers online is vital to economic growth and prosperity. As Australians spend more online, and new technologies like artificial intelligence appear, more personal information about individuals is being captured and processed raising questions as to whether "the Privacy Act and its enforcement mechanisms remain fit for purpose."

At the same time, businesses that are trying to do the right thing are faced with an increasingly complex regulatory environment with respect to managing personal information. This is particularly true for businesses who work across international borders where complying with information protection standards can be a requirement for access to overseas markets.

In addition to EU Law and the GDPR considered, the Attorney-General's department is also closely considering the ACCC's digital platforms inquiry report.

Associated Press uses EOS and Ethereum to verify election coverage

Behind the scenes of the U.S. Presidential election, the [Associated Press](#) has been posting their official election results to the Ethereum and EOS blockchains to give anyone reviewing the Associated Press coverage of the results an independent method of verifying the accuracy of the published numbers using the underlying blockchain data.

Interestingly, the project was ran in collaboration with Wikipedia alternative [Everipedia](#), and will see more than 7,000 state and national election race calls recorded on the Ethereum and EOS blockchains.

Notwithstanding the interesting applications of the technology, the data written to the blockchain is of course only as strong as the voting process itself. Or in Everipedia co-founder and president Sam Kazemian's words:

This is one of those times where I'm super pro-blockchain but, like, it might probably be better to actually trust the centralized organization that's professionally done this for over 100 years

Given recent claims made by President Trump that election fraud has occurred, it will be interesting to see if the blockchain records become a source of checking how results have come in in various locations. Blockchain has been previously applied in an attempt to minimise the risks of disinformation spreading. In 2019, the New York Times launched its blockchain-based [News Provenance Project](#) to tackle misinformation, using a Hyperledger-based platform to verify media sources.

Senate Inquiry into FinTech & RegTech Second Issues Paper released

On 9 November, The [Senate Select Committee on Financial Technology and Regulatory Technology](#) tabled an interim report expected for finalisation on 20 September 2020. The Report made 32 recommendations to the Government, some of which have already been implemented in the 2020-21 Budget. In preparation for the final report, a second issues paper has been released.

The interim reports' good reception will be built on with the Committee announcing it will now be taking further evidence before delivering its final report in April 2021. The Committee was established in September last 2019, and following an extensive round of public submissions and hearings in January and February, released their interim report in March this year.

As COVID-19 intervened in the process, Senator Andrew Bragg commented:

the committee now needs to consider further matters relevant to its terms of reference.

The issues paper notes that if Australia wishes to maintain a competitive position in the financial and regulatory technology space, there must be a further call for positions:

It is clear that Australia needs to take a long term view of tech as a driver of future jobs and economic growth to ensure that Australia remains globally competitive. In the context of COVID-19, rapidly increasing global digitisation and the decline of Hong Kong as a financial services hub, there are significant opportunities for Australia to seize....

So far the Committee would like to explore: Blockchain applications, Digital Identity and MyGov and Data security, but it emphasises that any submission may go beyond these issues if it is relevant to the scope of the broader area.

For those interested in contributing, written submissions addressing these issues must be made by 11 December 2020.

US Securities Clarity Act consigned to regulatory purgatory

Following the introduction of the [Securities Clarity Act](#) (H.R. 8378) by Congressman Tom Emmer, and an immediate referral to the House Financial Services Committee, HR 8378 has since languished in committee purgatory.

With a few other things going on in the US at the moment, many fear that the bill may suffer the same fate as the on again, off again US digital dollar stimulus proposals.

The Bill has an interesting goal of amending America's securities laws to exclude investment contract assets, or in practical terms, most digital tokens, from the definition of security.

More specifically, H.R. 8378, which Rep. Emmer sponsored with support from both Democrat and Republican co-sponsors, would provide regulatory clarity for the launch of an open blockchain network by making contract assets separate and distinct from a securities offering which may be, for example, the initial offering or private sale of those tokens. The bill permits companies that comply with current securities registration requirements or that qualify for an exemption to provide for the distribution of their assets to the public without fear of increased regulatory uncertainty down the road.

It does so with two fairly simple amendments to the Securities Act of 1933:

1. defining an "investment contract asset" as: "an asset, whether tangible or intangible, including assets in digital form— (A) sold or otherwise transferred, or intended to be sold or otherwise transferred, pursuant to an investment

contract; and (B) that is not otherwise a security [under section 2(a)(1) of the Securities Act of 1933]”; and
2. providing that the term “security” does not include an investment contract asset.

The Bill was generally well received on its introduction, receiving praise from various different interest groups. In particular, Amy Devine, the chief policy officer of the Digital Chamber of Commerce [stated](#) that the bill will:

help clarify the legal status of certain digital tokens, an issue that has significantly impacted the growth of the blockchain ecosystem in the United States.

Similarly, Kristin Smith, the Executive Director of the Blockchain Association [said](#) that the bill helps:

clarify outstanding issues related to when and how securities laws and commodities regulations apply to digital assets ... [and would do] much to clarify the situation and put into law pro-growth policies for the crypto economy.