Article Information

Authors: Steven Pettigrove, Luke Higgins, Will Deeb, Tahlia Kelly
Service: Banking & Finance, Banking & Finance Litigation, Blockchain
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Blockchain Bites: Qoin tossed $14m penalty and AFSL ban; Some stablecoins are more equal than others: ASIC issues stablecoin relief; It's the vibe: High Court to rule on Bitcoin property dispute

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Qoin tossed $14m penalty and AFSL ban

On 27 January 2026, the long-running litigation concerning the Qoin Wallet product reached its final chapter. The Federal Court handed down its penalty decision in *Australian Securities and Investments Commission v BPS Financial Pty Ltd (Penalty) [2026] FCA 18*, imposing $14 million in civil penalties, a 10-year injunction restraining unlicensed financial services activity and corrective advertising orders against BPS Financial Pty Ltd (**BPS**).

In the wake of the judgment, the Australian Securities and Investment Commission's (**ASIC**) chair stated:

> *The size of these penalties underscores the seriousness of BPS Financial's misconduct and is intended to send a strong message of deterrence to the digital asset industry…. The digital asset industry is well on notice that its products will continue to be a focus for ASIC. We want to encourage innovation and new services for consumers, but not at their expense*

Background

ASIC launched legal action against BPS in 2022, alleging unlicensed conduct and that the firm made false, misleading or deceptive representations to about 80,000 consumers or businesses in connection with the Qoin Wallet, a digital wallet used to store and transact a crypto-asset called Qoin Tokens.

BPS launched the Qoin Wallet in January 2020 and by late 2022, had issued more than 93,000 wallets and raised over $40 million through token sales. BPS did not hold its own Australian Financial Services Licence (**AFSL**) and instead sought to rely on statutory exemptions by operating under authorised representative arrangements with third-party AFSL holders, including PNI Financial Services Pty Ltd (**PNI**).

ASIC alleged that BPS was, in substance, carrying on a financial services business by issuing a non-cash payment facility and providing financial product advice without an AFSL, and that its reliance on the authorised representative exemption was misplaced.

At first instance, the Federal Court accepted that BPS was unlicensed for most of the relevant period, but found that BPS was exempt for a 10-month period while acting as an authorised representative of PNI. ASIC appealed that finding, arguing that the exemption in s 911A(2)(a) requires a person to provide financial services "as representative of" the licensee, not merely pursuant to a formal appointment.

The Full Federal Court agreed with ASIC, holding that whether the exemption applies turns on substance rather than form, specifically, whether the financial services were actually provided in a representative capacity or on the issuer's own behalf. The Court was careful to confine its ruling to the facts declining to rule categorically that a product issuer cannot in all circumstances operate under a Corporate Authorised Representative capacity. On the facts, the Court found that BPS

was acting on its own behalf when issuing the Qoin Wallet, and therefore could not rely on the authorised representative exemption during the PNI period. This appeal outcome set the stage for the subsequent penalty judgment.

The Penalty Judgment

Against that backdrop, the penalty judgment was confined to three questions:

1. whether BPS should be relieved from liability under s 1317S of the Corporations Act;
2. if not, the appropriate penalty for the unlicensed conduct; and
3. the appropriate penalty for the misleading representations.

Justice Downes treated the unlicensed activity as a single course of conduct spanning January 2020 to October 2023.

1. *Relief from liability: honesty is necessary but not sufficient*

Section 1317S of the Corporations Act permits a court to relieve a contravener from liability where:

1. the person acted honestly;
2. the person ought fairly to be excused; and
3. relief should be granted either in whole or in part.

Justice Downes accepted that BPS acted honestly given that they had obtained legal advice prior to launch, engaged with ASIC early and made genuine attempts to structure their offering compliantly via authorised representative and intermediary arrangements.

As the court observed:

> *"In light of the legal advice obtained by BPS and its engagement with ASIC, it also cannot be said that BPS acted carelessly or imprudently to such a degree as to demonstrate no genuine attempt to comply with s 911A."*

However, the Court found that BPS knew it required an AFSL unless a statutory exemption applied, yet it proceeded on the assumption that executing an authorised representative or intermediary agreements was, in and of itself, sufficient.

Justice Downes rejected this assumption finding exemptions under section 911A are not engaged by the agreements alone. Whether an exemption applies depends on the factual circumstances of how the financial services are actually provided. BPS couldn't meet its statutory obligations merely by executing an agreement that does not reflect the reality of the arrangement.

Importantly, none of the legal advice BPS obtained squarely addressed whether the authorised representative or intermediary agreements as operated in practice, satisfied the statutory exemptions.

The Court highlighted that, in circumstances where regulatory uncertainty existed, particularly during the PNI period, this strengthened, rather than weakened, the expectation that BPS obtain precise advice on the execution and practical operation of the agreements.

The Court therefore concluded BPS "ought [not] fairly be excused".

Valuation of "benefit derived"

Central to the valuation of the penalty was how to identify the "benefit derived" from the unlicensed conduct.

ASIC argued that the benefit of BPS's unlicensed conduct was the revenue generated from Qoin token sales, whereas BPS argued that:

- token sales were separable from the Qoin Wallet; and
- in any event, only profit (not revenue) should be relevant.

Although the Qoin Wallet was the NCP product, Justice Downes found it was an essential component of the overall Qoin facility. Without the Wallet, Qoin Tokens could not be sold or used. Revenue from token sales was therefore reasonably attributable to the unlicensed conduct. This conclusion of itself is questionable, although we note the misleading and deceptive conduct breaches extended to conduct relating to the Qoin token.

The Court then turned to whether "benefit" meant profit or revenue. Relying heavily on the High Court's reasoning in *R v Jacobs Group (Australia) Pty Ltd*, Justice Downes held that:

- the statutory definition of "benefit" is deliberately expansive;
- nothing in s 1317G suggests a netting-off or profit-based approach; and
- a profit analysis would introduce complex accounting disputes ill-suited to determining maximum penalties.

Accordingly, benefit was determined as the gross revenue actually received during the period BPS engaged in the contravening conduct.

In the reasons for judgment, Justice Downes said:

"During the same period, BPS issued more than 96,000 Qoin Wallets and derived substantial revenues totalling over $42 million from the sale of Qoin Tokens."

Despite the very high maximum, the Court imposed a $2 million penalty for the unlicensed conduct. In reaching this figure, Justice Downes undertook the following analysis:

- there was no evidence of consumer loss;
- the conduct was deliberate in the sense of being intentional, but not reckless or dishonest;
- BPS made genuine attempts at compliance and cooperated with ASIC;
- capacity to pay and insolvency risk were relevant, but general deterrence remained paramount to the Court.

Not imposing a penalty, as BPS proposed, would have failed to deter similar conduct and risked treating licensing breaches as a cost of doing business.

Misleading and deceptive conduct

The Court stated that each access of the Qoin website containing a misleading representation constituted a separate contravention of section 12DB of the ASIC Act. Applied mechanically, this would yield a theoretical maximum penalty of "many billions, if not trillions, of dollars". Justice Downes therefore grouped the representations into contravening representations, being the Fiat Trading Representation, Crypto Trade Representation, Merchant Growth Representation and Approval/Registration Representation.

Justice Downes accepted that some consumers were likely encouraged by the representations, but there was no direct evidence of reliance or loss. The conduct was nonetheless characterised as *objectively reckless*. BPS failed to appreciate the obvious risk that its statements would mislead consumers, even if there was no subjective intention to deceive.

The Merchant Growth Representation was treated as particularly serious given it remained published for over 12 months after the decline in merchant numbers was known.

ASIC sought $19 million in penalties for the misleading conduct whereas BPS proposed $600,000. The Court rejected both extremes.

Ultimately, the Court imposed:

- $4 million for the Trade Representations;
- $2 million for the Merchant Growth Representation; and
- $6 million for the Approval/Registration Representation,

totalling $12 million.

Injunctions and corrective advertising

Beyond monetary penalties, the Court also ordered:

- a 10-year injunction restraining BPS from carrying on a financial services business without an AFSL; and
- extensive corrective advertising orders to reflect that BPS no longer controlled the new Qoin website.

The hefty penalty handed down by the Court indicates that the Courts and the regulator will not take lightly unlicensed conduct or misleading and deceptive conduct involving digital assets. Despite Qoin's efforts to comply with the law, the Court was significantly influenced by a desire for deterrence. This outcome is a cautionary note to product issues to ensure that they properly understand their obligations even where those obligations are complicated and unclear. It also highlights that mechanical approaches to compliance involve considerable risk as the Court may consider substance over

form. Product issuers are encouraged to seek fulsome advice extending to licensing, contracting arrangements, the product lifecycle and disclosure matters in order to mitigate these risks.

Written by Steven Pettigrove, Luke Higgins and Tahlia Kelly

Some stablecoins are more equal than others: ASIC issues stablecoin relief

Following industry consultation in late 2025, ASIC released a new regulatory instrument providing tailored licensing relief for certain stablecoins and wrapped tokens.

ASIC Corporations (Stablecoin and Wrapped Token Relief) Instrument 2025/867 (**Relief Instrument**) provides licensing and disclosure exemptions to distributors of eligible stablecoins and eligible wrapped tokens.

'Eligible stablecoins' must the satisfy the following core criteria, among others:

- the stablecoin is issued by an eligible stablecoin issuer (typically, a stablecoin issuer who holds an AFSL licence, or an exempt foreign issuer);
- there are redemption rights associated with the stablecoin (i.e., it can be unconditionally redeemed for the underlying currency);
- the stablecoin issuer must maintain cash or cash equivalent reserves that are equal or greater than the total underlying amount of stablecoins on issue; and
- the stablecoins have no right to, or receive a financial return, other than redemption rights.

Additional criteria apply to 'eligible wrapped tokens'.

The instrument offers licensing relief to distributors who are not issuers of stablecoins or wrapped tokens:

- who operate a financial market only because one or more stablecoins or wrapped tokens is a financial product;
- who operate a clearing and settlement facility only because one or more stablecoins or wrapped tokens is a financial product; and
- who provide certain financial services in relation to a stablecoin or a wrapped token.

While designed to foster 'innovation and growth', the practical limitations of the Stablecoin Instrument become apparent quickly. At the time of writing, there are only three Australian eligible stablecoin issuers which distributors can offer without fear of falling afoul of financial services licensing requirements.

The inclusion of exempt foreign issuers widens the breadth of the Relief Instrument, which contemplates foreign entities that are not required to hold an AFSL to issue the relevant digital asset because they do not carry on a financial services business in Australian (in relation to the digital asset).

Paragraph 12 of the Relief Instrument introduces additional conditions for the licensing exemption. Put simply, the distributors will be exempt from requiring licensing if:

1. the eligible stablecoin issuer has (within the last 4 months), published a report on its website about the composition and value of the reserves in relation to the relevant stablecoins at a date that is no more than 1 month before the date the report was published;
2. if the eligible stablecoins have been on issue for at least 16 months – the issuer has, within the last 13 months, published on its website a report:
    1. about the composition and value of the reserves in relation to the eligible stablecoins in the class at a date that is no more than 3 months before the date the report is published; and
    2. the report audited by a registered company auditor or equivalent;
3. the reports identify that:
    1. the reserves comprise only cash or cash equivalent assets denominated in the underlying currency; and
    2. the value of the reserves is greater than the amount of stablecoins on issue.

In addition, the issuer must hold reserves on trust.

Taking these requirements into consideration, a stablecoin issuer like Tether, and their native token USDT, may fall out of scope as their reserves comprise of (as at the last report published), cash and cash equivalents (77.23%), corporate bonds (0.01%), precious metals (7.13%), bitcoin (5.44%), 'other investments' (2.14%) and secured loans (8.06%). Tether has the largest market capitalisation of any stablecoin globally.

While the Relief Instrument signals ASIC's intent to create a more permissive regulatory perimeter for digital asset infrastructure, its tightly drawn eligibility criteria will provide relief only to a limited range of stablecoins. By effectively

limiting relief to fully cash-backed, stablecoins with rigorous, continuous and audited reserve disclosures, the framework prioritizes prudential considerations.

The relief also introduces an unusual situation where a distributor becomes reliant on the underlying stablecoin issuer to continue providing continuous disclosure of the composition and value of the reserves in relation to the relevant stablecoins. A scenario may arise whereby a distributor may fall out of the exemption criteria solely due to the failings of the underling issuer (i.e., where the issuer fails to provide updated reports, or introduces non-cash reserves).

In addition, while the eligibility criteria appear to have been drafted within certain tokens in mind, it will be up to distributors to apply the criteria and assess formal or substantive compliance.

Whether this instrument serves as a catalyst for a regulated domestic stablecoin ecosystem remains to be seen. With the likes of Tether taking steps to offer an onshore USDT in partnership with Anchorage in the United States, it will be interesting to see whether the relief instrument encourages more onshore operators in Australia.

Written by Steven Pettigrove and Will Deeb

It's the vibe: High Court to rule on Bitcoin property dispute

The High Court of Australia has granted special leave to rule on whether bitcoin is capable of being property. The case involves a dispute between Adam Poulton and Jeff Conrad and concerns Conrad's payment to Poulton to invest $10,000 in Bitcoin on his behalf.

This development follows the Full Court of the Supreme Court of Tasmania decision, which endorsed, in obiter, a third category of property for crypto assets (beyond possession and choses in action) and suggested that control via private keys may be sufficient to establish possession of what is intangible property.

In his special leave application, Poulton argues that bitcoin, while something people are willing to exchange for currency, is not property capable of being possessed under Australian common law and is instead merely "information in a database". The applicant relies on the orthodox distinction between choses in possession and choses in action. Choses in possession are tangible items that can be physically held or owned, whereas choses in action are intangible rights or property (i.e., debts, shares, or contractual rights) that cannot be physically held and can only be enforced or claimed through legal action.

On this basis, Poulton submits that possession has always required physical custody of a tangible thing, with the consequence that torts such as conversion and detinue are unavailable. He describes bitcoin as "a unique address on a network of computers", arguing that this does not make it a unique item of property. As such, he contends that bitcoin cannot be possessed in the legal sense.

Conrad, who was successful in the Full Court of the Supreme Court of Tasmania, argues that bitcoin is property capable of possession when understood by reference to control and exclusivity rather than physical holding. They submit that possession has never been limited to tangible objects and that control of the private key gives the holder exclusive power to deal with the bitcoin and to exclude others.

This development will be closely watched, particularly in light of the progression of the *Corporations Amendment (Digital Assets Framework) Bill 2025*, which follows the reasoning of *Poulton v Conrad [2025] TASFC 7* and distinguishes possession of digital tokens from possession of general items. Under section 86 of the draft legislation, general items are taken to be possessed if they are in a person's custody or under a person's control, whereas digital tokens are taken to be possessed if the person is capable of exerting factual control over the electronic record, or as prescribed by the regulations. "Factual control" is defined as the ability to transfer the token, exclude others from transferring the token, or demonstrate either of those abilities.

This decision will be keenly awaited, as it is expected to bring much-needed clarity to the classification of crypto-assets and the availability of tortious and proprietary remedies under Australian law. Following a long line of overseas cases, the case is likely to be closely watched in the common law world, as the first such case to reach a court of final appeal.

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