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Blockchain Bites: High Court endorses expansive financial product definitions in Block Earner appeal; ASIC hits Pause: No-action relief for digital asset businesses extended to 30 September 2026; Ready or not: Australia's Travel Rule starts on 1 July

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High Court endorses expansive financial product definitions in Block Earner appeal

The High Court of Australia has ruled in favour of the Australian Securities and Investments Commission (**ASIC**) against Web3 Ventures Pty Ltd, trading as Block Earner. In the judgment delivered on 17 June 2026, the High Court of Australia found in favour of ASIC, holding that Block Earner's fixed-yield 'Earner' product fell within Chapter 7 of the *Corporations Act 2001* (Cth).

The decision overturns the earlier Full Federal Court decision which found that the offering was *not* a financial product and marks a decisive development in one of Australia's most closely watched crypto-related licensing cases. This landmark decision is the first time a crypto-asset product has been examined by the High Court of Australia under financial services laws. The decision endorses a broad approach to defining the regulatory perimeter concerning financial products, suggesting an expansive approach to the financial investment test under the general definition of a financial product. Meanwhile, its relatively short analysis of the definition of a derivative could well prove problematic as it blurs the line between ordinary contractual arrangements and the conventional understanding of what is a derivative in financial markets.

Financial investment: contributions, nexus and purpose

Section 763B of the Corporations Act sets out when a person is taken to 'make a financial investment' for the purposes of the financial product definition in s 763A.

In simple terms, a financial investment exists where:

- an investor provides money or something of value to another person (the "contribution"); and
- that contribution is used (or intended to be used) to generate a financial return or benefit *for* the investor (even if no return or benefit is generated); and
- the investor does not have day-to-day control over how the contribution is used.

The High Court's reasoning regarding the Earner product is as follows:

1. *Characterising the contribution*

A key step in the High Court's reasoning was identifying the user's contribution. Under the Earner product, users deposited AUD into their account and, by selecting 'Lend', nominated an eligible cryptocurrency and the amount of AUD to be invested. Block Earner then allocated the nominated AUD and 'converted' it into the specified cryptocurrency.

However, in substance, the user's funds were not themselves converted into cryptocurrency. Rather, users were entitled to a fixed rate of return on the money's-worth contribution, denominated and paid in the relevant cryptocurrency. The economic reality was that Block Earner deployed the contributed AUD within its broader business activities, and the return paid to users was not directly referable to the specific use of those funds.

The High Court rejected the Full Federal Court's characterisation of the Earner product as a loan of cryptocurrency paying fixed interest. Instead, it disavowed the premise underlying the analysis that users 'lent' crypto-assets, and held that the relevant 'contribution' was AUD.

In doing so, the Court expressly critiqued the terminology used in Block Earner's Terms of Use. It observed that labels such as 'Lend' and 'loan' were 'inapposite', noting that users did not in fact possess or transfer cryptocurrency in the relevant sense. The Court instead emphasised that legal characterisation turns on the rights and obligations created by the arrangement, rather than the product's description, stating:

At no stage did any user have any cryptocurrency and at no stage did any user 'lend' any cryptocurrency to Block Earner.

In essence, the High Court took a substance-over-form approach, meaning that even if a product is structured as a fixed return loan, it does not necessarily fall outside of the Australian financial services regime depending on the affect of deeming provisions in the Corporations Act. It also suggests some judicial discretion in defining the boundaries between what is a credit facility (and outside the financial services regime), and what is a financial product in substance.

2. *Nexus of contribution*

The Full Federal Court placed significant weight on the absence of a close nexus between the actual use of user contributions and the returns paid to users. The return was fixed and did not depend on the success or failure of any particular downstream activity undertaken by Block Earner.

The High Court rejected that narrower approach. It held that the contribution of AUD was used, or intended to be used, to generate the promised return, even though the return was fixed and not directly tied to the performance of any identified pool of assets or activity. The Court accepted that Block Earner used the contributed value in its business to generate both the customer return and its own profit.

This reflects a broader conception of contribution than the Full Court had adopted. On the High Court's reasoning, the analysis does not depend on tracing a particular asset through a particular use. The focus is instead on the contractual contribution made by the user and whether that contribution is used, or intended to be used (in some manner), by the issuer to generate the promised return. That approach may have wider implications for other fixed-yield crypto products, including those involving direct transfers of stablecoins or other digital assets.

3. *'For' whom the investment is made for*

One of the most pragmatic aspects of the Court's judgment was its commercial interpretation of the word 'for' in s 763B. The High Court rejected the idea that a return must be generated only 'for' the investor. It held that a return can be generated for both the issuer and the investor at the same time, reflecting the commercial reality of such arrangements:

Contrary to the Full Court's reasoning, the conclusion that the Earner Product is captured by s 763B(a) does not "conflate[] the generation of a return that would enable Block Earner to meet its obligations to its users with the generation of a return or other benefit 'for' those users". The text of s 763B(a) does not confine the way in which a contribution may be used to generate a financial return "for" the investor. For example, there is nothing in the text of s 763B(a) that suggests that the "financial return, or other benefit" must be only for the investor. Any contention otherwise would ignore the commercial reality of any such financial investment. ***In any profit-making investment business, the business uses the funds invested to generate a return both for it, and for its investors. Every provider of a financial product is looking to make a profit out of the venture****.*

This paragraph indicates a very expansive approach to the financial investment product definition in section 763B. Under the High Court's reasoning, a product is not excluded from section 763B merely because the issuer bears the underlying business risk, and keeps the upside or funds the return from its broader business activities. The focus is on whether the investor's contribution is used, or intended to be used, to support the return promised to the investor.

So framed, the concept of a financial investment may extend more readily to fixed-rate and account-style products, and potentially capture products presently structured as loans.

Derivative: can any contract qualify?

Under s 761D, a derivative is broadly an arrangement under which one party must, or may be required to, provide value to another at a future time and the amount payable, or the value of the underlying arrangement, is determined, derived or varies by reference to something else (e.g., an asset, rate, index or commodity).

The High Court held that the Earner Product was also a derivative because of their view that the 'arrangement' started when a user contributed AUD to Blockearner and became entitled to receive AUD back at a future time, but the amount received ultimately varied by reference to the value of the nominated cryptocurrency and the relevant exchange rates. In the Court's view, that was sufficient satisfy s 761D(1)(c).

In reaching that conclusion, the High Court rejected the Full Federal Court's view that the exchange functionality was separate from the Earner product. By characterising the Earner product as a single, integrated facility, entered into when the user completed the first steps of depositing AUD and opting into the 'Lend' product and accepting the Terms of Use, the conversion of AUD into cryptocurrency and back again was part of the product itself, not an ancillary or severable service.

This broad interpretation, if applied to traditional finance and commercial contracts, may lead to many other products or arrangements being unintentionally caught within the derivative definition. To that end, this Court did not engage with the traditional understanding of a derivative in financial markets or the scope of the definition which debated by the Full Federal Court in the *Chameleon Mining* case.

The Court did not squarely engage with the more difficult question of statutory purpose, namely whether this was really the kind of arrangement Parliament intended to capture when it created a distinct derivative category in Chapter 7. The Earner product was, in substance, a fixed yield product. The fact that the final AUD amount moved by reference to a stablecoin value may be viewed as part of the settlement mechanics rather than the essential commercial object of the arrangement. By treating that feature as sufficient, the judgment risks extending an already broad definition of derivative into territory more naturally occupied by investment and account-style products, or even ordinary contracts with future performance.

As such, the court's derivative analysis is open to criticism, being comparatively flat and moving from the existence of exchange-rate and crypto-price variability to the conclusion that the product was a derivative without much detailed analysis of why that variability should attract the specific classification in s 761D. In our view, the High Court's expansive approach to the definition of a derivative is problematic and likely to be distinguished in future.

Credit facility point left unresolved

Another challenging aspect of the judgment is the Court's analysis of the 'credit facility' arguments raised by Block Earner, as the Court did not engage with the issue in a substantive way. Rather, the issue was held not to arise because regulation 7.1.06(1)(a)(iv) of the *Corporations Regulations 2001* (Cth) defines a credit facility as the provision of credit that is **not** a financial product within section 763A(1)(a). On the basis that the Court concluded that the Earner product *was* a facility through which a person made a financial investment, it followed, on the terms of the regulation, that the product could not be a credit facility for the purposes of the exclusion. Again, the absence of reasoning is problematic, and we query if the same result would be reached if the High Court had first asked itself whether the product was a credit facility.

The arrangement in this case had features commonly associated with credit facilities in use in traditional finance. Users advancing value to a provider, who then assumes an obligation to repay value at a future time together with a fixed return are now in a difficult position. The Court reasons that such an arrangement is a financial product only because they determined first that Earn was a financial product. As a matter of substance, and perhaps for good policy reasons, the judgment suggests that a product structured as a loan by the investor to the company cannot escape financial product classification either as a debenture or under the general financial product definition.

Deference to the Regulator

A key takeaway from the decision is confirmation from the High Court that "overinclusiveness" is a feature (not a bug) of the Australian licensing regime – the decision quoted from the *Chameleon Mining* case where it was said that:

Rights and liabilities are drawn in overtly broad terms, on the footing that instances of overreach which become apparent in the administration of the legislation may be remedied by adjustments to the Act made not by remedial legislation but by exercise of powers conferred upon the Executive Government or bodies such as the Australian Securities and Investments Commission.

News that part of ASIC's role is to protect against 'instances of overreach' under the *Corporations Act* raises an important question as to how much bright line guidance should be expected from a regulator. INFO225 at present features the word "may" 86 times, "could" 16 times and suggests readers obtain their own legal advice 3 times. In the present case, Block

Earner obtained legal advice, which was a point taken into account on penalties at first instance (although the company has still faced substantial legal costs). The position of foreign regulators is markedly different. The US Securities and Exchanges Commission (**SEC**) has reversed its earlier position which implied expansive securities laws definitions and was considered "regulation by enforcement". Under Chair Atkin the SEC has moved to give guidance in consultation with industry to provide "rules of the road" which to date have been welcomed by the industry. Europe's MiCA regime is extremely lengthy but has made clear when and how token sales can be made and in Cayman the line between a VASP and a non-VASP activity is relatively clear. Important policy questions remain when the regulatory perimeter is effectively left to the regulator to define by the courts. When a regulator states they are merely applying the law and does not wish to be seen to be making law, but the courts point out that the regulator's decisions very much define where the edges of the laws are, market participants are a difficult very position unless the regulator provides clear and bright line guidance and a pathway to compliance for novel products.

It is worth remembering that the facts in this case included the Earner product in question being novel, and being quickly withdrawn from the market once the regulator raised concerns.

Conclusion

The High Court's judgment fundamentally endorses very broad financial product definitions although these definitions must still be applied rigorously on a case by case basis. That task will continue under the *Corporations Amendment (Digital Assets Framework) Act 2026 which* introduces new regulated product categories for 'Digital Asset Platforms' (DAP) and 'Tokenised Custody Platforms' from 9 April 2027, bringing digital asset exchanges and custody providers within the Chapter 7 provisions of licensing in Australia, but does not define the financial product status of specific products.

Meanwhile, the High Court has now made clear that most Earn style products will need to be offered under financial services laws in one form or another – albeit intermediated staking services will occupy a special status under the DAP framework.

The decision also makes clear that crypto product labels will carry little weight if, in ASIC's view, the substance of the arrangement involves a financial investment or otherwise satisfies the criteria of another financial product category. To that end, the decision is consistent with the regulator's policy position of treating crypto-asset related offerings as requiring full regulation under financial services laws.

Written by Steven Pettigrove, Luke Higgins and Tahlia Kelly

ASIC hits Pause: No-action relief for digital asset businesses extended to 30 September 2026

On 25 June 2026, the Australian Securities and Investments Commission (**ASIC**) issued an updated class no-action letter extending both the scope and deadline of its transitional relief for certain digital asset businesses to **30 September 2026**.

ASIC's no-action relief provides a transitional policy position not to take enforcement action against certain unlicensed digital asset businesses, provided they lodge an AFSL (or variation) application by 30 September 2026, enter into another recognised exemption, and comply with specified conditions under the relief instrument.

The relief, which also covers some market operators and clearing and settlement facilities, sits alongside broader regulatory change, including the forthcoming *Corporations Amendment (Digital Assets Framework) Bill 2026* (Cth) (**DAF Bill**) regime from April 2027 and ASIC's continued position, reflected in the updated Information Sheet 225 (**INFO 225**), that many digital asset arrangements already fall within the existing financial services framework and must be assessed on a case-by-case basis.

Who is included in the updated scope?

The no-action position applies to persons providing financial services in relation to digital assets that constitute financial products, where those services would otherwise require licensing.

ASIC will not take action where entities are demonstrably transitioning toward licensing in a range of new circumstances (indicated in bold), including where entities:

- lodge an AFSL application (or variation) by 30 September 2026;
- *are appointed as an authorised representative of a licensee and are authorised to provide the financial services on*

behalf of the licensee;
- *provide financial services on behalf of a related body corporate, where:*
    - *the related body corporate has lodged an AFSL application (or variation);*
    - *the entity and its related body corporate have entered into an agreement that the related body corporate will, as soon as practicable after the AFSL or variation is granted, authorise the entity to provide financial services on its behalf; and*
    - *ASIC is notified of said agreement.*
- *enter into an intermediary authorisation for financial services relating to the issue, variation or disposal of a financial product, and ASIC is notified of said authorisation;*
- *provide financial services under a structured arrangement with a related body corporate involving the issue, variation or disposal of a financial product on its behalf, where:*
    - *the related body corporate, or its representatives may make offers to persons to arrange for the issue, variation or disposal of financial products by the entity;*
    - *the entity will issue, vary or dispose of financial products in accordance with those offers, where accepted;*
    - *the related body corporate has lodged an AFSL application (or variation);*
    - *the entity and its related body corporate have entered into an agreement that the related body corporate will, as soon as practicable after the AFSL or variation is granted, authorise the entity to provide financial services on its behalf; and*
    - *ASIC is notified of said agreement.*

The no-action position applies to financial services that are provided on or after 29 October 2025 and continues until the earliest of:

- ASIC refuses to accept the AFSL application;
- the applicant withdraws their application;
- ASIC refuses the AFSL (or variation);
- ASIC grants the AFSL (or variation); or
- the entity entering into an authorised representative or intermediary authorisation (where relevant).

The relief is subject to several conditions, including:

- the business must have been operating in Australia on or before 31 December 2025;
- retail-facing providers (or the related body corporate where relevant) must be members of the Australian Financial Complaints Authority (**AFCA**);
- foreign companies must be registered and appoint a local agent no later than, where relevant:
    - the day the AFSL application is lodged;
    - the entity is appointed as an authorised representative;
    - enters into an agreement with a related body corporate; or
    - enters into an intermediary authorisation.

What does this mean for digital asset businesses?

The extension provides a further window for digital asset businesses that were previously working towards the 30 June deadline to finalise their licensing strategy. However, the expanded scope and extended timeframe also introduce additional structuring considerations, including ensuring that the appropriate entity is positioned to obtain licensing and rely on the relief.

The extension to the relief for 90 days to allow digital asset businesses to review their product offering and consider additional relief pathways is a sensible and pragmatic step. However, 90 days is a short time, and digital asset businesses seeking to rely on the relief will need to move quickly in order to finalise their licensing strategy before 30 September 2026.

Written by Steven Pettigrove and Tahlia Kelly

Ready or not: Australia's Travel Rule starts on 1 July

What is changing?

Australia's Travel Rule starts on **1 July 2026**. It is the next phase of Australia's AML/CTF reform journey, and the point where policy turns into practice. From that date, reporting entities involved in transfers of value, including virtual asset

transfers, will need to collect, verify and, where required, pass on information about the payer and payee, unless an exemption applies.

For Virtual Asset Service Providers (**VASPs**), such as crypto exchanges, custodial wallet providers and other regulated businesses engaging in virtual asset transfer service, this is not just another regulatory deadline. It is a practical implementation issue that affects onboarding, transaction monitoring, counterparty checks, wallet screening and the customer experience.

Unlike some jurisdictions, the rule will apply to all transfers of value. There is no small-transfer carve-out, and businesses should not assume that domestic transfers, offshore counterparties or self-hosted wallets are automatically outside scope.

What it means for VASPs

In practice, the Travel Rule requires businesses to examine their role in the value transfer chain. A business may be an ordering institution if it accepts instructions from a customer to transfer value, a beneficiary institution if it makes transferred value available to a payee, or an intermediary institution if it receives and passes on transfer messages.

The label a business uses is less important than what it actually does. For VASPs, this means mapping value transfer flows and identifying where the business sits in each flow before deciding what information must be collected, verified, transmitted or retained.

The information that may need to travel includes details about the payer, payee and transfer, such as names, addresses, dates and places of birth, identifiers, account details, wallet addresses and transaction references.

Self-hosted wallets are likely to be one of the more challenging implementation issues. Even where there is no institution to which Travel Rule information must be transmitted, VASPs still need to identify the type of wallet, understand the counterparty and apply appropriate collection, verification, monitoring and risk controls.

What should businesses do now?

The immediate focus should be on confirming whether designated services are in scope, mapping value transfer flows, testing whether systems can capture and transmit the required information, and updating AML/CTF policies and procedures.

Businesses should also document how they will deal with missing, incomplete or inaccurate information, including when value may need to be withheld, rejected or suspended. If there are gaps, the key is to identify what must be fixed immediately, what can be risk-managed during transition, and how that approach will be evidenced.

Timeline

The key date is **1 July 2026**, when the Travel Rule obligations commence for relevant value transfers, including virtual asset transfers. Other transition dates remain relevant, including **29 July 2026** for newly regulated VASPs to apply to enrol and register with AUSTRAC, and **31 March 2029** for regulatory reporting involving unverified self-hosted virtual asset wallets.

For businesses still working through the practical implications of the Travel Rule and general AML/CTF reform readiness, Piper Alderman's Blockchain team can assist with scoping and implementation planning.

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