

Article Information

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Service: Blockchain

Sector: Financial Services

Blockchain Bites: Will the ATO face a \$600M+ bitcoin refund bill or is bitcoin more than just 'mere information'?; US GENIUS Act looking smarter, passes key Senate Vote; ASIC seeks High Court appeal of Block Earner in landmark application; and From Cane to Crypto: Ripple targets sweeter future for Colombian Farmers

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

Will the ATO face a \$600M+ bitcoin refund bill or is bitcoin more than just 'mere information'?

Headlines have circulated today about whether crypto, and Bitcoin specifically, has been found to be equivalent to money under Australian law, potentially upending 5 years of private rulings and the Australian Taxation Office's approach to crypto, which is to treat it as property. The case is not yet published, but one of the lawyers who argued the case, who has long argued that crypto is not property, but is akin to gambling and should be regulated and taxed as such, has boldly said the ATO *might* have to refund people for capital gains tax paid on crypto trading (and presumably clawback any credits given for capital losses claimed in tax returns).

The decision concerns a former Australian Federal Police officer who was [accused of stealing 81.616 bitcoin](#) during a drug raid in early 2019. The bitcoin was then worth USD\$291,000 but at today's prices would be over USD\$8M. The bitcoin's keys were on a Trezor seized by police during the raid, and a cyber crime specialist later noticed that the bitcoin associated with those keys had been moved 4 days after the seizure and the bitcoin was then moved further. Police [initially didn't have resources](#) to trace the movements but in 2021 further tracing allegedly connected the moved bitcoin to bank account deposits in the name of the officer.

The judgment is not yet published, but the Australian Financial Review published excerpts including the judge's comments that there was no case law suggesting crypto was property for the purposes of criminal law, but noting numerous cases had frozen crypto in proceeds-of-crime prosecutions. The Magistrate also said (per the AFR):

There have... been a number of family law cases that treat cryptocurrency as property for the purposes of family law settlements, without addressing the underlying issue of whether cryptocurrency is, in fact, property... I find the argument that cryptocurrency has not yet reached a state that is comfortably analogous to a form of money unpersuasive.

In my view, that [being a form of money] is sufficient to enable bitcoin to be characterised as property; that is, to use the words of the statute, as 'other intangible property', and I so rule.

The argument in the present case is that 'mere information is not property' a position taken by a number of advocates who believe crypto should not be subject to taxation. Dr Adrian Cartland, who is co-counsel to the accused, suggested that this decision throws into doubt years of the tax office's rulings:

The reasoning totally upends the ATO's view because it was held that bitcoin is Australian money...it is not a CGT asset. Therefore, acquisitions and disposals of bitcoin have no tax consequences

Before the crypto community get too excited, it is worth remembering that this case is criminal, and not tax related, and is highly unlikely to result in any change to taxation, past or present. The ATO considers bitcoin and other cryptocurrencies to be assets subject to capital gains tax.

Justice Jackman (brother of the famous Hugh Jackman) gave an extra curial speech last year in which [he noted that crypto bore the indicia of property](#), and suggested the common law could recognise it as property without the need for parliamentary intervention. His honour Jackman dismissed the 'mere information' argument in his speech, saying:

We are ... a long way removed from the general objection to information as property that the information has an inherent value and benefit over which there is no exclusive right or control

and that:

[I]f market participants in very large numbers are satisfied... in undertaking transactions on the basis that cryptocurrency is property, then it would be most surprising if the judiciary were to disagree.

Two Australian superior court decisions in 2024 found that crypto is property. In the [NGS decision](#), a 'crypto is not property' argument was dismissed by the Collier J of the Supreme Court of Victoria, who cited Justice Jackman's speech favourably. In [Re Blockchain Tech](#), bitcoin was found to be property for the purposes of bailment. While these are civil, not criminal, cases, it would be unusual to see such a definitional split between the two areas of law. The United Kingdom Law Commission considers that crypto should be property and [a bill is before the UK Parliament which will make crypto property](#). Mr Cartland has stated that his client is appealing the finding that bitcoin was property (being money) presumably to seek that his client may be found not guilty of taking the 81 bitcoin in 2019.

To those who argue that crypto and bitcoin is not property as it is 'mere information', an answer to the follow-up question of 'then will you give me some?' appears elusive. A ruling from a higher court will be welcomed by the industry to provide clearer guidance as regulation takes shape concerning crypto around the world.

Written by Steven Pettigrove and Luke Higgins

US GENIUS Act looking smarter, passes key Senate Vote

The US Senate's GENIUS Act, which seeks to regulate stablecoins in the USA, was looking wobbly a few weeks ago when it [failed a key procedural vote in the US Senate](#), with a number of Democrats, including the bill's co-sponsor, voting it down. It has been reported that the reasons behind this were growing concerns at conflicts of interest around President Trump and crypto ventures involving his family. Now those same Democrats have returned to support the bill's progress, voting it past the key 60 vote threshold which ends debate and enables an up or down majority vote on the bill.

Since Republicans hold the majority in the Senate, if the bill is given a vote it is near certain to pass and head to the lower house of Congress for a vote before it could be sent to President Trump's desk for signature. [Decrypt said](#):

It is anticipated that once stablecoin legislation passes, once-hesitant Wall Street giants will flood the sector, bringing billions of dollars, if not trillions, into crypto.

Left-leaning MSNBC said the bill was pro big tech and:

would grant the biggest companies in the history of the world a dangerous opportunity to operate their own financial systems, immediately extending their monopolistic power to banking and competing with the U.S. dollar

Changes to the bill seemed to get Democrats on board, including prohibitions on these big tech companies selling user data, which may be hollow for public blockchain stablecoins given how easily transactions can be tracked, as well as increased lobbying from the crypto industry, [which spent over 9 figures on lobbying and donations in the 2024 US elections](#), demonstrating how the industry has matured and how much value it is bringing to the global economy.

The news of the Senate vote was followed this week with Hong Kong passing its own stablecoin legislation. The UK, Singapore and Australia are also working on their own bills to recognise stablecoins.

This represents a continued move towards regulation embracing, instead of blocking, the deployment of new, decentralised and automated blockchain systems, representing the first upgrade to the current financial system in decades.

Written by Steven Pettigrove

ASIC seeks High Court appeal of Block Earner in landmark application

In a significant development just announced, ASIC has [applied for special leave to appeal the Block Earner decision to the High Court of Australia](#), signaling its intent to challenge the Full Federal Court's ruling that Block Earner's fixed-yield crypto product was not a financial product under the *Corporations Act 2001 (Cth)*.

A quick recap

In April this year, the [Full Federal Court found that Block Earner's "Earner" product, which allowed customers to earn a fixed return by lending crypto-assets to Block Earner, did not amount to a financial product](#) in the form of either a managed investment scheme, a financial investment, or a derivative.

The [Court's reasoning turned on two central findings](#):

1. Users did not gain rights to benefits produced by a "scheme"; and
2. The fixed yield paid by Block Earner was not dependent on its use of the crypto-assets, but rather a contractual repayment obligation.

The Court also pointed to clear and deliberate disclosures in Block Earner's user terms that clarified these arrangements. On that basis, the Court overturned the earlier finding that an Australian Financial Services Licence (AFSL) was required and dismissed ASIC's appeal regarding a waiver of penalty which the Federal Court had granted Block Earner in the lower decision. ASIC had appealed the grant of that waiver of penalty in a highly unusual move and in response Block Earner had filed a cross appeal against the original finding.

ASIC wants the final word

ASIC's latest move, being an application for special leave to apply to the High Court of Australia, underscores the ostensible concern of the regulator regarding the consequences of the Full Federal Court's reasoning. In its brief media release, ASIC stated it is seeking clarification on what constitutes a "financial product", especially in contexts involving:

1. fixed-interest returns; and
2. asset conversion from one form to another (e.g., crypto-to-fiat or tokenised forms).

The regulator stresses that the statutory definition of a financial product is meant to be broad and technology-neutral, and that the clarification by the High Court is "in the public interest" extending beyond the crypto-asset sector to *all* financial services:

The definition of financial product was drafted in a broad and technology-neutral way, and ASIC believes it is in the public interest to clarify this. This clarification is important as it applies to all financial products and services whether they involve crypto-assets or not.

Special leave and why it matters

The High Court of Australia does not hear every appeal. A party must first apply for what is known as "special leave", which is only granted in limited circumstances, such as where:

1. there is a question of legal principle of national significance;
2. there is inconsistency in the law that requires resolution; or
3. the matter involves significant public interest.

In simple terms, special leave is the gateway to the High Court. ASIC must be able to convince the High Court that this case is bigger than just Block Earner. If leave is granted, the High Court will deliver the final word on how far Australia's financial services laws extend. It will also be the first ever crypto-related case in Australia to reach the High Court.

High Court special leave applications are not straightforward, and it may be challenging for ASIC to show how the analysis of whether a single product, which is no longer being offered, and was removed from the market when ASIC first raised concerns, is a matter of 'significant public interest'.

What comes next

This latest move raises renewed uncertainty for crypto and fintech businesses. The Full Court's decision was widely welcomed for drawing a clear line around what is – and what isn't – a regulated financial product (at least in certain

crypto-contexts). If the High Court decides to weigh in, that line could once again shift.

Regardless of the outcome, the Block Earner case continues to highlight a deeper issue: Australia's regulatory framework is still not supporting innovation. Until meaningful reform is introduced, key questions will be left to be answered in the courtroom, rather than through the far more efficient pathways of clear guidance and collaborative engagement.

Written by Steven Pettigrove and Luke Higgins

From Cane to Crypto: Ripple targets sweeter future for Colombian Farmers

Ripple, a global leader in enterprise blockchain and crypto solutions, has launched its [second pilot](#) in partnership with Mercy Corps Ventures, a global development and humanitarian organisation. The pilot will run in Colombia and use the XRP Ledger to improve agricultural traceability and give smallholder farmers better access to finance through blockchain-backed data and deferred payment options.

This initiative is part of Ripple and Mercy Corps' ["Unlocking Opportunity" program](#), which aims to support emerging market entrepreneurs and small-medium enterprises (SMEs) by building solutions for financial resilience through blockchain and fintech innovation.

Ripple's contribution [includes](#) both technical and financial support, leveraging the XRP Ledger (XRPL) and the [Ripple USD stablecoin](#) (RLUSD). The focus of the program is on real-world use cases that promote financial inclusion, such as savings, remittances, micropayments and tokenisation of real-world assets.

Blockchain-Powered Agriculture

This pilot specifically partners with [WĒIA](#), a blockchain traceability platform built on the XRPL, to test how blockchain can improve incomes for 300 smallholder farmers in Colombia. These farmers, many of whom operate informally and lack credit histories, often struggle to access loans and expand their operations.

Ripple [describes](#) the pilot as:

a unique opportunity to demonstrate real-world applications of blockchain to improve traceability in agriculture, creating pathways for smallholder farmers to access financial services, improve livelihoods and ensure compliance with global sustainability regulations.

WĒIA's platform tracks the production of panela — a traditional unrefined cane sugar — from planting to harvest. Each step is immutably recorded on the XRPL and made accessible via QR codes, enabling verifiable sustainability claims that boost buyer confidence. The XRPL's speed, low transaction costs and carbon-neutral design are expected to be suitable for rural and resource-constrained environments. A standout feature is the Farm Now, Pay Later model, which uses traceability data to allow farmers to access agricultural inputs without upfront costs. This enables farmers to purchase supplies when planting crops, with payments deferred until *after* harvest.

The pilot involves 300 farmers processing 240 tonnes of panela per month, and is testing three key hypotheses:

1. First, it seeks to determine whether verified sustainability claims recorded on the XRP Ledger can lead to an increase in the price of panela;
2. Second, it will assess whether the transparency provided by immutable blockchain records improves customer satisfaction;
3. Third, the pilot will evaluate whether access to reliable traceability data encourages more formal business relationships, such as farmers entering into forward contracts with corporate buyers by the end of the program.

As seen previously in [Bhutan's crypto-powered tourism payment system](#), this collaboration is another example of blockchain technology being used to drive financial inclusion and support sustainable economic development.

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