

Article Information

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Service: Blockchain, FinTech

Sector: Financial Services, IT & Telecommunications

Blockchain Bites: Careful consideration required before engaging celebrity endorsements or “finfluencers”, Senator Bragg beckons: ‘Ask me anything (about crypto)’, OECD consults on responsible blockchain innovation

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.

Careful consideration required before engaging celebrity endorsements or “finfluencers”

The past decade has seen the rise of the “influencer” but recently these social media stars, who amass huge numbers of followers and promote paid content, have been branching out into promoting products which fall into the financial space and potentially providing financial advice.

Of course, only those who operate under a financial services licence are authorised to provide financial advice in Australia. But the content of social media “finfluencers” is now higher on ASIC’s radar. This is unsurprising given:-

1. ASIC’s consumer protection focus
2. the amount of time we all spend online consuming content
3. the extent of free content available on social media and;
4. the large reach and influence of influencers.

When asked about concerns that ASIC has in relation to social media influencers and financial advice in the [Joint Committee on Corporations and Financial Services](#), ASIC Commissioner, Danielle Press stated:

It really comes down a question of whether or not it is financial advice. If it is, it’s probably unlicensed. That is illegal activity, and we would be very interested in that illegal activity. We are looking at unlicensed advice as one of the topics that we think very closely about and are considering. What we would suggest is that, if there is evidence of unlicensed advice being given, we would very much appreciate it being referred to us so that we can look at it appropriately, because it is illegal activity.

This question was posed in response to comments made by Senator Jane Hume to attendees of a conference of the Stockbrokers and Financial Advisers Association in May (which we briefly wrote about [here](#)) in which she focused on positives of social media financial influencers, stating it is “mostly a good thing”.

At the conference, Senator Hume said:

Some of the information and opinions that consumers receive from online forums will be bad but some of it will be good, and a lot of it will better engage younger generations in investment and financial markets.

She continued:

We have to back Australians to be sensible enough to judge for themselves whether to put their hard earned money into higher-risk assets.

ASIC's focus on unlicensed advice is not only relevant to traditional financial services businesses, but it is also relevant to digital currency businesses.

If a crypto-asset or your platform itself has the characteristics of a financial product, an influencer engaged to promote it is likely to be providing a financial service. If that "influencer" is not operating under a financial services licence and provides a financial service, they may be committing an offence which carries a penalty of five years imprisonment and/or a fine of up to \$126,000 for an individual or \$1.26 million for a corporation.

Senator Bragg beckons: 'Ask me anything (about crypto)'

Departing from the norm, Senator Andrew Bragg has taken to [Reddit](#) asking for the public's comments on the current state of cryptocurrency and digital asset regulation. This demonstrates the expanse of platforms and voices that the [Senate Select Committee on Australia as a Finance and Technology Centre \(Committee\)](#) is exploring while [drafting its final report](#). Specifically Bragg asks:

What policy proposals would you like to see? What obstacles are in your way? What reforms would provide the biggest benefit to this sector?

Over 130 responses provided a range of perspectives.

Emerging themes from the comments included:

1. **Tax confusion** - specifically the treatment of digital currency as an asset being a particular point of friction as it inhibits the use of digital currency as a currency. Noting the developments in many payment providers enabling digital currency as a payment mechanism, perhaps this is worth revisiting.
2. **Striking the balance** - over regulating hinders innovation, under regulation creates uncertainty. Those responding implore the Committee to consider a balance that provides clarity whilst not making compliance so onerous as to push innovators offshore.
3. **International comparison** - the excitement in the potential for digital currencies and assets were demonstrated through a variety of international comparisons of some countries pioneering blockchain innovations and their regulatory framework set up to do so.

A majority of the comments included the overriding message of the need to upskill and educate Australian regulators to ensure that they have adequate knowledge and resources to be able to effectively respond to day-to-day challenges start-ups face when operating in Australia.

This is in line with Braggs comments that "*we should be mainstreaming*" digital assets with existing regulation where ever possible.

Between sharing his appreciation for dark chocolate Tim Tams, the Senator's comments show his excitement for the future adoption of digital assets including:

- "*I think there is a promising future for stable coins and that includes issuing an Aussie dollar stable coin*"

- *“[The Wyoming bill](#) is very interesting as is their whole regulatory framework – we’ll see what we can learn from them just as we’ll have a good look at Singapore and the UK”*
- *“other jurisdictions to which you refer are getting ahead of us. And we must keep up. We are an ambitious nation!”*

The full reddit thread is [here](#).

OECD consults on responsible blockchain innovation

As early as 2018 the OECD developed and provided guidance for the progress and use of blockchain spanning across sectors.

The increase in adoption and development of blockchain technology, particularly the turn to digitisation spurred by COVID-19, has spurred further work by the OECD, which is now inviting comments on a [working discussion draft document](#). This draft seeks to provide more substantive proposals to stakeholders in the blockchain industry.

The OECD recognises that, to date, the pillars of responsible blockchain innovation [include](#):

1. Recognising the need for Compliance and Adherence with existing relevant requirements;
2. The importance of promoting Governance, Transparency, and Accountability, in blockchain-based systems;
3. Facilitating Interoperability through different means;
4. Safeguarding Digital Security and Data Privacy; and
5. Fostering Education and Skills Development in line with the needs of different stakeholder groups.

Building on these pillars, the OECD highlights blockchain’s potential as a [“general purpose technology”](#) meaning that it is a technology that can be supplemented by other innovations, can improve over time and can become increasingly abundant. However, this potential is likely to be fostered in a piecemeal approach if the regulation for its use remains piecemeal. The OECD affirmed that:

Providing a timely, balanced, global response to these challenges is therefore key, with the lack of regulatory certainty already identified as an impediment to greater blockchain innovation and mainstream adoption and the lack of global consensus opening up opportunities for regulatory arbitrage.

The draft for consultation focuses on sustainable adoptions of blockchain with a particular emphasis on planning for decentralised ecosystems from legal and policy implications to the winding up of decentralised systems. Amongst others, another key area for exploration is the consideration of compliance with international privacy standards taking into account the near immutability and longevity of many blockchains which stands in stark contrast from many global privacy standards including the right to be forgotten.

While the comments will not be publicly published they will be made available to delegates of the OECD. In the draft, the OECD highlights the international progress made on designing regulatory frameworks for blockchain adoption. We echo the OECD’s sentiments that in order to collectively reduce the opportunities for regulatory arbitrage the OECD’s comments and frameworks should be adopted by each international regulator respectively.

[Comments on the consultation](#) are due on **31 August 2021**.