

Article Information

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Blockchain Bites: Government reports galore, Federal Budget FinTech focus, and regulator crackdowns

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

Steering Committee sets the RegTech ball rolling towards a blockchain powered future

While blockchain has yet to cross the line into broad acceptance, in February 2020, the Australian government placed its confidence in the technology's revolutionary potential with its release of the [National blockchain roadmap](#). The first step includes the formalisation of the National Blockchain Roadmap Advisory Committee and renaming it the National Blockchain Roadmap Steering Committee (The steering committee).

Four working groups have been announced to support the committee, including:

- **The Supply Chains Working Group** (established August 2020) which will investigate the potential for blockchain technology to support trusted supply chains, with an initial focus on the agriculture sector.
- **The Credentialing Working Group** (established August 2020) which will investigate using blockchain to support credentialing in the education sector.
- **The Cybersecurity Working Group** (established October 2020) which will investigate the potential for blockchain technology to bolster cybersecurity and;
- **The RegTech Working Group** (established October 2020) which will investigate the potential for blockchain technology to help businesses in meeting their regulatory compliance obligations in more secure and efficient ways.

Our own Michael Bacina has been [named a key contributor to the RegTech Working Group](#), following on from his testimony before the Senate Committee inquiry into FinTech and RegTech last year. Michael will be serving alongside a range of well respected and well known blockchain figures identifying RegTech use cases and challenges so that Australia's blockchain future can be unlocked.

Dick Smith scam advertising garners lawsuit against The Guardian

Dick Smith, the owner of Dick Smith Electronics and Australian Geographic, is threatening to sue [The Guardian](#) due to false advertisements appearing on their website which promote a common scam which in turn suggests Smith supports a cryptocurrency "investment" which is in reality a scam.

The advertisements feature Smith's image and link to stories which mimic legitimate news articles, except these "how to

make money easy” and getting “rich in a few days” use fake quotes from Smith endorsing investment in cryptocurrencies. The “investment” is of course not in any actual cryptocurrency but is simply a scam.

In response, Dick Smith’s legal team is threatening to commence defamation proceedings if they do not receive a satisfactory response from The Guardian. Mark O’Brien, a lawyer acting on behalf of Smith, stated in a letter to the Guardian’s editor:

“Mr Smith is determined to ensure the cryptocurrency scam comes to a permanent end ... While we acknowledge that The Guardian Australia does take the fraudulent advertisements down once notified, that does not prevent your Australian readers from falling victim to this prolific cryptocurrency scam.”

Work smart not hard: Productivity Commission publishes paper on RegTech

Aimed at championing the opportunities presented by regulatory technology – the use of cloud computing technology to help businesses comply with regulations efficiently and less expensively, the [Australian government’s Productivity Commission](#) has recently released an [information paper](#) informatively titled “Regulatory Technology” detailing where regulatory technology (**RegTech**) has been useful and offers further potential.

The paper provides different examples of instances where RegTech has been useful, and has further potential, highlighting that this is most often present where:

1. regulated parties face complex or onerous regulatory requirements
2. there is scope to undertake more risk-based approaches to regulation
3. technology can help to better monitor activity, including by overcoming constraints related to physical presence
4. technology can safely unlock more uses of data to meet compliance goals

Using Blockchain as an example, the paper suggests that is blockchain is one of many useful RegTech tools that has:

“improved the agility of processing, speed of reporting and monitoring, integration of technological solutions and quality of analytics using digital information and big data”

The paper refers to the Swedish Land Registry as an example, which has begun its official use of blockchain to register land and property ownership on a small-scale. This is an ideal use-case for how technology can be used to register physical asset transactions and more specifically, how blockchain can be used to make compliance with regulatory requirements on property transfer more efficient.

DeFi takes on traditional finance; the regulatory challenges

[Synthetix](#), one of the largest decentralised digital asset derivatives exchange recently received [mainstream media](#) attention for driving the growth of a \$US10 billion (\$14.2 billion) the decentralised finance industry, commonly referred to as DeFi.

[Kain Warwick](#), Sydney-based Founder of Synthetix, said recently to the [AFR](#) that over \$US600 million of circulating money has been injected into the Synthetix platform in the last four months for users to trade synthetic digital assets and lend their digital assets to each other through automated protocols.

Given the comparisons drawn between DeFi with the ICO boom in 2017, it is likely that we will see more regulatory scrutiny against DeFi projects in Australia and internationally.

Jessica Sier of the AFR asserted that:

“While some ICOs worked earnestly to develop new ways of using smart contracts and the blockchain, the vast majority took advantage of the exuberant and greedy market, committing widespread fraud and often outright theft.”

We aren't sure of any published basis for these remarks, but there has been a prevailing skeptical view of the large sums of money which flooded ICOs historically and the issues around transparency which followed.

OECD publishes insights on tax policy issues of digital currencies

The [OECD](#) and the [G20](#) on 12 October 2020 published a [report](#) analysing different international tax policy implications of the taxation of virtual currencies, stablecoins, Central Bank Digital Currencies and decentralised finance.

The report, titled [“Taxing Virtual Currencies: An Overview of Tax Treatments and Emerging Tax Policy Issues”](#), sets out key insights for the consideration of policymakers for the purpose of making observations about the current tax treatment of digital currencies in various countries.

The insights provided by the OECD in the report for policymakers internationally included that policymakers must deploy:

- Clear guidance and a clear legislative framework in their jurisdiction including how digital currencies fit within the existing tax framework;
- Tax treatment of digital currencies is coherent with the broader regulatory framework and tax treatment of other assets; and
- Simplified tax treatment for occasional or small traders of digital currencies.

The OECD report is one of the most comprehensive reports released to date in relation to international tax policy and summarising the tax policy and legal challenges of the digital assets internationally, it is likely to be referred to by policymakers in deciding how to deal with digital currencies as they increase in adoption.

Federal Budget 2020-21: FinTech focus

With the release of the [2020-21 Federal Budget](#) on 6 October 2020 (**Budget**), we're highlighting some of the key measures aimed at supporting startups, FinTech and blockchain. With literally thousands of pages dedicated to going over every aspect of the Budget in detail, we will only be summarising some of the key decisions.

Digital transformation

The Budget allocates a further \$419 million to fund the development and implementation of the Modernising Business Registers program, which is aiming to streamline interactions with government by combining the dozens of disparate registers into one location. Here's hoping this has the desired effect of making it easier to start, run and close a business (and for me to undertake due diligence). Over the next two years, the Government will invest \$256 million in the expansion of its Digital Identity system and will provide an additional \$9.6 million for fintech trade and investment flows. Part of the Modernising Business Register program involves the introduction of director identification numbers, discussed in more detail [here](#).

At a federal level, e-invoicing will become mandatory for all agencies by 1 July 2022, with over 80 per cent of invoices being able to be received electronically by 1 July 2021. A further \$11.4 million will be invested into a new Regtech Commercialisation Initiative, ambiguously intended to “make it easier for businesses to comply with regulations”.

Blockchain pilots

Announced soon before the publication of the Budget was released, the Budget confirmed that \$6.9 million has been allocated over two years from 2020-21 to support industry-led pilots to demonstrate the application of blockchain technology to reduce regulatory compliance costs and encourage broader take-up of blockchain by Australian businesses. These pilots were discussed by [Chloe White](#) and Steve Valles at the recent [Blockchain Masterclass hosted by Swinburne](#)

[University](#), and represent the biggest investment the Federal Government has made to date in the sector.

Cyber Security Strategy

The Budget also provides for an additional \$201.5 million to deliver the [2020 Cyber Security Strategy](#). As part of the Strategy, among other initiatives, the Government has planned to invest \$128.1 million to counter cybercrime and \$37.7 million in developing Australia's cyber security skills.

Simplification of Export Market Development Grants

The popular Export Market Development Grants Scheme (**EMDG**) is being "simplified and reoriented" to more effectively support export-ready small and medium enterprises. This change was expected, and aims to implement the recommendations of the [independent review](#) of the EMDG scheme.

Tax changes

Tax guru [Will Fennell](#) has summarised the key tax measures in the Budget better than we ever could, which you can read [here](#).

FCA bans sale of crypto-derivatives to retail consumers

The United Kingdom's [Financial Conduct Authority \(FCA\)](#) has [published rules](#) prohibiting the offer of digital asset derivatives products such as futures, options and exchange-traded notes to retail customers, just over a year after a ban was [first proposed](#). Following a [consultation process](#) which opened in July 2019 and closed in October 2019, the FCA has published its Policy Statement ([PS20/10](#)) setting out the FCA's final policy position and rules that will come into force on 6 January 2021.

Explaining the rationale for the decision, the FCA said that:

"The FCA considers these products to be ill-suited for retail consumers due to the harm they pose."

In particular, the FCA expressed its concern that digital asset derivatives cannot be reliably valued by retail consumers because of the:

- inherent nature of the underlying assets, which means they have no reliable basis for valuation;
- prevalence of market abuse and financial crime in the secondary market (eg cyber theft);
- extreme volatility in cryptoasset price movements;
- inadequate understanding of cryptoassets by retail consumers; and
- lack of legitimate investment need for retail consumers to invest in these products.

While [ASIC](#) has yet to make any firm comment or commitment in relation to digital asset derivative products, they will no doubt be considering the FCA's position, and its consequences carefully.

Regulator crackdown: BitMEX hit with multiple charges

Crypto trading behemoth [BitMEX](#) has been hit with multiple significant actions in the United States, for various alleged breaches of the Commodity Exchange Act and the Bank Secrecy Act among others. First and foremost, the Commodity Futures Trading Commission (**CFTC**) has [charged](#) BitMEX with operating an unregistered trading platform, as well as with various violations of anti-money laundering regulation. In addition to this civil action, the [US attorney for the District of](#)

[New York indicted](#) four individuals, Arthur Hayes, CEO of BitMEX, as well as Ben Delo, Samuel Reed and Gregory Dwyer for violating and conspiring to violate the Bank Secrecy Act.

The charges are against a variety of different entities and individuals which the CFTC claims make up BitMEX as a whole, and include HDR Global Trading Limited, 100x Holding Limited, ABS Global Trading Limited, Shine Effort Inc Limited, and HDR Global Services (Bermuda) Limited (referred to collectively as **BiTMEX**) in addition to Hayes, Delo, Reed and Dwyer.

The charges stem from the root problem that despite “purportedly withdrawing from the U.S. market in or about September 2015”, BiTMEX has actively sought out and provided its crypto futures contracts and derivative products to US customers. Further, the indictment claims that since September 2015, BiTMEX has failed to maintain adequate an adequate AML program (which, as Westpac can [confirm](#), is a serious allegation).

SEC slaps SALT with penalty and refund order

The [Securities and Exchange Commission \(SEC\)](#) recently hit [Salt Lending](#) with an order to offer refunds to participants in its 2017, \$47 million initial coin offering (**ICO**), as well as a penalty of \$250,000 civil penalty.

On 30 September, the SEC released details of a [court order](#) which ruled the lending platform had violated Sections 5(a) and 5(c) of the Securities Act when it offered and sold SALT tokens without having a registration statement filed or in effect with the SEC.

According to the SEC ruling, when Salt’s ICO began in June of 2017, it raised \$47 million in funds by the end of the year. Salt then raised an extra \$1.2 million from post-ICO sale of its SALT tokens. The SEC’s finding that the SALT Token was a security hinged on the finding that SALT token purchasers has a reasonable expectation of obtaining a future profit out of Salt’s endeavours. In particular, the SEC found that Salt made it clear to investors that:

“Salt would take various steps to increase the price of Salt Tokens, including limiting the number of Salt Tokens created and sold, managing the price at which Salt continued to sell the Salt Token, and managing the value at which Salt allowed the Salt Token to be redeemed for various benefits”

The SEC’s order highlighted that the settlement does not mean Salt admits or denies the findings. This marks the latest in a string of claims and settlements by the SEC in relation to token offerings, with the strongest precedent to date being in the [Kin v SEC decision](#).