

Article Information

Authors: Louisa Xu, Michael Bacina, Tom Skevington

Service: Blockchain, FinTech

Sector: Financial Services

Blockchain Bites: Bitcoin as money in Australian Courts, Seeking certainty in proof-of-stake tax, Binance launches fiat-to-crypto exchange in Australia, cybersecurity and CBDCs

Michael Bacina, Tom Skevington and Louisa Xu of the Piper Alderman Blockchain Group bring you the latest legal, regulatory and project updates in Blockchain and Digital Law.

Is Bitcoin beginning to broach the boundaries of money in Australia?

Could a recent Australian decision, as well as a similar US decision, provide further support to digital currencies being treated at law as a form of money, despite not being legal tender at this time (outside of Japan)?

In the decision of [Commissioner of Police v Bigatton \[2020\] NSWSC 245](#), the Australian Federal Police sought orders seizing funds and digital currencies in connection with alleged money laundering by Mr Bigatton. These allegations around in connection with Bitconnect. Bitconnect is a recognised scam in which ponzi style returns were offered to lure in participants.

The Police alleged that Mr Bigatton was committing offences of operating an unregistered managed investment scheme, and also alleged that Mr Bigatton was involved in money laundering of funds in excess of \$100,000.

Mr Bigatton operated the “BitConnect Lending Program” which the Court described as “an investment vehicle that allowed investors to profit from BitConnect trading bot and volatility software. Investors received a daily profit based on investment options”.

As one of the requirements of a managed investment scheme is that people contribute money or “money’s worth”, Mr Bigatton alleged that dealing in digital currency was not dealing in “money” within the definition in the *Corporations Act*. Cavanagh J said:

I should say something about the nature of cryptocurrency. Cryptocurrencies are known as virtual currencies and may be considered a form of electronic money, although I understand that Mr Bigatton would dispute that. A unit of a cryptocurrency, such as a bitcoin, is created from code using an encrypted string of data blocks in the form of numbers known as blockchain. Cryptocurrencies can be bought and sold on exchange platforms and can be used to pay for goods and services from a person or entity that is willing to accept the particular cryptocurrency as payment. ... as an example law firms [are] apparently starting to use cryptocurrencies in some of their transactions.

However, he continued in saying:

There does not appear to be any case as yet which has been determined, or at least the parties have not referred me to any case which offers guidance on the submission made by Mr Bigatton that bitcoin is not money. He has not referred me to any case in support of his submission.

So while this caselaw provides some discussion on the point, the issue did not need to be decided for the Police requests for continued freezing of assets to occur. The decision highlights there is not yet clear guidance on the matter.

The State of Staking: Seeking certainty in proof-of-stake tax

To put it mildly, decentralised finance (**DeFi**) applications are doing alright at the moment. Many of these DeFi platforms already (or will) rely on staking protocols, whereby users 'stake' their digital asset and receive rewards, either in the form of interest, mining fees or similar.

Despite the success of these platforms, there remains widespread confusion about the tax treatment of the various forms of staking rewards. While some preliminary steps have been made, international tax offices have done little to address the confusion so far. That may be about to change, after four US lawmakers released a letter they had sent to the [Internal Revenue Service \(IRS\)](#) on the subject. Signed by Congressional Blockchain Caucus' co-chairs Reps. David Schweikert (R-Ariz.), Bill Foster (D-Ill.), Tom Emmer (R-Minn.) and Darren Soto (D-Fla.), the [letter](#) asks the IRS to ensure taxpayers staking digital assets don't get hit with both income tax and capital gains tax. In short:

It is possible the taxation of 'staking' rewards as income may overstate taxpayers' actual gains from participating in this new technology... It could also result in a reporting and compliance nightmare, for taxpayers and the Service alike

The concern about a reporting and compliance nightmare comes out of the reality that most staking protocols distribute rewards following the creation of a new block, which usually occurs seconds or minutes. Each of these new blocks can be considered to be an independent taxable event, meaning taxpayers could potentially have hundreds of taxable events every year.

Ultimately, there is little reason for the ATO and other international tax authorities to change their positions or provide further guidance without being prompted by governments.

Tales of a Florida Boy: Alleged Twitter hacker's arrest and not guilty plea

Following the large-scale hack which [inundated](#) Twitter on 15 July 2020 with a common 2x Bitcoin scam in July, three individuals have been arrested and charged in the United States. One of the individuals and the alleged mastermind of the operation, a 17 year old boy from Florida, has since pleaded not guilty to all 30 charges brought against him.

While lawyers for the accused are arguing for reduced bail, our 17-year old alleged mastermind remains in jail on \$725,000 bail. He faces 30 charges and, if convicted on all counts, could spend a theoretical 200 years in prison.

In a [news release](#) following the arrest of the trio, US Attorney David L Anderson for the Northern District of California said

There is a false belief within the criminal hacker community that attacks like the Twitter hack can be perpetrated anonymously and without consequence... Today's charging announcement demonstrates that the elation of nefarious hacking into a secure environment for fun or profit will be short-lived.

Interestingly, the Californian Department of Justice indirectly identified the investigative benefit to tracking proceeds of crime on a blockchain rather than in cash, saying:

While investigations into cyber breaches can sometimes take years, our investigators were able to bring these hackers into custody in a matter of weeks.

Punishment pending for PlusToken crypto conspirators?

The Chinese Ministry of Public Security and local police have [released a report](#) confirming their arrest of 27 "major criminal suspects" and a further 82 "key" members of the infamous PlusToken ponzi scheme.

Launched in early 2018, PlusToken imploded over the course of late 2019, while holding an estimated USD\$3 billion in digital assets including Bitcoin, Ethereum and EOS, among others.

Like many offerings at the time, PlusToken offered both a custodial wallet service and a supposed "investment program" which essentially guaranteed high **monthly** returns on stored funds, of between 8% and 16%.

Various blockchain research firms have been monitoring the movement of funds associated with PlusToken since the implosion, with movements in those funds being attributed to various price movements since June 2019. In particular,

large liquidations of PlusToken sourced Bitcoin has been attributed to the significant price drops in [September 2019](#).

Cybersecurity, CBDCs and digital transformation: Blockchain Australia webinar

[Blockchain Australia](#) hosted an excellent webinar on the [Blockchain use case in Cybersecurity](#). With cybersecurity emerging as a [national priority](#), almost 300 attendees joined the webinar to hear from the top shelf panel including:

1. [Senator Andrew Bragg](#) (Liberal Senator for New South Wales);
2. [Joni Pirovich](#) (Special Counsel – Mills Oakley);
3. [Chloe White](#) (Department Of Industry – National Blockchain Roadmap Lead);
4. [Guy Harrison](#) (Founder & Chief Technology Officer – ProvenDB); and
5. [John Paitaridis](#) (Chief Executive Officer – CyberCX).

Highlights from the presentations included Tentative confirmation from [Senator Andrew Bragg](#) that:

1. amendments to the Corporations Act facilitating virtual AGM's and electronic signatures by companies should be extended beyond the current 5 November 2020 deadline;
2. the Reserve Bank of Australia is actively researching developments in Central Bank Digital Currencies internationally, but has no plans to proceed with developing or issuing an Australian digital currency at this juncture.

Chloe White, National Blockchain Roadmap Lead, also confirmed that progress on the Australian National Blockchain Roadmap continues apace and with the overwhelming interest in the [working groups](#) with over 200 applications, it is likely that additional working groups will be established.

Binance launches fiat-to-crypto exchange in Australia

On 28 July 2020, Binance Australia [launched](#) its AUD fiat-to-crypto platform that allows Australian users to trade digital currencies in accordance with the AML/CTF laws in Australia.

Binance Founder and CEO [Chengpeng Zhao](#) (CZ) said:

Australia has been at the forefront of blockchain innovation with favorable policies. By providing a secure and regulated platform for trading digital currencies with AUD, Binance Australia aims to make crypto more accessible among Australian users, furthering our mission to provide crypto access and drive freedom of money worldwide

Binance Australia has taken a localised approach to provide Australians access to the features and functions of [Binance.com](#) and the broader Binance ecosystem which currently is reported by [CoinMarketCap](#) as the largest digital currency exchange globally with volume of over USD\$7 billion.

Chainalysis launches free Market Intel

Blockchain analytics firm [Chainalysis](#) has launched [Market Intel](#), a new website separate intended to inform investment decisions in crypto, rather than focusing in tracking illicit activity and enabling compliance. Market Intel is aimed at asset managers and financial regulators interested in monitoring the health of crypto markets.

Market Intel is currently only available in Beta, but already supports Bitcoin, Ethereum, Tether, Bitcoin Cash, and Litecoin. It seems more likely than not that this will expand over time to include other digital assets monitored through Chainalysis' other compliance products.

US Congress hot and cold on digital assets, but considers Digital Dollar

The US Congress is giving us whiplash. Legislators go from [considering central bank digital currencies](#), to [including then excluding digital dollars from stimulus bills](#) at the drop of a hat. The debate continued last week in the US Senate Banking, Housing and Urban Affairs Subcommittee on Economic Policy during a [hearing](#) on "Winning the Economic Competition" between China and the US.

While the majority of the discussion was taken up considering non-digital asset topics, Former [Commodity Futures Trading Commission](#) Chairman Christopher Giancarlo flew the flag for digital assets and advocated for the rollout of pilot programs to test out different facets of a blockchain based tokenised US dollar.

Congress has clearly taken to heart Mark Zuckerberg's [testimony](#) before the US House Financial Services Committee on Wednesday, 23 October 2019 regarding Libra, where he said that:

While we debate these issues, the rest of the world isn't waiting. China is moving quickly to launch similar ideas in the coming months. Libra will be backed mostly by dollars and I believe it will extend America's financial leadership as well as our democratic values and oversight around the world. If America doesn't innovate, our financial leadership is not guaranteed.

The question remains, where does this leave Australia, as we eagerly await the Reserve Bank's continuation of their [CBDC experiments](#).

Visa vaunts vision of digital currency strategy

Not to be outdone by [Mastercard](#), [Visa](#) recently released details of its [digital currency strategy](#). The announcement identifies that fintechs, including those in the digital currency space, can take advantage of Visa's [FastTrack](#) program to integrate quickly with Visa's global network, and sets out Visa's contribution to the digital asset industry to date.

Visa also confirms that:

We've been advancing and evolving our digital currency strategy for quite some time.

Emphasising the above, Visa refers to its partnerships with companies like [Coinbase](#) and [Fold](#) and its [investment](#) in digital asset custody provider [Anchorage](#). Perhaps more interestingly, Visa confirms that its dedicated [research team](#) has been "exploring the science of blockchain technology for several years". Visa attributes a few key projects to the work of the research team, including [Zether](#) and [FlyClient](#). The focus on future research appears to be on new mechanisms to improve scalability and enable offline digital currency transactions.