Article Information

Authors: Steven Pettigrove, Jake Huang, Lola Hickey, Luke Misthos, Michael Bacina
Service: Blockchain, FinTech
Sector: Financial Services, IT & Telecommunications

2022: The Year in Blockchain

Michael Bacina, Steven Pettigrove, Jake Huang, Luke Misthos and Lola Hickey of the Piper Alderman Blockchain Group bring you the latest legal, regulatory and project updates in Blockchain and Digital Law.

This has been a huge year in Blockchain, starting out high and unfortunately ending on some terrible lows, but with hope for 2023. From crypto-asset prices falling while institutional and mainstream adoption continues to grow, faddish PFP NFTs falling from favour while intrinsic value NFTs spread in the real world, the common theme has been an industry continuing to explore, and perhaps starting to find broader product-market fit. Blockchain continues to provide a base for interesting solutions to be tested for existing problems and greater automation and efficiency to be achieved.

With the increasing amounts of open source code available for anyone to build smart contracts, we see reduced development costs and greater real world adoption coming in 2023. The biggest challenge for the sector in 2023 will be the continued regulation-by-enforcement being adopted in western nations which has accelerated following the FTX collapse. Policy makers need urgent education and to understand the jobs and growth impact which blockchain is bringing and the ongoing negative narratives need to be countered.

2023 may well be the year that the users of blockchain and crypto-assets have their voices heard and press for innovation-supporting regulation which captures existing best practices to protect users, but the risk of knee-jerk reaction legislation and well-intentioned regulation which seeks to regulate the technology itself and so fail to fit for purpose, leading to further departures of Australian projects. The EU MiCA legislation is likely to provide a sound template for regulatory reform, as well as Japan's regulatory framework which itself emerged after the Mt Gox hack many years ago.

We will of course continue to work to advise our clients in this challenging space, and seek to advocate for a path balancing stakeholders in ongoing regulatory development.

Below we collect some of the major news events impacting Australian Blockchain for the year:

January

The Senate Select Committee into Australia as a Technology and Financial Centre released their Final Report which contained 12 recommendations to help position Australia to take advantage of blockchain technology. This report remains a high water mark for Australian policymakers seeking to understand and provide innovation supporting regulation. The recommendations were formally adopted by the then-government, but have since seen limited deployment.

The Australian Open Art Ball was launched and sold out in 3 minutes with a world-leading court mapping matching NFTs up to the court with the match winning ball from finals being sent to the corresponding NFT holder, and NFTs being updated based on match results.

February

As a first direct investment in cryptoassets, KPMG in Canada allocated an investment in cryptoassets to its corporate treasury. The cryptoassets included Bitcoin, Ethereum and carbon offsets, which goes towards the firm's ESG commitments.

Forbes released their Blockchain 50 in 2022 ranking popular projects in the space.

March

United States' President Joe Biden signed an Executive Order outlining a whole-government approach to understanding cryptocurrencies, their growing impact on traditional finance and offers a roadmap to implement regulation. The Executive Order directs federal agencies to study and report on digital currencies. 9 reports have been tabled since.

ANZ announced their own stablecoin during Blockchain Week, called the A$DC, pegged to the Australian dollar, and performed test transactions using an ERC-20 token. It was the world's first stablecoin minted by an Australian Bank and marked a key sign of traditional banking moving beyond proof of concepts or pilots and making real on-chain transactions.

Blockchain Week was a huge success with events focused on Sydney, Melbourne and Brisbane bringing the Australian blockchain community together.

April

Blockchain Australia, an Australian blockchain industry leader, led an Australian mission to the US with appearances at Consensus and NFT NYC events, two of the most influence events in cryptocurrency and blockchain.

May

AUSTRAC issued two new regulatory guides for businesses when dealing in, and assessing, perceived risks and expectations around crypto-assets.

Google announced it was forming a team to develop infrastructure that will support customers who wish to run blockchain applications as the company sought to take advantage of the efficiency and transparency of blockchain technology.

June

Australian cryptocurrency industry leaders urged the newly elected Labor government to continue the course for crypto regulation started by the Bipartisan Senate Report. Unfortunately that did not gain traction at all, with movement only starting later in the year in response to the FTX collapse.

Two key US Senators co-sponsored a balanced bipartisan bill seeking to regulate crypto-assets in the US, providing valuable leadership to global regulation efforts. The *Responsible Financial Innovation Act* contained a number of exciting features covering key areas which have been unclear for too long, and it may assist development of regulation in Australia.

July

The Shanghai Government announced the launch of a US$1.5 billion Metaverse Development Fund as part of measures designed to boost its post-pandemic economy recovery.

Disney named blockchain provider Polygon as one of six companies to be joining its 2022 Disney Accelerator program. As a part of the company's focus on "next generation storytelling efforts", the business development program was announced as seeing to build 'the future of immersive experiences" and help accelerate the growth of companies which specialise in technologies such as augmented reality, NFTs, and AI characters.

GameStop, the American video game retailer, announced the launch of its NFT marketplace, GameStop NFT. Launching on Ethereum using a layer-2 solution to minimise transaction fees, the marketplace focusing on NFT artwork with a roadmap to expand into GameFi in time.

Terra USD, an algorithmic "stablecoin" backed by another crypto-token Luna, spectacularly lost its peg with US dollars and the ensuring meltdown impacted the entire crypto market, which brought down Three Arrows, a crypto hedge fund, and Celsius Network, a crypto lending group.

The same day Terra and Luna crashed, Cosmos Asset Management launched Australia's first Bitcoin and Ethereum ETFs. These were later delisted and Cosmos is now in external administration.

EU reached a provisional deal to curb money laundering and terrorism financing in Europe by implementing the "travel rule" on transfers of crypto-assets. This has proven to be highly contentious as it creates friction in the otherwise low-friction world of value transfer powered by blockchain.

August

A bipartisan group of US Senators introduced a second bill, the *Digital Commodities Consumer Protection Act 2022*, which seeks to give the Commodity Futures Trading Commission the exclusive jurisdiction to regulate 'digital commodity' trading. Importantly, popular cryptocurrencies such as Bitcoin and Ether were expressly defined as digital commodities in the bill.

The US Treasury announced it had sanctioned the collection of smart contracts which operated the Tornado Cash. This followed from a 2018 announcement indicating OFAC they were considering sanctioning digital wallet addresses.

The Australian Government announced a start to work on a token-mapping exercise for crypto-assets to help educate policy-makers and regulators, support the industry and provide protections for consumers.

State Street, one of the world's largest asset management and custody firms, announced plans to work towards tokenising funds and private assets using distributed ledger technology. The strategic move followed their digital arm's initiative to offer institutional clients custodial services for digital assets by the end of 2022.

September

The Ethereum Merge finally arrived following massive delays with upgrades, developments, and was a first-of-its kind transition on a blockchain of this size, described by some as changing the engine of a jet while in flight. The Merge immediately dropped energy usage on the Ethereum blockchain by 99.5%.

The Treasury released an exposure draft of legislation which sought to clarify that digital currencies (except for CBDCs) would not be taxed as foreign currency under Australian law. The Treasury also released explanatory material outlining the proposed changes.

Following Treasury Consultation over the proposed shape of a centralised exchange licensing regime, Liberal Senator Andrew Bragg pressed the legislative agenda ahead by publishing his own draft *Digital Assets (Market Regulation) Bill 2022* which proposed a new licensing regime and reporting requirements for digital asset exchanges.

Global investment firm, KKR & Co, announced a partnership with digital asset management firm, Securitize, to tokenise its private equity fund "Health Care Strategic Growth Fund II" on Avalanche, a public blockchain network.

The Reserve Bank of Australia (RBA), in conjunction with the Digital Finance Cooperative Research Centre released a white paper into a CBDC pilot.

October

EU approved the full text of the *Markets in Crypto Assets Regulation* (MiCA), which will shape the regulatory landscape for how crypto assets and crypto asset service providers will be regulated in the EU member states. MiCA is on track of becoming law and coming to force in 2024, offering regulated path to token offerings, and will have a significant influence in other countries crypto regulation.

Coinbase and a dozen other crypto firms won Major Payments Institution licences from Monetary Authority of Singapore (MAS), enabling them to offer regulated Digital Payment Tokens under Singaporean law.

MAS proposed new measures regulating cryptocurrency exchanges and retail crypto offerings as well as addressing the risks associated with fiat-backed stablecoins. MAS has been slow to approve licences for exchanges in Singapore since the regime commenced.

TBD, the bitcoin-focused subsidiary of payment services firm Block (the parent entity of Square) confirmed its partnership with Circle, issuer of the USDC stablecoin, to bring cross-border USDC transfers and savings to investors globally.

ASIC issued interim stop orders relating to three crypto-asset funds offered by Holon Investments preventing retail investors from gaining access to Bitcoin, Ethereum and Filecoin under a segregated and insured and licensed product for reasons which remain quite unclear. Holon published all of the material concerning the stop order so that others would have visibility on the approach taken by the regulator.

ASIC later commenced civil penalty proceedings against Qoin alleging unlicensed financial product and financial services were being provided and that Qoin had engaged in misleading or deceptive representations relating to a non-cash payment facility involving crypto-assets.

November

FTX, a Bahamas based crypto exchange group that was once the third largest in the world, collapsed and filed for Chapter 11 bankruptcy in the US. Its Australian subsidiaries went into voluntary administration separately.

Yield products in Australia came under pressure as ASIC sued start-up Block Earner for allegedly engaging in unlicensed conduct over their yield product. ASIC alleged that these were financial products and an unregistered managed investment scheme which required Block Earner to be licensed. Alongside this, the Finder Earn product was suddenly ended and withdrawn with 48 hours notice, which later was found to have arising from ASIC approaching Finder.

JP Morgan completed an on-chain pilot of government bond transfers, as part of the MAS's project Guardian in a further sign of traditional institutions entering the crypto space.

The Australian government provided its response to the fallout of FTX and promised to make Australia a leader in regulating crypto custody by bringing forward plans to provide crypto custody and centralised exchange licensing.

ASX abandoned a $250 million planned transition from the CHESS clearing and settlement system to a blockchain-based system. The project did not fail due to any blockchain related issues but appears to have suffered from the risks which can befall any major software build which must content with multiple stakeholders with competing interests.

The Federal Reserve Bank of New York announced a 12-week proof-of-concept pilot for a CBDC, to explore the feasibility of a central bank wholesale digital currency and commercial bank digital money.

December

New Zealand's central bank launched a consultation on the future money focusing on the risks and opportunities posed by private innovation in money, including cryptoassets and stablecoins.

The Australian government introduced into Parliament the *Treasury Laws Amendment (2022 Measures No. 4) Bill 2022* aimed at, among other things, clarifying the tax treatment of digital currencies and CBDCs.

The RBA confirmed that Australia's Council of Financial Regulators was working on options to incorporate payment stablecoins into the regulatory framework for stored-value facilities.

Hong Kong's legislature passed an amendment to anti-money laundering laws in December to establish a new licensing regime for virtual asset service providers. This new regime is set to become effective on 1 June 2023.

Finally, the G20 has indicated a desire to build a global policy approach to crypto-assets, which could see better standardisation and coordination between governments. PwC also released a report comparing jurisdictions on their crypto-regulation.

What's ahead for 2023?

The MiCA legislation should provide a blueprint as regulators around the world react to the FTX collapse and move to speed up regulation of the crypto-asset space. The success of that regulation will be measured in where projects, jobs and growth settle as the huge numbers of highly mobile young workers who are drawn to building in the decentralised space seek regulatory clarity and their own success.

We certainly hope Australia will lead the way in balancing innovation and technology-enabling laws which also provide consumer protection, and provide for recourse in the event of centralised business failures.