

Article Information

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Blockchain Bites: Pardon the interruption - the ATO enters bitcoin property debate; Ramp and Rails: AUSTRAC steps up VASP supervision; Tokenisation, tested: Australia drops Project Acacia report

The Piper Alderman Blockchain Group bring you the latest legal, regulatory and project updates in Blockchain and Digital Law.

Pardon the interruption - the ATO enters bitcoin property debate

The Australian High Court's docket does not often feature bitcoin as a central character. That was until recently, when the High Court granted [special leave to Adam Poulton in a dispute with Jeff Conrad](#), who paid Poulton to invest \$10,000 in bitcoin on his behalf.

On 7 May 2026, the Federal Commissioner of Taxation filed submissions seeking leave to intervene in the matter (*Poulton v Conrad* (H1/2026)), a Hobart Registry appeal that raises a direct question at the boundary of private law and the digital economy: whether a holding in bitcoin is 'property' under Australian common law, and if so, exactly what kind of property it is.

This question has remained a live issue in Australia despite overseas courts and [domestic courts](#) repeatedly treating crypto assets as property in practical contexts. Generally speaking, the courts have approached bitcoin as a species of valuable, controllable asset that the law can recognise and protect.

The Commissioner's proposed intervention is confined and does not seek to argue the whole appeal. He targets Ground 1 of the matter only: the 'property' character of a bitcoin holding. Naturally, that characterisation feeds into a wide range of legal consequences far beyond the immediate parties - after all, if bitcoin is not property, should the Commissioner be allowed to tax it?

Intervention in a High Court matter is discretionary. In his submissions, the Commissioner points to the established approach: leave may be granted where the applicant's functions and powers may be 'directly and substantially affected' by the Court's decision, and where the proposed submissions offer assistance that is distinct from the parties' submissions without undue cost or delay.

Why the ATO cares

The Commissioner explains his interest in practical terms. In 2014, the ATO issued two Taxation Determinations (TD) addressing Bitcoin's treatment under the Australian tax law. TD 2014/26 proceeds on the view that Bitcoin holdings are property within s 108-5(1)(a) of the Income Tax Assessment Act 1997 (Cth), meaning a bitcoin holding is a capital gains tax (CGT) asset and therefore subject to capital gains taxation. TD 2014/27 proceeds from the same premise and addresses when bitcoin can be considered trading stock under Australian tax laws.

Those determinations are public rulings. The Commissioner says that where a public ruling applies and a taxpayer relies on it by acting consistently with it, the Commissioner is bound to administer the law in accordance with the ruling. He describes nearly 12 years of administration on the basis that a bitcoin holding is property.

The Commissioner sets out his primary concern, being that if the High Court were to conclude that a bitcoin holding is not

property at common law, the Commissioner says that outcome is likely to bear 'significantly, if not determinatively' on whether it is 'any property' for CGT asset purposes, with potential consequences for Commonwealth revenue, and it may also affect whether bitcoin can be treated as trading stock. In other words: it would hamstring the Commissioner's ability to tax dealings in bitcoin.

Core property principles and the Ainsworth test

The Commissioner's submission begins with a framing point about 'property' that is both orthodox and important for crypto assets. The submission states that the common law's use of the term 'property' is wide and context-dependent (with our emphasis added):

*'Property' is **not 'a monolithic notion of standard content and invariable intensity; nor 'a term of art with one specific and precise meaning'. The term is ambiguous and the very concept may be elusive. Importantly for present purposes, 'property' does not refer to a thing, but to a person's relationship with a thing. And the breadth of the word is such that 'it can be used to describe all or any of very many different kinds of relationship between a person and a subject matter'.***

With that in mind, the Commissioner adopts the familiar four-part formulation from the key case of *National Provincial Bank v Ainsworth* as a practical analytical tool: a right or interest will fall within the category of property where it is:

1. definable;
2. identifiable by third parties;
3. capable of assumption by third parties; and
4. has permanence or stability.

Something that satisfies the above four criteria is said to satisfy the Ainsworth test.

In his submission, the Commissioner applies the Ainsworth test to a bitcoin holding with specific reference to the actual mechanics of the bitcoin blockchain.

On the first limb of the Ainsworth test, the Commissioner states that the relevant 'thing' for property analysis is the ledger entry, being a discrete balance recorded at a particular address (with our emphasis added):

*The relevant **thing** is thus the ledger entry itself: **a defined, discrete numerical quantity, capable of identification by reference to the unique address at which it is recorded, incapable of confusion with any other holding, and transferable only by a transaction that extinguishes the balance at the origin address and records it at the destination address.***

By way of analogy, the Commissioner contends that in this respect a bitcoin holding is no less definable than the balance recorded by banks in numbered accounts that are held with them.

On the remaining limbs, the submission focuses on the public visibility of addresses and transaction history (supporting 'identifiable by third parties'), the system's transfer mechanics (supporting 'capable of assumption'), and the stability created by the blockchain ledger's immutable and persistent record of holdings and transactions (supporting 'permanence and stability').

Information, exclusivity and control

The Commissioner contends that a major fault line in the appeal is the characterisation of a Bitcoin holding as 'mere information', which has been one of the primary contentions for the bitcoin=property naysayers.

The Commissioner addresses the argument by stating that information is treated differently at law because it can be copied and shared without depriving the original holder:

As noted, the conclusion that a person's relationship with mere information is not property is principally informed by information's non-exclusivity: when it is transferred - or, more accurately, when it is transmitted - mere information belongs to both the transferor and the transferee. It can thus be infinitely duplicated.

The Commissioner then explains the features of bitcoin that matter most for distinguishing it from mere information: the protocol's prevention of 'double spending,' supported by the ledger and consensus mechanisms, and the resulting practical

exclusivity over the holding:

*A number of factors make Bitcoin qualitatively different from mere information. **The holder of Bitcoin is prevented from double-spending the Bitcoin by the nature of the transaction ledger and the consensus mechanisms by which transactions are verified. Double-spending is also inhibited by the creation of a new private key after each transfer of Bitcoin. In that way, '[o]wnership by one person prevents ownership by another.'** That is, a holder of Bitcoin has excludable control over access to the Bitcoin and, unlike information, which remains usable even when it is shared, Bitcoin may only be transferred by its owner once, making it rivalrous, like tangible things.*

What kind of property?

The classification problem is an old common law problem resurfacing in a new setting. The submission notes the traditional split between choses in possession and choses in action, and the historical insistence that there is no third category.

The Commissioner supports recognition that Bitcoin holdings are capable of possession, and, if the law demands selection within the traditional dichotomy, expresses a preference for treating a bitcoin holding as a chose in possession.

He also points to recent legislative movement in the same direction. The Commissioner's submissions refer to the Corporations Amendment (Digital Assets Framework) Act 2026 (Cth), which introduces a statutory concept of 'possession' of a digital token based on factual control, including the ability to transfer the record and exclude others from transferring it.

Conversion and detinue

The Commissioner does not argue whether the torts of conversion or detinue are made out on the facts, instead focusing on the legal consequences of classification. The submissions explain that treating bitcoin as property capable of possession matters because of the long-running debate about whether the tort of conversion applies to intangible rights, and the way courts have historically relied on 'documentary intangible' concepts to extend conversion to value that sits behind documents.

Conclusion

The ATO has administered the tax system for more than a decade on the footing that a bitcoin holding is property, reflected in its public rulings on CGT assets and trading stock. A High Court ruling to the contrary would not be a tidy or self-contained correction. Rather, it would smash through the tax system and open a difficult period of reassessment and dispute management where taxpayers have arranged their affairs, and the Commissioner has administered them, on the basis of the existing view.

That context explains the tone of the Commissioner's submissions. He presents bitcoin as an orthodox fit for property analysis by returning to first principles, contending that 'property' describes legal relationships rather than merely physical objects. Read as a whole, the intervention is an attempt to close off a recurring argument and have the common law state the position in terms that remain workable for both private law remedies and public administration. In other words, the Commissioner wants to nip this one in the bud.

We leave you with a final question for thought: if a bitcoin holding were truly nothing more than mere information, something that can be transmitted without loss and duplicated without consequences, then why not share some of your bitcoin with me?

Written by Steven Pettigrove and Luke Higgins

Ramp and Rails: AUSTRAC steps up VASP supervision

AUSTRAC has recently launched two [supervisory campaigns](#) targeting virtual asset businesses as new AML/CTF reforms come into effect. One of these initiatives, the "ramps and rails" campaign, specifically targets over-the-counter crypto-to-cash operators. The other targets local digital currency exchange operators. This follows [the transition from the "digital currency exchange" regime to the expanded "virtual asset service provider" \(VASP\) framework earlier this year](#).

[The VASP framework was introduced under the Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2024 \(Cth\), which implements significant reforms to Australia's AML/CTF regime as it applies to digital currency](#)

[businesses](#). The shift aligns Australia more closely with international standards, including the Financial Action Task Force (FATF) Recommendations on virtual assets. As a result, VASPs are now subject to enhanced AML/CTF obligations subject to limited transitional relief.

[Importantly, the expanded VASP definition captures a broader range of crypto-related products and services, including businesses facilitating fiat on- and off-ramps, custody arrangements, value transfer, brokerage services, exchanges and other intermediary services.](#) Digital asset businesses should carefully assess whether they are carrying on new designated services and ensure that their AUSTRAC registration is up to date. Entities newly captured will need to ensure they are appropriately registered with AUSTRAC and have compliant AML/CTF programs in place.

As part of the “ramps and rails” campaign, AUSTRAC is engaging with industry participants to supervise how effectively crypto businesses are complying with their AML/CTF obligations. The campaign targets 36 crypto businesses and focuses on business models, service channels, scale of operations, and the effectiveness of AML/CTF risk management frameworks.

AUSTRAC is also engaging with 27 local crypto exchanges, with a focus on reform readiness and improvements to governance arrangements.

In particular, AUSTRAC is likely to [scrutinise](#):

- customer due diligence processes, including KYC procedures;
- transaction monitoring and reporting (such as suspicious matter reports and threshold transaction reports);
- enterprise-wide and product-level risk assessments tailored to crypto-specific typologies; and
- governance, oversight, and the overall effectiveness of AML/CTF programs.

This development comes at a time when [regulatory expectations are increasing](#), and [transitional rules are in place](#). AUSTRAC’s concurrent supervisory activity signals a clear expectation that businesses will move quickly to align with their updated obligations.

AUSTRAC Chief Executive Officer Brendan Thomas emphasised the significance of the reforms, stating:

This is more than a name change. It reflects how this sector has evolved and ensures our regulatory framework remains relevant.

What now?

Businesses in the digital assets space should act promptly to:

- assess whether they fall within the VASP definition;
- apply for or update their AUSTRAC registration;
- review and uplift AML/CTF programs (including customer due diligence and transaction monitoring procedures);
- review and ensure they have a robust AML/CTF risk assessment in place; and
- ensure operational readiness for heightened regulatory scrutiny (including reporting obligations).

Written by Steven Pettigrove and Sophie Nguyen

Tokenisation, tested: Australia drops Project Acacia report

The Reserve Bank of Australia (RBA) has [announced the findings of Project Acacia](#), a [collaborative research initiative between the RBA and the Digital Finance Cooperative Research Centre \(DFCRC\) that sought to explore the role of tokenised finance in Australia’s wholesale asset market](#).

The [final report provides a detailed and practical exploration of how tokenised finance could reshape wholesale markets](#) in Australia. Drawing on 20 industry-led use cases, the report demonstrates that while tokenisation is already technically viable, its real impact depends on how markets, money and infrastructure evolve together.

The report builds [on DFCRC research indicating a potential \\$24 billion opportunity or 1% GDP gain](#) through adoption of digital finance in the Australian economy.

We delve into the themes of the final report below.

1. Adoption in Australian market

While the project highlighted strong industry interest in tokenising assets, its development still remains “in its early stages in Australia”. The report highlights that appetite for fixed income was the most prevalent asset class, consistent with global trends. At a structural level, it also observes that Australia’s wholesale markets have historically lacked dynamism compared to other parts of the financial system.

Adoption of tokenisation faces institutional and structural constraints, specifically:

- legal and regulatory uncertainty, including questions around ownership, settlement finality and regulatory classification;
- coordination challenges, requiring alignment across issuers, investors, custodians and infrastructure providers; and
- interoperability risks, which may lead to liquidity fragmentation and capital inefficiencies.

The report emphasises that scaling tokenisation will require “more enduring mechanisms for coordination across a wide range of participants”. Against this backdrop, tokenisation is framed as strategically important to Australia’s financial system. It has the potential to enhance market dynamism, lower funding costs, attract international capital and strengthen resilience, with the report emphasising that such goals are “in the national interest” while also requiring seamless access for global investors given the role of offshore capital in Australian markets.

2. Tokenisation as a structural efficiency and market reform driver

Project Acacia finds that tokenisation can materially improve wholesale market efficiency, resilience and functionality, but the extent of improvement is dependent on how tokenisation is integrated into market infrastructure and workflows, rather than simply digitising existing structures.

Across the use cases, the benefits were evident at multiple points in the asset lifecycle, particularly where manual and fragmented processes were replaced with automated and integrated systems. These included:

- faster issuance and settlement cycles;
- reduced counterparty and settlement risk;
- lower operational errors via automation; and
- improved access to liquidity (including 24/7 markets).

However, the report noted that some improvements, particularly around timing and transparency, could also be delivered through incremental reform to existing infrastructure (e.g. faster payment rails or extended settlement hours) rather than through tokenisation.

3. Programmability and “atomic” settlement

The report identifies programmability as the core innovation takeaway from the project. In particular, atomic settlement fundamentally changes how transactions are processed.

Atomic settlement ensures that “the transfer of assets and payment occurs simultaneously... eliminating timing gaps and partial settlement”. This enables:

- true delivery-versus-payment (DvP) with no settlement risk gap;
- straight-through processing from trade to settlement; and
- fully automated lifecycle functions (e.g. coupon payments, redemptions).

Closely linked is the concept of composability, where multiple financial processes can be combined into a single transaction. Processes that previously required “multiple intermediaries and systems” can instead be executed as a “single atomic transaction”. Together, these capabilities allow markets to move from sequential, intermediary-driven processes to integrated, programmable execution environments.

4. Tokenised money as a critical enabler

A consistent theme emerging from Project Acacia is that the benefits of tokenised assets are realised in conjunction with innovations in digital money and settlement infrastructure, rather than in isolation. The report emphasises that tokenisation, when combined with appropriate forms of digital money, has the potential to enhance the efficiency, resilience and functionality of wholesale financial markets.

To test this interaction, the project examined a range of settlement assets, including stablecoins, tokenised commercial bank deposits, a pilot wholesale central bank digital currency (wCBDC), and traditional Exchange Settlement Account (ESA) balances. These were deployed across multiple use cases to assess their suitability for facilitating transactions in wholesale tokenised asset markets.

The use cases demonstrated that integrating digital forms of money with tokenised assets can support key functional improvements, including the ability to achieve delivery-versus-payment outcomes (including atomic-style settlement), enable continuously available (24/7) settlement infrastructure, support programmable and conditional payment functionality, and reduce settlement risk and operational frictions.

5. Continued centrality of the two-tier monetary system

Despite innovation in private money, the report reinforces that central bank money will remain foundational. It continues to act as the ultimate settlement asset and supports financial stability.

Central bank money is described as an “anchor and enabler” of the future system, with the two-tier structure evolving rather than being replaced:

- central bank money provides trust and stability;
- private tokenised money supports innovation and scalability; and
- interactions between the two maintain convertibility and confidence.

Importantly, the report highlights that stablecoins and tokenised bank deposits may have “complementary roles... reflecting differences in scalability, use cases and trust”.

6. Legal and Regulatory Reform as a Precondition for Scale

The report consistently identifies legal and regulatory clarity as a prerequisite for scale. It states that clarity is an “important prerequisite” for market development.

Key areas requiring further development include:

- legal recognition of tokenised ownership structures;
- settlement finality in DLT environments;
- regulatory classification of tokenised assets and market infrastructure; and
- prudential treatment of digital asset exposures.

Industry participants also emphasised the need for:

- longer-term regulatory or innovation sandboxes; and
- clear pathways from experimentation to commercialisation.

Without these, uncertainty may continue to constrain investment and adoption.

7. Interoperability as a System-Critical Requirement

Project Acacia makes clear that the future system will not be built on a single platform. Instead, it will involve multiple DLT networks and traditional systems operating alongside each other. The report states that a tokenised ecosystem will “most likely consist of a range of traditional and DLT networks”. To function effectively, this requires:

- interoperability between platforms;
- integration with existing payment and settlement systems; and
- common standards across assets and infrastructure

Without this, the report warns of:

- liquidity fragmentation;
- inefficient capital allocation; and
- the emergence of “walled gardens”.

What is the next phase for Project Acacia?

The report concludes that transformation cannot be delivered by any one institution. Instead, it requires sustained coordination across industry, regulators and government. Barriers to adoption “transcend the roles... of any single institution”. The proposed next phase therefore focuses on:

- enhanced regulator-industry collaboration;
- development of a digital financial market infrastructure sandbox;
- continued exploration of tokenised money, including wCBDC and deposit tokens; and

- infrastructure upgrades to support tokenised settlement.

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