

Article Information

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Blockchain Bites: \$181m to fund Australia's future of finance and digital assets, Crypto-asset ETPs?, COALA endeavours to save DAOs from the Endangered List

Michael Bacina, Alexa Bowditch, Barbara Vrettos and Jade McGlynn of the Piper Alderman Blockchain Group bring you the latest legal, regulatory and project updates in Blockchain and Digital Law.

\$181m to fund Australia's future of finance and digital assets

A combination of funding from the Federal Government and Industry partners has culminated in \$181 million to support a 10 year research program examining the digitization of assets.

The recipient, the [Digital Finance Corporative Research Centre](#), aims to explore and develop ways to harness opportunities arising from the transformation of digital markets including the universal digitisation of assets.

The [Centre says](#) an asset digitised financial world will lead to:

- *“Distributed global marketplaces operating 24/7 and exchanging digitised assets instantaneously.”*
- *“New capital supply chains driving producer’s and investor’s profits through direct access to new market demand and competitive liquidity.”*
- *“Global competition for reliable and trusted investment environments, underpinned by real-time algorithmic compliance and enforcement.”*
- *“Entirely new forms of economic activity and interactions”*

The funding is made up of \$60 million from the Federal Government and \$121 million from a range of industry partners including the RBA, NAB, Macquarie Bank, Origin Energy, the NSX and Digital Asset (which is partly owned by the ASX).

The researchers will explore the potential to use blockchain technology and decentralised finance to facilitate digital asset trading as well as considering the broader regulatory context. The focus is [reported](#) to include exploring the ongoing development of Central Bank Digital Currencies.

The industry partners, their ambitions and the funding now available for the Centre present immense opportunities for blockchain development in Australia. As the research is likely to be guided by those partners, the partnership of Digital Asset is likely to propel the ASX CHESS replacement into new territory. The potential development of the project was foreshadowed discussions during [National Blockchain Week](#) titled “ASX DLT Solutions Ecosystem - What’s actually happening” and its recent press at the [Macquarie Technology Summit](#). Additionally, the RBA’s involvement builds on previous discussions in relation to a wholesale digital currency and potentially “[pointing to a future of programmable money](#)”.

The funding undoubtedly will fast track the development with these projects and with the [Senate Select Committee on Australia as a Technology and Financial Centre](#) hard at work on addressing the pain points for the industry, for their October report, we look forward to seeing the opportunities flourish from Centre in a robust regulatory environment.

A step closer for crypto-asset ETPs and investment products

Right on the end of financial year. ASIC released [Consultation Paper 343: Crypto-assets as underlying assets for ETPs and other investment products \(CP 343\)](#). There are some laudable ideas in this consultation, but there remains a way to go before crypto-asset, cryptocurrency, or digital asset ETPs become mainstream investments in Australia.

ASIC is proposing to:

- identify crypto-assets that could be considered appropriate underlying assets for an ETP
- establish a new category of asset and regulatory framework for crypto-assets and;
- restrict the crypto-assets a registered managed investment scheme (**MIS**) is authorised to hold (e.g. to Bitcoin or Ether)

ASIC has also proposed expectations of “good practices” for:

- robust and transparent pricing of crypto-assets
- responsible entities, in relation to the custody of crypto-assets
- the risk management systems of responsible entities that hold crypto-assets
- responsible entities, in relation to their PDS disclosure obligations for registered managed investment schemes that hold crypto-assets.

ASIC is proposing not to provide further expectations in [INFO 230](#) in relation to crypto-asset ETPs or guidance on how the design and distribution obligations (**DDO**) can be met for investment products that invest in, or provide exposure to crypto-assets.

The consultation is open for an unusually short time, and is positive in that it sets out sensible custody frameworks, but unhelpful in that it proposes moving Australia out of alignment with more progressive jurisdictions like Canada which have permitted exchange traded products and funds with Bitcoin backing, and the movement towards treating digital assets as the commodities that they plainly are.

We are hopeful that sensible submissions are made which are supportive of the innovation that crypto assets can bring, with a commodity treatment and sensible custody rules bringing the ‘light touch’ regulation that the Australian Government has indicated it wishes to have in place for these assets.

Submissions in response to the consultation are due by 27 July 2021 and should be sent to marketsregulation@asic.gov.au with the subject “CP 343 Submission - [your company or name]”.

COALA endeavours to save DAOs from the Endangered List

The [Coalition Of Automated Legal Applications \(COALA\)](#) - a global, multidisciplinary blockchain research and development initiative has published a proposed “DAO Model Law” with some interesting input from academics at prestigious institutions.

Decentralised Autonomous Organisations (or DAOs) are a new type of organisation that, instead of being governed by a central owner or group, operates autonomously and transparently without independent human intervention.

How? They run on software code written on smart contracts (usually on the Ethereum blockchain) which code,

automatically execute in a decentralised fashion and, being open-source, is readable by anyone. Those mechanisms replace rules and regulations which, in a company, is traditionally enforced by company officers or the board of directors who must act in the best interests of shareholders. Consider DAOs like the driverless taxi cab equivalent to companies.

Having an organisation without a main, centralised controller at the reigns [has a series of benefits](#), but this fundamental feature has also meant DAOs are not currently recognised by any legal system as having separate legal personality. Without that personality, DAOs are unable to legally own assets, enter into contracts and sue and be sued, for example. On top of that, any party that collaborates or participates in a DAO runs the risk of facing unknown and potentially unlimited liability (if, for example, a DAO was found to be a partnership).

The COALA group sees the benefits in DAOs and is trying to create a way for DAOs to be recognised by legal systems. To do this, their Model Law identifies the policy goals which underlie traditional corporate law rules and offers a number of “technological guarantees” developed to act as “functional equivalents” to those corporate rules – while bearing in mind the new opportunities of blockchain technology.

[According to COALA](#), the model is designed to:

assist governments in crafting their own DAO laws, so as to recognize full or partial legal personality to DAOs...to endow them with specific legal rights — and obligations — without requiring them to register or conform to traditional corporate law rules, so long as they satisfy the relevant legal provisions through technological means.

The COALA group [seems to have concluded](#) that the natural architecture of blockchain technology already meets the majority of regulatory requirements arising from legacy company law. The principles of functional and regulatory equivalence have been integrated throughout the DAO Model Law to seek to maintain the benefits which flow from the bespoke architecture of DAOs.

In its current form, the Model Law proposes that DAOs comply with a set number of rules to be granted legal personality with an attendant limitation of liability for participants and to act in accordance with the rights and obligations of States which have adopted the Model Law.

There are a lot of questions remaining but any proposed model laws represent a step in developing principles for regulation of DAOs. The proposed Model Law is [here](#).