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Blockchain Bites: Australia to pursue payments and crypto reforms, Australia to incorporate stablecoins into regulatory framework, Regulation by enforcement continues in Australia as Finder Wallet prosecuted, RBA bags bumper response to CBDC pilot, Sam Bankman-Fried arrested

Michael Bacina, Steven Pettigrove, Jake Huang, Luke Misthos and Lola Hickey of the Piper Alderman Blockchain Group bring you the latest legal, regulatory and project updates in Blockchain and Digital Law.

Australia to pursue payments and crypto reforms

Australia's Labour Government has announced plans to modernise Australia's financial system by implementing legislative reforms in relation to payments, financial market infrastructure, digital wallets, buy now pay later and cryptocurrencies.

The Treasurer, Jim Chalmers, and Assistant Treasurer and Minister for Financial Services, Stephen Jones, said the government will seek to embrace new financial opportunities while acknowledging Australia's regulatory regime has fallen behind.

> Unfortunately, our regulatory architecture has not kept pace with changes in the market, including the advent of new digital products and services.

The latest announcement follows the government's past promises to lead the way in regulating crypto exchanges and custody to provide greater protection for consumers and undertake a token mapping exercise to help formulate those reforms (now delayed to early next year). These build on the bi-partisan Senate Report led by Senator Bragg and recommendations from that Report.

The government is promising to:

- Update and strengthen Australia's payments system;
- Strengthen financial market infrastructure;
- Establish a regulatory framework for Buy Now Pay Later; and
- Establish a framework for the licensing and regulation of crypto service providers.

A consultation paper on payment system reforms has also been released with responses due by **6 February 2023**. The consultation is intended to underpin the preparation of a Strategic Plan for the future of Australia's payment system to be released in the first quarter of 2023.

The *Payment Systems (Regulation) Act* 1998 is set for an update giving the Reserve Bank of Australia (**RBA**) greater regulatory oversight over emerging payment systems, which the government considers should include digital wallet providers. This is the most surprising inclusion in this announcement as it has not been something the subject of previous policy announcements.

The government is considering a new licensing framework for payment services providers and additional oversight over nationally significant payment services or platforms.

The RBA is continuing its work on CBDCs which will involve a CBDC pilot in 2023:

> We will continue our work with the RBA to explore the policy case for an Australian central bank digital currency.

The Government also looks set to increase the RBA's powers to oversee financial market infrastructure and foster competition in relation to clearing and settlement activities. This will be closely watched given the recent ASX distributed ledger for clearing being abandoned.

The Government's token mapping exercise will involve the release of a consultation paper in early 2023 to inform which features of digital assets should trigger regulation under financial services laws as well as what kinds of custody and licensing infrastructure should be created to address those functions. Following the token mapping exercise, the government will consult on custody and licensing of crypto exchanges before introducing legislation. This process was to be accelerated in light of the recent FTX collapse, with Token Mapping commencing this year, but that token mapping has been moved back in this announcement.

The Government's latest announcements are a welcome indication that it intends to take action to modernise Australia's financial system architecture to respond to new technology, particularly decentralised technology.

In many ways, the proposed reforms are a continuation of reforms anticipated by the previous Government prior to the last election.

They are likely to represent "once in a generation" type reforms that will shape Australia's financial and payment system in the years ahead. There are important questions to be discussed and we anticipate significant policy debate on these issues in 2023.

Australia to incorporate stablecoins into regulatory framework

The Reserve Bank of Australia (**RBA**) has confirmed that Australia's Council of Financial Regulators (**CFR**) is working on options to incorporate payment stablecoins into the regulatory framework for stored-value facilities. A stablecoin is a type of crypto-asset that is intended to hold a stable value relative to a certain unit of account or store of value, such as a fiat currency or commodity. The CFR's work forms part of a wider package intended to reform and modernise Australia's financial and payments system.

The planned stablecoin reforms were confirmed in an RBA report on stablecoins released last Thursday. The RBA report recognises that:

> Stablecoins have the potential to enhance the efficiency and functionality of a range of payment and other financial services.

The CFR's intention is to undergo significant work with the purposes of implementing stablecoins into the ordinary payment system without excessive risk exposure. These risks including market and liquidity risks, operational risks and risks to financial stability, including financial institutions and funding markets.

In its report, the RBA reiterated the importance of developing an appropriate framework for stablecoins:

> Consistent with the international focus, the CFR has agreed that developing a framework for regulating 'payment stablecoins' is a priority in the near term, given the potential for these arrangements to become widely used as a means of payment and a store of value.

The RBA's report follows the release, in September, of Senator Andrew Bragg's draft Digital Assets (Market Regulation) bill. That bill proposed a licensing regime for digital asset platforms, custody services and stablecoin issuers.

The RBA's report follows several previous comments praising the potential of stablecoins. At a conference in September, Ellis Connolly, the Head of the RBA's Payments Policy Department, said the central bank:

> Sees potential for well-designed, well-regulated stablecoins to make a contribution to providing better services for Australian households and businesses… [it's] really important that we get the regulation of this right.

The RBA's Governor, Dr Philip Lowe, also praised stablecoins in a speech on the sidelines of the G20 meeting in Bali in July identifying stablecoins as:

> the one piece of the crypto landscape where I think there is real promise.

The RBA's comments will instil confidence among a number of financial institutions and fintechs which are piloting or have launched Australian dollar stablecoin offerings. We expect further developments in early 2023 as the Government seeks to finalise its Strategic Plan for the future of Australia's payment system.

Regulation by enforcement continues in Australia as Finder Wallet prosecuted

The Australian Securities and Investments Commission (**ASIC**) has commenced civil penalty proceedings in the Federal Court of Australia against Finder Wallet. The Finder.com subsidiary is alleged to have provided unlicensed financial services, breaching product disclosure requirements and failing to comply with design and distribution obligations in connection with the Finder Earn product.

Before its rapid sunsetting last month, which Finder said was due to interest rate changes but which ASIC says occurred after they contacted Finder about the Earn product, users were able to transfer cash, purchase True AUD stablecoins and be paid a fixed return for giving Finder the use of the stablecoins. Customers were paid in AUD on a compounding return of either 4.01% or in some cases 6.01% with a nifty little second by second counter showing the interest clocking up.

ASIC has been busy, having commenced proceedings against Block Earner last month. In the announcement by ASIC, Deputy Chair Sarah Court acknowledged ASIC's recent activity:

> This is ASIC's third recent action against a firm offering a crypto-asset related product that we consider to be a financial product. Our message to industry is clear – just because an offer involves a crypto-asset related product does not guarantee it will fall outside the current regulatory regime.

ASIC alleges that the product offered by Finder Wallet is a debenture because customers deposit money with the understanding their money would ultimately be repaid, this is a marked difference from the allegation made in relation to Block Earner by ASIC.

The definition of a debenture under the Corporations Act is technical and requires the contribution of money to occur, so if the matter is defended the status of crypto-assets and whether the involvement of a crypto-asset in this product prevents the definition of a debenture being met will be closely watched.

This prosecution continues ASIC's approach of regulation by enforcement of crypto-asset products and comes only a day after the current government announced consultation on crypto-product licensing. Such actions will unfortunately impact Australia's reputation as a jurisdiction supporting innovation, and increase the risk to start-ups bringing forward innovative products, and see more projects leave for jurisdictions which have greater certainty.

RBA bags bumper response to CBDC pilot

In a speech last week, Brad Jones, the Assistant Governor (Financial System) of Australia's central bank (the **RBA**) examined the risks and opportunities of a retail central bank digital currency (**CBDC**).

Consistent with the RBA's previous messaging, Jones asserted that the RBA has yet to see a strong public interest case for a retail CBDC emerge, but that the bank is keeping an open mind. This highlights the "chicken and egg problem", as use cases building on foundational technology like a true decentralised digital cash will likely need a trusted issuer to be in place in order to incentivise widespread adoption and novel uses cases emerge over time.

Jones commented on the initial response to the RBA's eAUD pilot program first announced in July which is intended to explore use cases for a retail CBDC. Jones noted that the pilot had:

> attracted much more interest from industry than we anticipated – more than 140 use case proposals from around 80 entities have been submitted.

A wide range of use cases have been proposed spanning:

- e-commerce payments;
- offline payments;
- government payments; and
- the trading and settlement of tokenised assets.

The providers which have lodged submissions include large banks, financial market infrastructure providers and consultancies, small digital asset firms and fintechs. The most useful base use-case of all is simply the existence of a digital equivalent to cash which can be transacted peer to peer.

The RBA's project team is currently in the process of identifying a number of use cases which will participate in the pilot early next year.

In concluding remarks, Jones speculated that future payments reforms may prove evolutionary rather than revolutionary. These could include both fintech and blockchain based solutions such as the use of payment stablecoins and tokenised bank deposits to facilitate atomic settlement of financial and real assets, and the emergence of a wholesale CBDC to improve efficiency and automation of the underlying payment rails of our economy.

The huge response to the RBA's CBDC pilot suggests a high level of blockchain industry engagement and optimism about the potential for an Australian CBDC. We will continue to monitor developments as the pilot starts early next year, with the RBA expected to report on findings from the pilot in mid-2023.

Sam Bankman-Fried arrested

Founder and former CEO of FTX, Sam Bankman-Fried (**SBF**), has been arrested in the Bahamas after a sealed indictment containing criminal charges was filed against him by the Southern District of New York.

The United States Attorney's office confirmed via Twitter that SBF was arrested at the behest of the United States Government resulting from alleged fraud that arose between a range of transactions and operations between FTX and its sister company Alameda Research.

FTX, Alameda, SBF and his associates have dominated headlines in the past month following the back-to-back collapse of FTX and Alameda Research, both founded by Mr Bankman-Fried, and both likely at the center of the upcoming proceedings.

Enforcement Director at the US Securities and Exchanges Commission Gurbir Grewal foreshadowed the SEC's own charges against SBF:

> We commend our law enforcement partners for securing the arrest of Sam Bankman-Fried on federal criminal charges. The SEC has authorized separate charges relating to his violations of securities laws, to be filed publicly tomorrow in SDNY.

According to the Bahamian Attorney General, Ryan Pinder, the United States is likely to request Mr Bankman-Fried's extradition. If approved, SBF will remain in custody and flown to the United States before appearing in court to defend the prosecution.