## Article Information

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# Blockchain Bites: OK, Computer: Australia modernises payments regulation with major amendments to the PSRA; Batter up: Meta loses strike out bid in ACCC crypto ad case; Howz DAT? ASX issues guidance for crypto treasury companies

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

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#### OK, Computer: Australia modernises payments regulation with major amendments to the PSRA

On Thursday, Australia passed significant amendments to the *Payment Systems (Regulation) Act 1998* (Cth) (**PSRA**) to modernise the regulatory framework for the country's payments ecosystem. The changes, introduced through the Treasury Laws Amendment (Payments System Modernisation) Bill 2025, expand the powers of the Treasury and the Reserve Bank of Australia (**RBA**) to designate, oversee and regulate payment systems.

The reforms aim to:

- expand the coverage of the payments regulatory framework to include new and emerging payment systems and participants;
- provide for new ministerial powers to designate payment systems when it is in the national interest to do so;
- introduce civil penalty provisions and enforceable undertakings; and
- increase maximum penalties for certain criminal offences.

**New definition of payment system**

The current definition of 'payment system' is limited to systems that facilitate the circulation of money and does not capture payments made through digital assets or systems that enable payments without directly processing them. The Bill inserts a new definition of 'payment system' into the PSRA as:

> *(a) … a system under which, or pursuant to which, one or both of the following occur:*
>
> > *(i) the making of payments or the transfer of funds;*
> >
> > *(ii) the transmission or receipt of messages that effect, enable, facilitate or sequence the making of payments or the transfer of funds (whether or not those payments are made, or those funds are transferred, under or pursuant to the system); and*
>
> *(b) includes any instruments or procedures that relate to that system.*

This definition is intended to cover broader arrangements such as payment systems using non-monetary digital assets and 'three party' or 'closed loop' systems.

**New definition of funds**

Funds is now defined as an umbrella term that includes, but is not limited to, money and digital units of value including

digital currency. It is intended to be a broad concept encompassing stablecoins.

**New definition of participant**

The Bill introduces a new definition of participant to capture all entities involved in the payments value chain, including those that facilitate or enable payments. The previous definition was limited to constitutional corporations that participate in or administer the system.

The new definition is:

*A participant in a payment system is a constitutional corporation that:*

> *(a) operates, administers or participates in the payment system; or*
>
> *(b) provides services that enable or facilitate one or more of the following:*
>
> > *(i) the operation or administration of, or participation in, the payment system;*
> >
> > *(ii) the making of payments, or the transfer of funds, under or pursuant to the payment system;*
> >
> > *(iii) the transmission or receipt of messages under or pursuant to the payment system that effect, enable, facilitate or sequence the making of payments or transfers of funds (whether or not those payments or transfers are made under or pursuant to the payment system).*

This definition is intended to capture all entities with a relationship to the payment system. The Explanatory Memorandum provides examples such as digital wallet services (e.g., ApplePay) and services facilitating payments in crypto assets. It is designed to be technology neutral and adaptable to new services as they emerge.

**New role for the Minister to designate payment systems**

Previously, only the RBA could designate a payment system as a special designated payment system. Under the reforms, the Minister may now do so if it is in the 'national interest'. This designation differs slightly in that the Minister must identify and consider matters that:

1. are not core public interest matters; and
2. are materially relevant to determining whether the action is in the national interest.

When considering the national interest, the Minister may take into account factors such as national security, consumer protection, cybersecurity, crisis management and AML/CTF.

**Enforceable undertakings**

The Bill introduces a formal framework allowing the RBA and nominated regulators to accept and enforce written undertakings from payment system participants. These undertakings may be accepted before an access regime is imposed or a standard is made.

If a participant breaches an undertaking, the RBA or regulator may apply to a relevant court for enforcement orders. Courts may issue orders including:

- directing compliance with the undertaking;
- requiring payment to the Commonwealth of any financial benefit gained from the breach;
- compensating affected parties; and
- any other order the court considers appropriate.

**Criminal and civil penalties**

New provisions cover both criminal and civil penalties for failure to comply with a direction or to provide information to the RBA. While the substance of the provisions remains similar to the previous regime, the amendments introduce a civil penalty framework and increase maximum penalties.

**What's next?**

In a joint media release, Treasurer Jim Chalmers and Minister for Financial Services Daniel Mulino state:

> *These changes will modernise our payments system and help make our economy more productive. This is all about making our payments system more seamless, safer and stronger, and suitable for the times.*

While the amendments to the PSRA are drafted with the intention of keeping pace with the evolving modern economy, the regulatory framework may still struggle to align with the realities of distributed and permissionless blockchain systems. For example, imposing access restrictions or operational standards on decentralised networks such as Ethereum presents practical (and philosophical) challenges.

With major players such as Circle, Fireblocks and Stripe entering the stablecoin space and building their own payment networks, it will be interesting to see how the Australian Government chooses to exercise its new powers and what the Minister will consider to be in the 'national interest'. Policy makers and regulators are grappling with an increasingly dynamic payments ecosystem and have designed a regulatory framework that permits a high degree of flexibility in how they regulate it. However, with such broad authority will come significant policy and political challenges in finding an appropriate balance between different policy objectives and limitations in an increasingly globalised financial and payments system.

*Written by Steven Pettigrove and Emma Assaf*

**Batter up: Meta loses strike out bid in ACCC crypto ad case**

Meta has failed in its attempt to strike out the Australian Competition and Consumer Commission's (ACCC) further amended statement of claim (FASOC) over scam cryptocurrency advertisements on Facebook.

The case concerns ads featuring well-known Australian public figures, which, when clicked, led users to fake landing pages showing those figures endorsing crypto trading products (**Celeb-Bait**). The ACCC is pursuing allegations of misleading and deceptive conduct and accessoral liability against Meta as the platform operator who facilitated the distribution of these ads via its self service advertising system.

Justice Abraham made three preliminary points about Meta's submissions:

1. Meta analysed paragraphs 'in a vacuum' instead of reading the pleading as a whole.
2. Meta raised objections now that it could have raised earlier, suggesting it was 'searching for a deficiency or error'.
3. Meta's arguments reflected disagreement with the ACCC's approach and not a misunderstanding of the case.

**The conduct case and 'reasonable safeguards'**

The ACCC alleges Meta engaged in misleading conduct by failing to implement reasonable safeguards or warnings to prevent scam ads.

Meta argued these allegations were unclear, claiming that the ACCC did not show how each safeguard linked to each ad, the term 'Celeb-Bait' was inadequately defined and the word 'reasonable' was vague and distracting.

The Court rejected these arguments. Justice Abraham noted that 'reasonable safeguards' had been part of the original pleadings and were already considered by Yates J in an earlier decision. The allegation is that Meta could have adopted any one of several safeguards and doing so would have reduced harmful ads.

The Court also found the term 'reasonable' has an ordinary meaning and is clearly explained in the pleadings which set out what the safeguards are, why they are reasonable and how they could have been implemented. Meta's complaint about not understanding 'Celeb-Bait' was described as artificial given Meta's own responses to notices used similar terms.

**Accessorial liability**

The ACCC also alleges Meta is liable as an accessory because it knew scam ads were being displayed and would continue to appear, its ad review processes did not prevent them and that these ads would make misleading representations.

The ACCC does not allege any individual at Meta knew the content of each ad when it was posted (as opposed to a general awareness of the type of content which was being posted) but argues that knowledge should be attributed to Meta through its systems – an approach described by Edelman J in *Productivity Partners* as the 'alternative path'. The ACCC accepted that its case involves a degree of novelty in this regard, but the Court was prepared to accept that the point should be properly argued at trial.

Meta argued the case was meritless, saying the ACCC must prove Meta knew each ad was misleading at the time it was shown. The ACCC argued that it is enough to show Meta knew the essential elements of the contraventions including the widespread problem and the content of ads via its systems.

Whether Meta's knowledge is sufficient is a factual or mixed question of law and fact unsuitable for resolution in a strike out application. The Court noted this issue has 'significant and broad implications' and is a matter of public interest.

Meta also claimed parts of the FASOC were vague and embarrassing. The Court disagreed, finding the paragraphs in question were similar to those in the original claim (to which Meta had not objected) and that the ACCC provided sufficient detail including who made complaints, when and about what.

**The outcome**

Meta's application to strike out the ACCC's pleadings was dismissed and the ACCC was granted leave to file its FASOC. This decision clears the way for the ACCC's case to proceed to trial.

The case raises important questions about the responsibilities of digital platforms in preventing scams and the level of knowledge required for accessorial liability in the online advertising context. While the ACCC is taking steps in this case to set legal expectations for platforms under the Australian Consumer Law, the Government has separately passed legislation to establish Scam Prevention Frameworks which would see financial services and digital platforms, among others, imposed with significant responsibility for proactively identifying and combatting scams.

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**Howz DAT? ASX issues guidance for crypto treasury companies**

Following on after the ASX's latest compliance update, listed companies eyeing cryptocurrency treasury strategies (**CTS**) face a high-stake test in balancing substance over spin. Locate Technologies, the last-mile delivery start-up, joined a small number of ASX-listed companies pursuing bitcoin treasury strategies this year. Steve Orenstein, Locate's chief executive officer, admitted it was divisive, but stated to the Sydney Morning Herald:

> *"The risk is actually in holding fiat currency today... If you really understand that, then you aren't concerned about the volatility in bitcoin."*

Locate's bold move seemingly paid off as bitcoin hit a record high shortly after their investment, and Locate's share price more than doubled in the six weeks since their announcement.

However, in light of the ASX's recent Compliance Update, crypto treasury strategies will face closer scrutiny and may trigger requirements for shareholder votes, readmission hurdles or halts in trading. The ASX has warned companies dipping into crypto-assets could alter the risk profile of their companies, requiring new disclosures.

CTS can quickly become a regulatory minefield. We summarise some of the key considerations to help navigate the tightrope.

1. **Significant changes to the company**

A CTS may involve a significant change in either the nature or scale of the company's activities or a change in the company's main undertaking. ASX's rule of thumb for significant changes are:

- If CTS affects more than 25% of assets, revenue, EBITDA or profit, it may be considered a significant change to the company's scale.
- If the CTS becomes more than half of the company's business, it may be considered a change in the entity's main undertaking.

Additionally, under ASX Listing Rule 7.1, the company cannot issue more than 15% of its capital in 12 months without shareholder approval. Capital raising to fund CTS may trigger this rule.

Companies exploring a CTS will need to consider:

- Does the CTS represent a major shift in what the company does (e.g. switching from trading in financial products to

strategic long-term investments in a particular sector)?
- Is the scale of the CTS large enough to materially affect the company's operations or financials?

2. **Maintaining a suitable structure**

ASX expects listed entities to maintain appropriate structure and operations, in line with the ASX listing principles.

ASX has indicated that a CTS can have regulatory pitfalls, such as:

- If a company's principal activity is investing in crypto-assets, this is likely to raise issues with structure and operations under ASX Listing Rule 12.5.
- A company cannot have 50% or more of its assets in a form readily convertible to cash. Crypto-assets may be treated as cash-equivalents, though ASX has not made a definitive ruling.

If breached, ASX may suspend trading until assets are reinvested or applied to business operations.

ASIC has made clear, through INFO230, that the admissibility of entities offering crypto-asset exposure hinges on meeting standards for permissible assets, pricing and disclosure, aligning them with the safeguards applied to exchange traded products.

3. **Meet disclosure obligations**

Any information likely to affect the share price must be disclosed to ASX immediately, such as a material acquisition or disposal, under ASX Listing Rule 3.1. ASX guidance states that information is market sensitive if it would influence persons who invest in securities to either acquire or dispose of the company's shares. ASX expects companies to monitor the value of their crypto holdings and disclose any changes, and will closely review misleading CTS ramping announcements, especially where speculative crypto purchases are mischaracterised as treasury strategy.

4. **Substance over form**

Broadly, ASX takes a view to assessing CTS with a 'substance over form' approach. Even if the CTS is labelled as a "treasury strategy", it will look at the real impact regardless of how the strategy is designed.

An alternative structure to holding crypto-assets, as mentioned by ASIC in INFO225, is the Listed Investment Company (**LIC**) model. Rather than holding its own Australian Financial Service Licence (**AFSL**), an LIC typically appoints an external investment manager who holds an AFSL. Where the LIC provides investors with a material exposure to crypto-assets, regulators expect it to follow the same standards as a registered managed investment scheme.

The latest guidance and increasing in interest in CTS in Australia and other markets signals that listed companies are again exploring putting crypto-assets on the balance sheet. Invariably, this will also mean stablecoins in years ahead. Any CTS will require robust risk controls and adherence to listing and regulatory requirements. The ASX's recent guidance makes it clear that CTS remains a high-risk approach to capital diversification that requires careful management, clear disclosure and ongoing monitoring of compliance obligations.

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