

Article Information

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Full Court flips Qoin narrowing Authorised Rep exemption

Steven Pettigrove, 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.

Full Court flips Qoin narrowing Authorised Rep exemption

On 30 May 2025, the Full Federal Court [found](#) that BPS Financial Ltd (**BPS**) was not entitled to rely on the ‘authorised representative’ exemption under the *Corporations Act 2001* (Cth) (**Corporations Act**) when issuing its Qoin Wallet product. The Court allowed ASIC’s appeal and declared that BPS had operated without the required Australian Financial Services Licence (**AFSL**).

Background

BPS marketed and issued the Qoin Wallet, a digital wallet which enabled users to store and transact crypto tokens called “Qoin”. By late 2022, more than 93,000 wallets had been issued with BPS raising over \$40 million through token sales.

While ASIC had previously secured a Federal Court [ruling](#) in 2024 that [BPS contravened AFSL requirements](#), the Federal Court accepted that BPS was exempt during a 10-month period in which it was an authorised representative of PNI Financial Services Pty Ltd (**PNI**) which held an AFSL.

ASIC appealed this finding, advancing two grounds of appeal:

1. That the primary judge erred in finding that BPS was exempt from the requirement to hold an AFSL under s 911A(2)(a) of the Corporations Act during the period of the operation of the Authorised Representative Agreement with PNI; and
2. That the primary judge erred in finding that BPS was acting as a representative of PNI (within the meaning of s 911A(2)(a)) during the period of the PNI authorised representative agreement without making the necessary findings of fact as to whether, in providing the relevant financial services, BPS was acting on its own behalf or as a representative of PNI.

The Court addressed two appeal grounds together, as they both turned on whether BPS was acting “as representative of” PNI when it issued the Qoin NCP product.

The Full Court’s Ruling

ASIC’s primary argument on appeal was that the authorised representative exemption under s 911A(2)(a) of the Corporations Act involves “**an essential representative capacity requirement**”, meaning that a person cannot be a representative for the purposes of the exemption if they are, in substance, the issuer of the financial product themselves.

ASIC argued, and the Court accepted, that the primary judge erred by focusing too narrowly on whether BPS had been appointed as an authorised representative under s 916A without asking whether BPS had in fact acted in that capacity when providing the financial service.

The Court emphasised the language of s 911A(2)(a), particularly the words “as representative of”. The Court found these words focus not just on whether formal authorisation exists but whether the financial service was actually provided in a representative capacity. This interpretation was consistent with s 911B(1) which the Court held (at [92]):

makes plain that a representative “must only provide a financial service” if they are providing the relevant service on behalf of a principal. The legislation makes it plain that there is an essential requirement that the “representative” act in their capacity as such. (emphasis added)

The Court acknowledged that the primary judge was correct in observing that s 916A(1) allows an AFSL holder to determine the scope of an authorised representative’s authority. However, this did not resolve the question of whether BPS provided the Qoin product *in that capacity*. The Full Federal Court explained that (at [96]):

“whilst the AFSL holder might lawfully and validly authorise a person under s 916A to provide specified financial services covered by the AFSL holder’s licence, such an authorisation only operates to the extent that the authorised representative, in fact, provides the relevant financial service in that capacity.

Turning to the facts, the Court considered that, among other things:

- BPS had developed and launched the Qoin NCP product *before* any involvement with PNI.
- BPS began developing Qoin in 2019 and issued it in January 2020 under an earlier arrangement with another AFSL holder. PNI was therefore not involved in any of the development, document preparation, or launch of the product.
- All key documents associated with Qoin including the White Paper, Product Disclosure Statement and Terms of Use were authored by BPS with no material involvement from PNI.
- The Terms of Use did not mention PNI at all. The contractual relationship was strictly between BPS and its users.
- The appointment of BPS by PNI was essentially a case of ‘AFSL provisioning’ – seeking out an AFSL holder to allow BPS to issue a financial product without obtaining its own licence (which is not a relationship where PNI meaningfully exercises any control over the financial services BPS was providing).
- Although PNI took some compliance steps such as preparing a compliance plan and attending monthly meetings, these occurred *after* BPS had already produced the Product Disclosure Statement and related documents.

These facts led to the conclusion that “other than appointing BPS as its authorised representative, PNI had little to do with the issue of the Qoin NCP Product” (at [115]) and that “BPS was acting on its own behalf and not as a representative of PNI” (at [116]). Consequently, BPS was not entitled to rely on the s 911A(2)(a) exemption and was required to hold its own AFSL.

Despite this conclusion, the Full Court was quick to affirm that the decision turned on its facts. It did not consider whether the issuer of a financial product can never act in their own capacity as an authorised representative of an AFS licensee.

Interestingly, Qoin itself did not contest the appeal and the Court appointed an amicus curiae to argue the point of law. However, the Full Court gave no consideration to these arguments in its judgment, focusing mostly on the decision below and ASIC’s arguments on appeal which it accepted were refined before the Full Federal Court. These factors place some doubt over the general application of the judgment and perhaps whether the point of law was fully argued.

The Full Court’s decision was nevertheless unanimous and highlights ASIC’s increased concerns over AFSL provisioning, poor supervision of CAR arrangements and suggests potential limits to the CAR exemption, that is, that a representative as a matter of fact and substance must be acting as a representative of the licensee (not just providing services of a type covered by its license).