Article Information

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Blockchain Bites: Aussie crypto regulation hope replaced by hops toward a better policy? Mt. Gox creditors face tax minefield as billion dollar payouts loom, Robinhood launches prediction markets hub

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

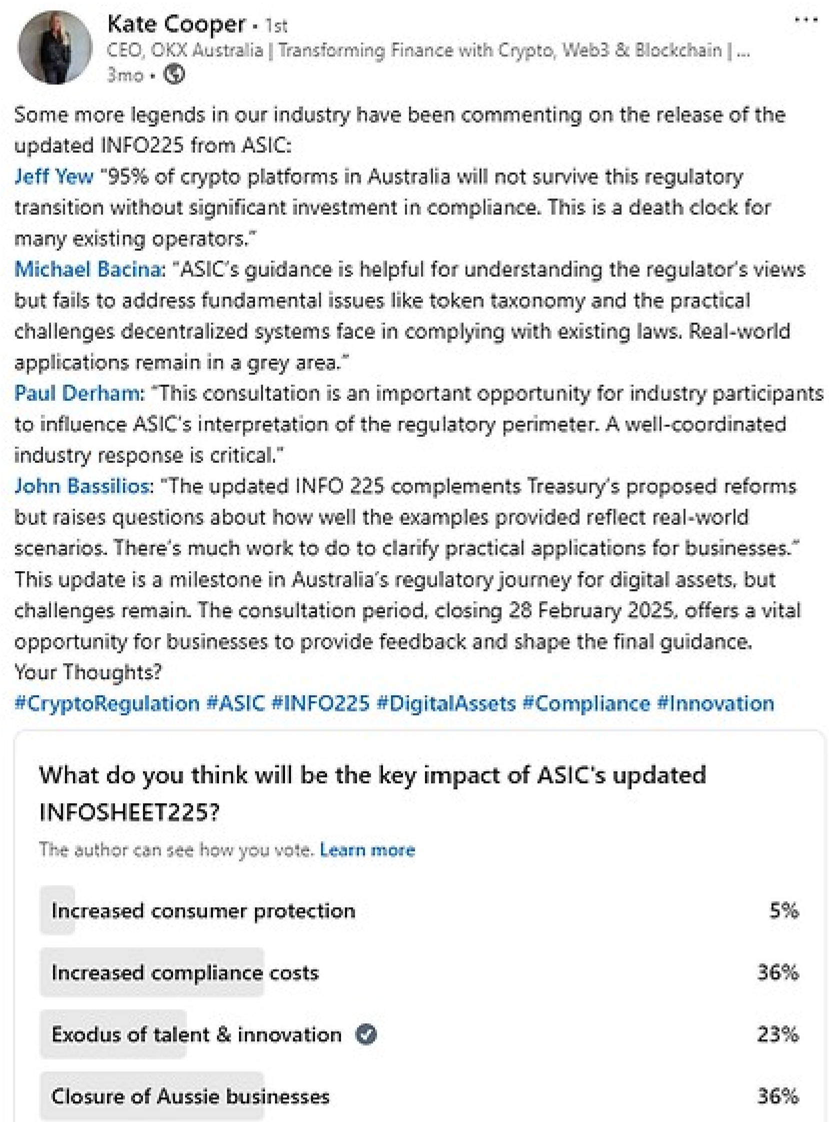
Aussie crypto regulation hope replaced by hops toward a better policy?

The Australian crypto industry has been staring down the barrel of a regulator firmly fixed on applying a licensing regime to exchanges which would have wiped out all but the largest exchanges. But in an about-face, likely informed in part by the US and other countries adopting sensible innovation-embracing regulation, the Australian Financial Review and others are reporting that the government will now launch a more streamlined crypto regulation framework.

The key parts of the framework will reportedly include:

- Crypto exchanges needing Australian Financial Services Licenses, rather than the far more expensive and burdensome markets licenses.
- Minimum capital adequacy requirements for exchanges, something the industry has been calling for as part of regulation.
- Regulation of stablecoins as 'stored-value facilities' by the Australian Prudential Regulation Authority.
- Investigations into ending debanking.
- No changes to existing tax laws, but the creation of a working group to move towards clearer tax rules on crypto.

ASIC is presently consulting on an update to a guidance paper INFO225, with a number of responses to the paper calling on ASIC to get into the real work of fit-for-purpose legislation rather than non-binding guidance when key issues of definitions of law remain unclear. A quick poll showed 36% of industry leaders thought businesses would close amid higher costs and talent would leave without increased consumer protection:



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Some more legends in our industry have been commenting on the release of the updated INFO225 from ASIC:
Jeff Yew "95% of crypto platforms in Australia will not survive this regulatory transition without significant investment in compliance. This is a death clock for many existing operators."
Michael Bacina: "ASIC's guidance is helpful for understanding the regulator's views but fails to address fundamental issues like token taxonomy and the practical challenges decentralized systems face in complying with existing laws. Real-world applications remain in a grey area."
Paul Derham: "This consultation is an important opportunity for industry participants to influence ASIC's interpretation of the regulatory perimeter. A well-coordinated industry response is critical."
John Bassilios: "The updated INFO 225 complements Treasury's proposed reforms but raises questions about how well the examples provided reflect real-world scenarios. There's much work to do to clarify practical applications for businesses."
This update is a milestone in Australia's regulatory journey for digital assets, but challenges remain. The consultation period, closing 28 February 2025, offers a vital opportunity for businesses to provide feedback and shape the final guidance.
Your Thoughts?
#CryptoRegulation #ASIC #INFO225 #DigitalAssets #Compliance #Innovation

What do you think will be the key impact of ASIC's updated INFOSHEET225?
The author can see how you vote. Learn more

Increased consumer protection	5%
Increased compliance costs	36%
Exodus of talent & innovation	23%
Closure of Aussie businesses	36%

The Australian Treasury has since released its statement titled 'Developing an Innovative Australian Digital Asset Industry'. Some highlights from the statement include:

The Government is working with industry, regulators and the broader community to make Australia a leader in the global digital asset ecosystem.

The four primary elements to Australia's approach to digital asset reforms are: …a framework for Digital Asset Platforms (DAPs), which are online platforms that hold digital assets, such as crypto, for consumers…

…a framework for payment stablecoins, which will be treated as a type of Stored-Value Facility (SVF) under the Government's Payments Licensing Reforms… …undertaking a review of Australia's Enhanced Regulatory Sandbox…

…a suite of initiatives to investigate ways to safely unlock the potential benefits of digital asset technology across financial markets and the broader Australian economy.

The Government recognises that de-banking…is a global challenge [for the digital asset sector]

We want to seize [the] opportunities [of digital assets] and encourage innovation at the same time as making sure Australians can use and invest in digital assets safely and securely with appropriate regulation.

It is not known yet what the policy changes will mean for the INFO225 consultation, but it is likely that submissions will inform the development of legislation which ASIC is assisting the government to develop. The government has promised legislation by years end and with an election coming up in Australia, perhaps there is room for a bipartisan approach to finally hop towards licensing clarity for the Lucky Country.

Written by Steven Pettigrove and Luke Higgins with Michael Bacina

Mt. Gox creditors face tax minefield as billion dollar payouts loom

Mt. Gox, once the world's largest bitcoin exchange, collapsed in 2014 after a massive hack resulted in the loss of approximately 850,000 BTC from the exchange's holdings. After years of legal battles and liquidation proceedings, the long-awaited repayments to customers are now approaching. Wallets linked to Mt. Gox recently moved USD $930 million in bitcoin to new addresses, signaling preparations for distribution ahead of the 31 October 2025 deadline. With the exchange's remaining holdings valued at around USD $2.9 billion, the repayments could have significant implications for both the crypto market and the recipients of these funds.

Crypto-Asset Exchange Failures

A key legal issue in crypto exchange collapses is whether customer-held assets are classified as property held on trust, bailment, or simply as unsecured debt claims against the exchange. There has also been fierce debate about whether crypto-assets constitute property in a legal sense, with courts taking varied approaches. Australia recently confirmed in *Re Blockchain Tech* that Bitcoin is property and capable of being held on trust, aligning with the influential decision in *Ruscoe v Cryptopia Ltd (in liquidation)* from the New Zealand High Court.

The *Cryptopia* judgment provides persuasive authority in Australia, concluding that cryptocurrencies were held on express trusts for accountholders rather than forming part of the exchange's general assets. The decision analysed the key requirements for a trust – certainty of intention, subject matter, and objects – and found that Cryptopia's internal records and business practices supported the existence of separate trusts for each type of cryptocurrency held by the exchange. Importantly, the court recognised that:

- cryptocurrency can be classified as 'property' capable of forming the subject matter of a trust;
- trusts can arise even without formal documentation if the conduct of the parties implies a trust arrangement; and
- the commingling of customer assets does not necessarily negate the existence of a trust.

In contrast, creditors of Australia's Digital Surge held only a debt claim against the exchange rather than a beneficial interest in their crypto holdings. The terms of service of the exchange clearly stipulated that customers who deposited assets onto the exchange no longer owned their crypto-assets. The precise legal relationship between an exchange and its users thus depends heavily on the exchange's terms and conditions.

Tax Implications for Mt. Gox Customers

The classification of Mt. Gox's creditor claims – whether as property held on trust or as unsecured claims – will have major tax consequences for recipients of repayments. The taxation of these distributions in Australia is complex, and recipients should consider whether their receipt of distributions is a return of property or a form of compensation. Complex capital gains taxation rules will likely also apply for certain customers, as will the classic tax dilemma of the revenue vs capital characterisation.

Key Takeaways

While cases like *Cryptopia* suggest that crypto-assets can be held on trust, whether this applies in other cases will depend on the applicable legal agreements and facts. The taxation of distributions from any insolvency remains complex, and given the novel nature of crypto-assets, creditors should seek professional tax advice to ensure compliance with ATO regulations and mitigate their risk of penalties. As blockchain markets continue to mature and evolve, regulatory clarity on the treatment of exchange collapses and customer repayments will be crucial.

Written by Steven Pettigrove and Luke Higgins

Chance or skill? Robinhood launches prediction markets hub

Trading platform Robinhood has launched a prediction markets hub within its app, allowing users to trade on event outcomes, including interest rate decisions and sports events. The move signals an expansion beyond traditional stock and crypto trading, as the company continues its efforts to innovate in the delivery of financial services in areas like asset tokenisation and private markets.

Despite recent brushes with the SEC, Robinhood's expansion into event contracts comes on the back of growing interest in prediction markets, particularly in the wake of the US presidential election cycle.

Event contracts function similarly to binary options, allowing traders to bet on specific outcomes and profit from their predictions.

While some view prediction markets as mere gambling, scholars have pointed to academic research showing that prediction markets can function as a powerful way to incentivise truth discovery and research. Some view these markets as more effective than traditional polling or survey techniques.

The CFTC has raised concerns, arguing that event contracts resemble gambling rather than legitimate financial instruments. Just last month, Robinhood was forced to scrap Super Bowl betting contracts following regulatory pushback.

Despite this, Robinhood is forging ahead, claiming that these markets provide hedging opportunities for investors and businesses against uncertain events.

The concept of prediction markets is nothing new to the Web3 space. Polymarket, for example, has enabled decentralised betting on real-world events using blockchain technology. The platform attracted significant attention during the US presidential cycle for forecasting President Trump's victory despite blocking US users following a CFTC settlement.

A key difference is that decentralised prediction markets operate without intermediaries, using smart contracts to automate payouts and prevent manipulation. Robinhood, on the other hand, relies on a centralised platform operating through a CFTC regulated exchange. Robinhood says it has been in close contact with the CFTC on the product offering.

Robinhood's expansion into prediction markets is a clear sign of increasing demand for speculative event-based trading, but whether regulators will allow it to flourish remains uncertain. For now, the battle over what constitutes a financial instrument versus mere gambling looks set to heat up across traditional and decentralised markets.

Written by Steven Pettigrove and Luke Misthos