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Crypto Assets as Property and The Use of Stable coins In Australia

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CRYPTO ASSETS AS PROPERTY: FUNDAMENTALS AND LEGAL CLASSIFICATION

Understanding Crypto Assets: A Simple Guide

The intersection of crypto assets and property law represents one of the most significant legal and technological developments of our time. The recent development of crypto assets and their continued advancement will challenge lawyers and policy makers for the foreseeable future.

Crypto assets, also known as cryptocurrencies or digital assets, represent a revolutionary form of digital value that exists exclusively in electronic form on decentralised networks called distributed ledgers with the most notable being blockchains. Unlike traditional currencies issued and controlled by central banks, crypto assets operate on distributed ledger technology—a system where transactions are recorded across multiple distributed ledgers simultaneously, creating a transparent and immutable record of ownership and transfer.

Bitcoin (BTC)

Bitcoin (BTC), created in 2009 by the pseudonymous Satoshi Nakamoto, was the first cryptocurrency and remains the most widely recognised crypto asset. BTC was designed to operate as a decentralised digital currency which was to function as a peer-to-peer electronic cash system without the need for intermediaries such as banks or payment processors such as "Paypal". Each BTC can be divided into 100 million sub-units called "SATOSHIs", allowing for fractional ownership[1] and micropayments. BTC's blockchain uses a consensus reward mechanism called Proof of Work, where miners compete to solve complex mathematical puzzles to validate transactions and add new blocks to the chain. A major benefit of this reward mechanism is that it creates in economic terms a Nash equilibrium process for competition. This process secures the network and creates new BTCs according to a predetermined schedule, with a maximum supply capped at 21 million bitcoins. A major issue involving BTC is the highly volatile nature in value of BTC. This volatility impedes BTC from being used as a general currency mechanism for payment in commercial transactions. Commerce relies upon stability in value when transacting. For example, if the consideration for a transaction is set at $X then the receiving party want to be sure that they will receive $X. It is not unusual in international executory contract where payment involves some foreign currency for there to be a provision providing for hedging insurance to take account of foreign exchange fluctuations.

To deal with the substantial volatility of BTC, alternative crypto currencies have been developed which are more stable in value. This is particularly important for multi-jurisdictional transactions

where there can be a time lag between activation of a payment and receipt for value. Commercial entities want certainty that they receive a payment that actually matches their contractual arrangement and do not receive less value that was designated in the relevant contract. Hence, the volatility of BTC has substantial financial disadvantages where the value of the BTC could decrease during transaction processing.

Ether (ETH)

Ether is the native cryptocurrency on the Ethereum blockchain, launched in 2015. Unlike Bitcoin, which primarily serves as a digital currency of value, the Ethereum blockchain functions as a programmable blockchain platform that enables developers to build and deploy decentralised applications (dApps) and smart contracts—self-executing agreements with terms directly written into code. Ether serves multiple purposes within the Ethereum ecosystem:

(a) it functions as a medium of exchange,
(b) it acts as 'gas' to pay for computational resources required to execute smart contracts and process transactions, and
(c) it can be staked by validators to secure the network following Ethereum's transition to a Proof of Stake consensus mechanism in September 2022.

This transition to a Proof of Stake consensus (the Merge), fundamentally changed how Ethereum validates transactions, moving away from energy-intensive mining that uses the "Proof of Work" mechanism (a similar mechanism that remains with BTC consensus) to a system where validators stake "ether" to participate in block validation (Proof of Stake consensus involves substantially less energy to validate new block being appended to the Ethereum blockchain).

Cardano (ADA)

Cardano, founded by Ethereum co-founder Charles Hoskinson, is a third-generation blockchain platform that emphasises a research-driven approach to development. The platform's native cryptocurrency, ADA, named after mathematician Ada Lovelace, serves as the medium of exchange and unit of account within the Cardano ecosystem. Cardano distinguishes itself through its layered architecture, separating the settlement layer (where ADA transactions occur) from the computation layer (where smart contracts execute). This design aims to provide greater flexibility, security, and scalability. Cardano uses a Proof of Stake consensus mechanism called Ouroboros, which has been mathematically proven to be secure through peer-reviewed academic research. ADA holders can delegate their tokens to stake pools, earning rewards while contributing to network security and governance through Cardano's on-chain voting mechanism. A substantial benefit of Cardano is that it is capable of processing cross-blockchain transactions through a variety of existing solutions like bridges and sidechains, and its core design philosophy is committed to enhancing this interoperability further in the future. The goal is to make Cardano an "Internet of Blockchains," enabling seamless communication and value transfer across different networks.

USD Coin (USDC)

USD Coin (USDC) represents a fundamentally different category of crypto asset known as a stablecoin. Issued by Circle Internet Financial in partnership with Coinbase through the Centre Consortium, USDC is designed to maintain a stable 1:1 peg with the United States dollar. Each USDC token is backed by an equivalent amount of U.S. dollars and dollar-denominated assets held in reserve by regulated financial institutions. Circle publishes monthly attestation reports from independent accounting firms verifying that the reserves match or exceed the circulating supply of USDC. This reserve structure aims to provide stability and predictability, addressing one of the

primary concerns with traditional cryptocurrencies like Bitcoin and Ether—price volatility. USDC operates on multiple blockchain networks, including Ethereum, Solana, Algorand, and others, making it highly interoperable across different blockchain ecosystems. The stablecoin serves various purposes: facilitating trading on cryptocurrency exchanges, enabling cross-border payments with near-instant settlement, providing a stable store of value within the crypto ecosystem, and serving as a bridge between traditional finance and decentralised finance (DeFi) applications. An alternative to USDC is Tether (USDT).

Tether (USDT) is another prominent U.S. dollar-pegged stablecoin, issued by Tether Limited. As the first and most widely used stablecoin by market capitalisation and trading volume, USDT plays a crucial role in cryptocurrency markets as a trading pair and liquidity provider. Like USDC, USDT claims to maintain 1:1 backing with U.S. dollars and dollar-equivalent assets, though it has faced scrutiny regarding the composition and verification of its reserves. USDT operates on multiple blockchain platforms, including Ethereum (as an ERC-20 token), Tron (as a TRC-20 token), and several others, providing flexibility for users across different networks. The widespread adoption of USDT in cryptocurrency exchanges makes it a critical component of crypto market infrastructure, facilitating billions of dollars in daily trading volume.

Australian Stablecoins: AUDD and Market Landscape

The Australian stablecoin market, while substantially less mature than its U.S. counterpart, has seen significant developments. The Australian Digital Dollar (AUDD), issued by AUDC Pty Ltd (a subsidiary of Novatti Group, an ASX-listed and ASIC-regulated company[2]), represents the most prominent Australian dollar-denominated stablecoin currently in the market. AUDD maintains a 1:1 peg with the Australian dollar, with each token fully backed by AUD held in reserve as cash in bank accounts or cash equivalents. AUDC commits to transparent operations, releasing quarterly reports detailing reserve holdings and undergoing regular third-party audits. AUDD operates as a blockchain-agnostic stablecoin, available on multiple networks including Stellar, XRP Ledger, Ethereum (ERC-20), Solana, Hedera, XDC Network, and BASE. In September 2024, AUDD became the first Australian stablecoin listed on Coinbase, significantly expanding its accessibility and market presence[3].

Other Australian dollar stablecoins have emerged in the market, though with varying levels of adoption and success. TrueAUD (TAUD), issued by U.S.-based TrustToken, was historically the largest AUD-denominated stablecoin with approximately AUD$40 million in circulation as of 2022[4]. The Australian Dollar Token (AUDT), created by Chrono.tech, and XAUD, developed by blockchain company TAU, also compete in this space. The ANZ Bank developed A$DC (Australian Dollar Digital Currency) as part of a pilot program with the Australian Government to explore digital currency applications for excise tax collection, though this remains under regulatory review and has not achieved broad commercial deployment.

The operational mechanics of stablecoins like AUDD follow a mint-and-burn mechanism. When a user wishes to acquire AUDD, they transfer Australian dollars to AUDC, which then 'mints' (creates) an equivalent amount of AUDD tokens and credits them to the user's digital wallet. The Australian dollars received are held in reserve, typically in segregated bank accounts. Conversely, when a user wishes to redeem their AUDD for Australian dollars, they send the stablecoins back to the issuer, who 'burns' (permanently destroys) the tokens and returns the corresponding AUD to the user. This mechanism ensures that the circulating supply of stablecoins always matches the reserves held, maintaining the 1:1 peg with the underlying fiat currency.

Australian Case Law: Crypto Assets as Property

The question of whether crypto assets constitute property under Australian law has remained uncertain for many years, with courts addressing the issue only at interlocutory levels until 2024. This uncertainty created significant challenges for crypto asset holders seeking legal remedies for theft, fraud, or misappropriation, as traditional property law remedies depend on the asset in question being recognised as 'property' in the legal sense.

Re Blockchain Tech Pty Ltd [2024] VSC 690 <>?

The landmark decision in Re Blockchain Tech Pty Ltd [2024] VSC 690[5] (12 November 2024) by Justice Attiwill of the Supreme Court of Victoria represents the first instance where a superior Australian court determined, on a final basis[6], that crypto assets constitute property under Australian law. This groundbreaking judgment resolved a fundamental legal question that had plagued the cryptocurrency sector and brought Australian jurisprudence into alignment with other common law jurisdictions including the United Kingdom, New Zealand, Singapore, and Hong Kong. The case arose from a dispute involving 36 Bitcoin, valued at over AUD$5 million, which the plaintiffs (Jin Chen and one other) alleged had been transferred to the first defendant (Wei Zhao) under a bailment agreement. The plaintiffs sought immediate possession of these Bitcoin, asserting they were entitled to them as bailor. Additionally, the plaintiffs claimed that 25 Bitcoin transferred to a cryptocurrency exchange for working capital purposes were held on trust by the first defendant as trustee.

Justice Attiwill's analysis centred on the application of the Ainsworth test, a legal framework established in National Provincial Bank Ltd v Ainsworth [1965] UKHL 1[7] for determining whether something qualifies as property. Lord Wilberforce in Ainsworth identified four essential characteristics of property:

1. it must be definable;
2. it must be identifiable by third parties;
3. it must be capable in its nature of assumption by third parties; and
4. it must have some degree of permanence or stability.

Applying these criteria to Bitcoin, Justice Attiwill found:

- **Definability:** Bitcoin can be precisely identified by its unique public key on the blockchain ledger. Each Bitcoin has a distinct digital identity that can be tracked and verified.
- **Identifiability by Third Parties**: The ownership of Bitcoin is publicly verifiable on the shared ledger, allowing third parties to confirm who controls particular Bitcoin at any given time.
- **Capability of Assumption by Third Parties**: Bitcoin can be transferred between parties, evidenced by the existence of very active trading markets worldwide, including cryptocurrency exchanges operating in Australia.
- **Permanence or Stability**: Bitcoin are recorded on the shared public ledger and remain stable at a particular digital address until a transaction occurs. Upon transaction, the number of Bitcoin at the sender's address decreases while the recipient's address increases correspondingly.

Crucially, Justice Attiwill classified Bitcoin as a 'chose in action'—a category of personal property consisting of intangible rights that do not confer immediate possession of a tangible object. His Honour stated: 'I find that a person's interest in Bitcoin is property. It is not a chose in possession as it is intangible. It cannot be possessed. It is a chose in action.' This classification departed from

the UK Law Commission's recommendation for a third category of personal property for crypto assets, instead fitting Bitcoin within the established binary framework of Australian property law. This characterisation as a chose in action had important consequences for the bailment claim. Bailment, a legal relationship where one person delivers goods to another for a specific purpose with the understanding that the goods will be returned, requires the subject matter to be capable of physical possession. Since Bitcoin, as intangible property, cannot be possessed in the traditional sense, Justice Attiwill concluded that no bailment relationship could arise. The Bitcoin were not delivered to the defendant in a manner analogous to delivering tangible goods.

However, this did not leave the plaintiffs without remedy. Justice Attiwill found that the 25 Bitcoin transferred to the exchange were held on trust by the defendant. This finding demonstrates that even though Bitcoin cannot be the subject of bailment, they can be held under other fiduciary relationships, including trusts, expanding the range of legal protections available to Bitcoin holders.

ASIC v NGS Crypto Pty Ltd (No 3) [2024] FCA 822[8]

Shortly before the Blockchain Tech decision, Justice Collier of the Federal Court delivered an important judgment in ASIC v NGS Crypto Pty Ltd (No 3), which addressed whether cryptocurrency constitutes 'property' for the purposes of the Corporations Act 2001 (Cth). This case arose from ASIC's enforcement proceedings against NGS Crypto Pty Ltd and its affiliates for allegedly operating an unlicensed managed investment scheme.

On 10 April 2024, Justice Meagher granted urgent interim orders sought by ASIC, including the appointment of receivers and asset preservation orders over cryptocurrency assets held by NGS. Section 1323 of the Corporations Act empowers the court to make orders prohibiting payment or transfer of money, financial products, or other property in certain circumstances. The central question was whether cryptocurrency fell within the definition of 'property' for the purposes of this section.

NGS subsequently applied to set aside or vary these orders, arguing that cryptocurrency assets were not 'property' under the Corporations Act and therefore could not be subject to such orders. Justice Collier rejected this argument, holding that 'at an interlocutory level, the definitions of financial service, financial product, financial investment and property in the Corporations Act are sufficiently broad to encompass cryptocurrency assets in appropriate circumstances.' While this determination was made in the context of an interlocutory application rather than a final hearing, it provided important judicial endorsement of the view that cryptocurrency constitutes property.

Justice Collier's reasoning was supported by Justice Jackman's scholarly paper 'Is cryptocurrency property?' delivered to the Commercial Law Association on 21 June 2024,[9] which analysed how cryptocurrency had been effectively assumed to be property in earlier Australian cases, including Commissioner of the Australian Federal Police v Bigatton [2020] NSWSC 245[10] and Chen v Blockchain Global Limited (2022) 66 VR 30[11].

Poulton v Conrad [2025] TASFC 7[12]

The Full Court of the Supreme Court of Tasmania in Poulton v Conrad provided an alternative perspective on the classification of crypto assets, creating an interesting divergence in Australian case law. In this case, the Court considered whether Bitcoin could be the subject of the common law torts of detinue and conversion—legal actions historically associated with the wrongful interference with tangible goods.

The Magistrates Court had found that Bitcoin constituted property for the purposes of detinue and conversion, awarding damages to the plaintiff. On appeal, the defendant did not challenge this fundamental characterisation of Bitcoin as property but instead argued other grounds, including that the crypto assets represented fees owed to the defendant.

The Full Court, in considering the nature of Bitcoin, expressed the view that cryptocurrency falls within a third category of intangible property that is 'capable of assumption by third parties, that is rivalrous, that is capable of exclusive control [and as such] amenable to at least, the torts ... [of] conversion and detinue.' This analysis disagreed with Justice Attiwill's conclusion in Re Blockchain Tech that Bitcoin is a chose in action that cannot be possessed.

This divergence creates an interesting jurisdictional split. In Victoria, following Re Blockchain Tech, Bitcoin is recognised as a chose in action—property that cannot be possessed and therefore not subject to bailment or the traditional possessory torts. In Tasmania, following Poulton v Conrad, Bitcoin may be characterised as falling within a sui generis third category of property amenable to possessory remedies. In other Australian states and territories, both decisions are persuasive but non-binding, leaving room for courts to adopt either approach or forge their own path.

This divergence suggests that the High Court of Australia may need to resolve this question definitively in future litigation. Until such resolution, crypto businesses operating across multiple Australian jurisdictions must navigate this uncertainty, particularly in structuring custody arrangements and terms of service.

Connor Yeates (A Pseudonym) v The King[13]

This case concerned whether Bitcoin is property that is capable of being stolen and thus the question to be decided was whether Bitcoin is property for the purposes of section 72 of the Crimes Act 1958. In an unanimous decision (Emmerton P., Taylor JA, and Kidd JA) the court made the following observations:

Further, the transfer of knowledge does not augment or diminish the knowledge. The information itself is changeless. It can be 'infinitely duplicated' and 'is normally open to all who have eyes to read and ears to hear'… Upon communication of information between parties 'the transferor still has everything that he had before, and the transferee continues to have what he has received'… The same is not true for Bitcoin as effected by public and private keys and recorded on the blockchain. It is not information or knowledge which remains immutable even when endlessly transferred. It is rivalrous. It may only be transferred once. A transfer of Bitcoin involves reducing the value of Bitcoin held at one address and correspondingly increasing it at another address.

In determining that Bitcoin is more than mere information, the court then addressed the issue on whether Bitcoin comprises the 4 property characteristics identified by Lord Wilberforce in the Ainsworth[14] case. The Court stated that Bitcoin meets all the characteristics stated by Lord Wilberforce.

The final aspect of this case worth noting is that the Court turned its attention as to what type of property bitcoin could be. That is:

> A further issue that has arisen in the cases which have considered whether Bitcoin is (or crypto assets generally are) property is whether Bitcoin, being intangible, can be accurately described as a chose in action. The issue arises because of the nineteenth

century dictum of Fry LJ in Colonial Bank v Whinne that '[a]ll personal things are either in possession or action.

The court noted that since Bitcoin is an intangible thing it cannot be a chose in possession. But could it be a chose in action. There has been some historical dispute as regards to Bitcoin there is no counterparty for it, and traditionally all choses in action relied upon there being an entity against whom to enforce any proprietary rights. The argument is then put that if there is no counterparty to enforce the rights associated with Bitcoin then it cannot be property. Consequently, the arguments is that if bitcoin is neither a chose in possession nor a chose in action then it cannot be property[15].

The Court then proceeded to state:

> It is unnecessary for us to resolve the issue at large of whether Bitcoin is accurately described as a chose in action. The issue in this case is whether Bitcoin is property for the purposes of s 72 of the Crimes Act. It must be, at least, 'other intangible property'.

In conclusion the Court stated as follows[16]:

For the reasons we have discussed, we are satisfied that Bitcoin is intangible property in that it is other than mere information and satisfies the Ainsworth characteristics of property. It therefore meets the Crimes Act definition of property capable of being dishonestly appropriated.

Comparison with UK Legislation: Property (Digital Assets etc) Act 2025

While Australian courts have addressed the property status of crypto assets through judicial development on common law principles, the United Kingdom has taken a legislative approach, providing statutory clarity through the Property (Digital Assets etc) Act 2025[17]. This Act, which received Royal Assent on 2 December 2025, represents one of the world's first comprehensive legislative frameworks explicitly recognising digital assets as personal property.

The UK Law Commission's comprehensive 2023 report[18] on digital assets identified a fundamental problem in trying to determine in a crypto asset or digital asset can be classified as "Property". According to the UK Law Reform Commission English and Welsh property law historically recognised only two categories of personal property—'things in possession' otherwise known as a "Chose in Possession" (tangible/physical objects like cars, chairs and all types of physical goods) and 'things in action' otherwise known as a "Chose in Action" (intangible legal rights such as debts, shares, IP and contractual claims). Basically, a Chose in Action is a legal right that can be enforced by court action, whereas a Chose in Possession is some physical item that has be held in possession.[19]

Digital assets, particularly cryptocurrencies like Bitcoin and Ether, did not fit comfortably within either category. According to the UK Law Reform Commission crypto /digital assets are clearly not tangible and thus cannot be 'things in possession,' but they also do not constitute actionable legal rights in the traditional sense. Consequently, the UK Law Reform Commission in their report recommended that a new third category of property be legislatively established.[20]

The UK parliament in response enacted The Property (Digital Assets etc) Act 2025 which addresses the identified gap by confirming the existence of a third category of personal property. The key provision states: 'A thing (including a thing that is digital or electronic in nature) is not prevented from being the object of personal property rights merely because it is neither—

(a) a thing in possession, nor

(b) a thing in action.' [21]

This carefully worded provision does not automatically deem all digital things to be property; rather, it removes the categorical bar that previously prevented digital assets from being recognised as property solely because they fell outside the traditional binary classification.

The implications of this legislative recognition are profound. Digital assets, including cryptocurrencies, non-fungible tokens (NFTs), tokenised real-world assets, and even digital carbon credits, now have clear legal status as personal property in England, Wales, and Northern Ireland. This recognition provides[22]:

- **Enhanced Legal Protections**: Owners can assert property rights against third parties, access legal remedies for theft and fraud, and obtain freezing injunctions to prevent dissipation of assets.
- **Inclusion in Insolvency and Estate Proceedings:** Digital assets can form part of bankruptcy estates available to creditors and can be passed down through inheritance like traditional property.
- **Clarity for Complex Legal Relationships:** The property status facilitates clearer structuring of custody relationships, collateral arrangements, security interests, and trust structures.
- **Judicial Flexibility:** While providing statutory recognition, the Act leaves courts to develop the boundaries and incidents of this third category on a case-by-case basis, allowing the law to adapt to evolving technology**.**

Comparing the UK legislative approach with Australian judicial developments reveals important differences. The UK Act provides comprehensive, prospective clarity through parliamentary legislation. Any person or business dealing with digital assets in the UK knows with certainty that these assets have property status under law. This certainty facilitates investment, commercial transactions, and financial innovation.

In contrast, Australia's approach relies on common law development through judicial decisions. Businesses operating nationally must consider the possibility that different Australian courts might classify crypto assets differently, particularly regarding whether they can be possessed or are subject to possessory remedies.

However, the Australian approach also offers advantages. Justice Attiwill's decision in Re Blockchain Tech demonstrates that Australian courts can fit crypto assets within the existing framework of personal property without requiring legislative intervention. The classification of Bitcoin as a chose in action provides a clear, principled approach grounded in established legal categories. Furthermore, common law development allows for nuanced, fact-specific analysis that can adapt to the unique characteristics of different types of crypto assets. This position is now supported through the unanimous Victorian Supreme Court of Appeal decision of Yeates (as discussed above).

Nevertheless, the UK's legislative certainty provides advantages for attracting cryptocurrency businesses, investment, and innovation. By being among the first countries to formally recognise digital assets in statute, the UK positions itself as a leading jurisdiction for fintech and digital asset enterprises. Industry groups welcomed the Act as providing much-needed clarity and supporting the UK's ambition to become a global hub for digital finance.

The question for Australian policymakers is whether similar legislative intervention is necessary or desirable. Given the current minor divergence between Victorian and Tasmanian approaches, and

the importance of national consistency for businesses operating across state borders, there may be merit in federal legislation providing uniform recognition of digital assets as property across all Australian jurisdictions. Such legislation could draw inspiration from the UK model while preserving beneficial aspects of Australian common law development.

Are Australian Stablecoins Derivatives Under Section 761D Corporations Act?

The classification of Australian stablecoins under the Corporations Act 2001 (Cth) raises complex and commercially significant questions. Whether stablecoins like AUDD constitute 'derivatives' as defined in section 761D has profound implications for regulatory obligations, licensing requirements, product disclosure obligations, and investor protections. This question requires careful analysis of both the statutory definition and relevant case law.

The Statutory Framework

Section 761D(1) of the Corporations Act defines a derivative as 'an arrangement in relation to which the following conditions are satisfied:

(a) under the arrangement, a party to the arrangement must, or may be required to, provide at some future time consideration of a particular kind or kinds to someone; and

(b) that future time is not less than the number of days, prescribed by regulations made for the purposes of this paragraph, after the day on which the arrangement is entered into; and

(c) the amount of the consideration, or the value of the arrangement, is ultimately determined, derived from or varies by reference to (wholly or in part) the value or amount of something else.' (emphasis added)

Regulation 7.1.04 of the Corporations Regulations 2001 (Cth) supplements this definition, declaring certain arrangements to be derivatives regardless of the timing requirement in section 761D(1)(b). Section 761D(3) provides important exclusions, including that 'securities' as defined in section 764A are not derivatives, creating a mutually exclusive relationship between these categories.

The Corporations and Markets Advisory Committee's 2011 Derivatives Report[23] confirmed that section 761D is intentionally broad, designed to capture a wide range of financial arrangements. Judicial interpretation has consistently supported this expansive approach, as demonstrated in Bathurst Regional Council v Local Government Financial Services Pty Ltd (No 5) [2012] FCA 1200, where complex constant proportion debt obligations were held to be derivatives despite having debt-like characteristics.

Arguments That Stablecoins Are Derivatives

Several compelling arguments support the characterisation of Australian stablecoins as derivatives under section 761D:

- **Value Derivation:** The core characteristic of stablecoins is that their value derives from and varies by reference to the underlying fiat currency. AUDD's value is explicitly pegged to and determined by the Australian dollar. This satisfies element (c) of section 761D(1)—the value varies by reference to something else, namely the AUD.
- **Future Consideration:** When a user acquires stablecoins, they typically have a contractual right to redeem them for the underlying fiat currency at a future time. This redemption right involves providing consideration (the stablecoin) at a future time in exchange for consideration of a particular kind (AUD), satisfying element (a) of the definition.

- **Economic Substance:** From an economic perspective, holding a stablecoin functions similarly to holding a derivative contract where the payoff depends on the value of the underlying currency. If the issuer fails to maintain adequate reserves or if the peg breaks, the stablecoin's value will diverge from par, reflecting the derivative nature of the relationship.
- **Broad Statutory Interpretation:** Courts have interpreted section 761D broadly to capture novel financial products. In Abn Amro Bank Nv v Bathurst Regional Council,[24] Justice Jagot held that instruments with debt-like features could still be derivatives if they satisfied the statutory elements. By analogy, instruments with currency-like features (stablecoins) could also be derivatives.
- **Regulatory Intent:** The purpose of derivative regulation is to ensure appropriate disclosure and oversight of complex financial products where value depends on underlying reference assets. Stablecoins, particularly algorithmic or partially-collateralised varieties, can exhibit significant complexity and risk, justifying regulatory oversight**.**

Arguments That Stablecoins Are Not Derivatives

Equally strong arguments can be advanced that stablecoins should not be classified as derivatives:

- **Functional Equivalence to Money**: Fully-collateralised stablecoins like AUDD function as digital representations of fiat currency rather than as derivative contracts. Each token represents a proportionate claim on the reserve assets held by the issuer, similar to how banknotes represent claims on central bank reserves. This makes them more analogous to electronic money than to derivatives.
- **No Leverage or Speculation**: Traditional derivatives are often characterised by leverage, where parties can gain exposure to underlying assets exceeding their initial investment. Stablecoins do not provide leveraged exposure; holding $100 of AUDD provides $100 of exposure to AUD, with no magnification of gains or losses.
- **Immediate Redeemability**: Unlike derivatives that settle at predetermined future dates, well-designed stablecoins offer redemption on demand or with minimal delay. This characteristic aligns them more closely with deposit-like instruments or electronic money than with futures contracts or other derivatives.
- **Security Exclusion**: Section 761D(3)(a) excludes securities from the definition of derivatives. If stablecoins constitute debentures (as debt securities), they would fall within the securities exclusion and could not simultaneously be derivatives. Stablecoins may represent a debt owed by the issuer to the holder, payable in AUD, fitting the debenture definition.
- **Alternative Regulatory Frameworks**: The AML/CTF[25] Act already regulates digital currency exchange providers, including those dealing in stablecoins. From 31 March 2026, expanded virtual asset service provider regulations will apply. This existing regulatory framework suggests Parliament did not intend stablecoins to be captured by derivative regulations designed for different risks.
- **International Precedents**: Many jurisdictions, including the European Union under MiCA (Markets in Crypto-Assets Regulation), treat stablecoins as a distinct category separate from both securities and derivatives. This international approach suggests that forcing stablecoins into the derivative category may not reflect their true nature or optimal regulatory treatment.

Conclusion on Derivative Status

The derivative status of Australian stablecoins remains an open question requiring judicial determination or legislative clarification. The technical elements of section 761D could potentially be satisfied, particularly the requirement that value varies by reference to an underlying asset (the AUD). However, the functional and economic characteristics of fully-collateralised, redeemable-on-

demand stablecoins like AUDD suggest they operate more as digital money substitutes than as derivative contracts.

The most prudent course would be for issuers to structure stablecoin products carefully, ensuring they either clearly fall within an exclusion (such as the securities exclusion if structured as debentures) or comply with derivative regulations if conservative legal advice suggests derivative status is probable. Additionally, Australian regulators and legislators should provide clear guidance on this question, potentially through regulations explicitly excluding qualifying stablecoins from the derivative definition, similar to the exclusions already provided for certain commodity purchase arrangements and water rights.

The Treasury's consultation on crypto asset regulation and the proposed Digital Asset Platform (DAP) [26]licensing framework may ultimately provide the necessary clarity. Until then, issuers of Australian stablecoins must navigate this uncertainty with appropriate legal advice and regulatory engagement. HERE

Stablecoins In Real Property Transactions

The Rationale for Using Stablecoins in Property Settlements

The Australian property settlement process has undergone significant digitalisation through the Property Exchange Australia (PEXA) platform, which facilitates electronic lodgement and financial settlement. However, even with PEXA's improvements, property settlements still depend on traditional banking infrastructure with inherent limitations: settlements generally occur during business hours, funds transfer through multiple intermediary banks causing delays, and cross-border transactions remain cumbersome and expensive. Stablecoins offer potential solutions to these persistent friction points.

The primary advantages of using stablecoins for property settlements include:

- **24/7 Availability**: Unlike bank transfers that operate within business hours and banking days, blockchain networks function continuously. Settlements could theoretically occur on weekends or after traditional banking hours.
- **Near-Instantaneous Settlement**: Blockchain transactions settle in minutes rather than hours or days. The transfer of value is atomic and final once confirmed on the blockchain, eliminating settlement risk.
- **Reduced Intermediary Costs:** Traditional property settlements involve multiple intermediaries, each extracting fees. Stablecoin transfers operate peer-to-peer or through smart contracts, potentially reducing transaction costs.
- **Cross-Border Efficiency**: For foreign purchasers, converting foreign currency to AUD and transferring funds internationally involves currency exchange costs, international wire transfer fees, and multi-day delays. Stablecoins can be transferred globally and converted locally, streamlining this process.
- **Programmable Money:** Smart contracts can encode settlement conditions, automatically releasing funds only when all conditions are met (title transfer, discharge of mortgages, stamp duty payment, etc.), reducing counterparty risk.
- **Transparency and Auditability**: All transactions on public blockchains are permanently recorded and verifiable, creating an immutable audit trail superior to traditional banking records.

Legal Framework Governing Property Settlement

Implementing stablecoin-based property settlements requires navigation of multiple complex legal frameworks operating at both state/territory and federal levels:

Land Titles Legislation

Australia's land titles system operates under the Torrens system[27], administered separately by each state and territory. The fundamental principle is that legal title is evidenced by registration on the government-maintained register. Key legislation includes the Real Property Act 1900 (NSW), Transfer of Land Act 1958 (Vic), Land Title Act 1994 (Qld), Real Property Act 1886 (SA), Transfer of Land Act 1893 (WA), Land Titles Act 1980 (Tas), Land Titles Act 2000 (NT), and Land Titles Act 1925 (ACT).

These Acts prescribe the form and manner of instruments that effect transfers of land. Crucially, they specify that transfers must be in the approved form and properly executed. While these Acts have been amended to facilitate electronic lodgement through systems like PEXA, they do not currently contemplate blockchain-based title registration or cryptocurrency-based payment mechanisms.

Electronic Conveyancing National Law

The Electronic Conveyancing National Law (ECNL), adopted by participating jurisdictions through Application Acts, establishes the regulatory framework for Electronic Lodgement Network (ELN) and Operators like PEXA. The ECNL requires that certain prescribed instruments must be lodged electronically through an approved ELN. This creates a practical constraint: even if parties wished to use stablecoins for the financial component of settlement, they would still need to use an approved ELN (currently PEXA or Sympli) for the lodgement of title instruments.

The ECNL Operating Requirements set technical and operational standards that ELN Operators must meet. These requirements address security, authentication, verification of identity, and financial settlement procedures. Current Operating Requirements assume traditional banking infrastructure, creating a significant obstacle to incorporating cryptocurrency payments into the electronic settlement workflow.

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

The AML/CTF Act imposes comprehensive obligations on reporting entities, including legal practitioners and conveyancers providing conveyancing services. These obligations include customer identification and verification (Know Your Customer), ongoing customer due diligence, record keeping, and reporting suspicious matters and threshold transactions. From 31 March 2026, when the AML/CTF Amendment Act 2024 reforms take full effect, the regime will expand to regulate virtual asset service providers comprehensively.

If a property transaction involves stablecoin payments, lawyers and conveyancers must comply with enhanced due diligence requirements. The source of the cryptocurrency must be verified and traced to ensure it does not represent proceeds of crime. The 'travel rule' requirements, aligned with FATF Recommendation 16, will require that when virtual assets are transferred, information about the sender and recipient must accompany the transfer. This creates additional compliance burdens for lawyers facilitating stablecoin-based settlements.

Duties and Stamp Duty
Each Australian jurisdiction imposes transfer duty (stamp duty) on property transfers, calculated as a percentage of the property's value or consideration paid. Revenue authorities require duty to be paid before or at settlement, typically through the ELN system which facilitates direct payment to the revenue office.

Current stamp duty legislation presumes payment in Australian dollars through traditional banking channels. If consideration were paid in stablecoins, several questions arise: How is the dutiable value calculated? Is it the number of stablecoins transferred, or their AUD equivalent value at the time of transfer? Does the revenue authority have the technical capability to receive duty payments in stablecoins? The ANZ Bank's A$DC pilot program for excise tax collection demonstrates that government agencies are exploring digital currency acceptance, but widespread implementation for stamp duty remains distant.

Foreign Investment Framework
The Foreign Acquisitions and Takeovers Act 1975 (Cth) and associated regulations require foreign persons to obtain approval from the Foreign Investment Review Board (FIRB) before acquiring interests in Australian real estate above certain thresholds. If a foreign purchaser wishes to pay using stablecoins, this raises questions about beneficial ownership transparency and source of funds verification. FIRB approval processes require disclosure of the source of consideration, and cryptocurrency payments may trigger heightened scrutiny regarding the ultimate beneficial owner and the origin of funds.

Practical Implementation Pathways
Given the current legal framework, several potential pathways exist for incorporating stablecoins into property settlements, each with varying degrees of feasibility and regulatory complexity:
Pathway 1: Parallel Track Settlement
The most immediately feasible approach involves a hybrid model where parties agree to use stablecoins for the substantive payment while maintaining parallel compliance with existing settlement infrastructure. The purchaser would transfer the purchase price in stablecoins (e.g., AUDD) directly to the vendor's designated cryptocurrency wallet address. Simultaneously or immediately thereafter, the vendor converts the received stablecoins to AUD through a registered digital currency exchange provider. The converted AUD is then used for the traditional PEXA settlement, including payment of stamp duty, discharge of the vendor's mortgage, and distribution to stakeholders.

This approach allows parties to benefit from the speed and efficiency of cryptocurrency transfers while maintaining compliance with existing land titles and electronic conveyancing requirements. However, it introduces additional steps and costs (cryptocurrency exchange fees, potential tax events from cryptocurrency disposal) and creates timing risks if the stablecoin peg is unstable or if exchange processing delays occur.

Pathway 2: Integrated Smart Contract Settlement
A more sophisticated approach involves developing smart contracts that encode all settlement conditions and coordinate with ELN systems. A settlement smart contract would be deployed on a blockchain supporting AUDD, with the contract holding the purchase price in escrow. The contract would be programmed to release funds only upon verification of certain conditions: confirmation

of title instrument lodgement through the ELN, proof of stamp duty payment to the revenue authority, discharge of existing mortgages, and any other negotiated conditions.

This requires integration between blockchain oracles (external data providers that feed real-world information to smart contracts) and ELN systems. Currently, no such integration exists, making this approach technologically feasible but practically unavailable without significant infrastructure development and regulatory approval.

Pathway 3: ELN Operator Integration

The most comprehensive solution would involve ELN operators like PEXA directly supporting stablecoin payments within their platforms. PEXA could maintain digital wallets capable of receiving and transmitting stablecoins, integrate with reputable stablecoin issuers to provide real-time conversion between AUD and stablecoins, and modify workspace functionality to display both AUD and stablecoin balances and transactions.

This would require amendments to the ECNL Operating Requirements to explicitly permit and regulate cryptocurrency-based financial settlements, development of technical standards for cryptocurrency integration in conveyancing systems, and coordination with land registries and revenue authorities to ensure acceptance of stablecoin-facilitated transactions.

Regulatory and Practical Obstacles

Despite theoretical benefits, significant obstacles impede widespread adoption of stablecoin-based property settlements:

- **Regulatory Uncertainty**: No Australian jurisdiction has explicitly authorised cryptocurrency-based property settlements. Legal practitioners risk professional liability if settlements fail due to unresolved legal questions.
- **Absence of Supportive Infrastructure**: Current ELN systems, revenue office payment systems, and financial institution processes do not support cryptocurrency transactions.
- **Professional Indemnity Insurance**: Legal practitioners' professional indemnity insurance may not cover claims arising from cryptocurrency-based transactions, creating unacceptable risk exposure.
- **Volatility Risk:** Despite being 'stable,' stablecoins can experience temporary price deviations from their peg. If AUDD trades at $0.98 AUD when settlement occurs, this creates a shortfall in the consideration paid.
- **Counterparty Risk**: Stablecoin holders face issuer default risk. If the stablecoin issuer becomes insolvent or reserves are inadequate, token holders may not receive par value on redemption.
- **Consumer Protection Concerns**: Unsophisticated purchasers may not understand cryptocurrency risks and may be vulnerable to fraud or technical errors in wallet addresses and transaction execution.

For stablecoins to become viable payment mechanisms in Australian property settlements, coordinated action is required from regulators, technology providers, and industry participants. Legislative amendments explicitly permitting and regulating cryptocurrency-based settlements, technical standards development for integration with existing conveyancing infrastructure, education and guidance for legal practitioners, and consumer protection safeguards would all be necessary components of a functional framework.

TOKENISATION OF REAL-WORLD ASSETS

Understanding Tokenisation

Tokenisation refers to the process of creating digital representations of real-world assets on distributed ledger technology (blockchain). These digital tokens can represent ownership, fractional interests, or rights in underlying physical or financial assets. The concept extends beyond cryptocurrency to encompass a vast array of asset classes: real estate, commodities, equities, debt instruments, carbon credits, intellectual property, and infrastructure assets.

The fundamental mechanics involve identifying the asset to be tokenised, creating a legal structure that links the digital token to rights in the underlying asset, issuing tokens on a blockchain that represent defined interests or claims, and establishing mechanisms for secondary trading, custody, and redemption. The legal structure typically involves a special purpose vehicle (SPV) or trust that holds the underlying asset, with tokens representing beneficial ownership interests in that vehicle.

The Australian Regulatory Framework for Tokenised Assets

Australia applies existing legal frameworks to tokenised real-world assets rather than creating entirely new regulations specific to tokenisation. This approach provides market stability and legal certainty by leveraging established principles, but it also creates challenges when traditional frameworks do not map cleanly onto novel technological structures.

Financial Product Classification

The threshold question for any tokenised asset is whether it constitutes a 'financial product' under section 763A of the Corporations Act. This determination is critical because financial products trigger extensive regulatory obligations including licensing, disclosure, conduct, and market integrity requirements. The Corporations Act defines financial products broadly to include securities (shares, debentures, managed investment schemes), derivatives, non-cash payment facilities, and various other instruments. Tokenised assets may fall within one or more of these categories depending on their structure and features.

Managed Investment Schemes (MIS): Many tokenised real-world asset structures are likely to constitute managed investment schemes under section 9 of the Corporations Act. An MIS exists where people contribute money or money's worth to acquire rights to benefits produced by the scheme, the contributions are pooled or used in a common enterprise, and the members do not have day-to-day control over the operation of the scheme. Tokenised real estate funds, for example, where multiple token holders contribute capital to acquire property managed by a professional operator, clearly satisfy these criteria.

If a tokenised structure is an MIS, it must be registered with ASIC unless an exemption applies. The responsible entity operating the scheme must hold an Australian Financial Services Licence (AFSL) authorising operation of a managed investment scheme, must meet capital adequacy requirements, comply with ongoing obligations including financial reporting, audits, and member meetings, and issue a Product Disclosure Statement (PDS) to prospective investors.

Carbon Credit Tokenisation

Carbon credits represent a particularly interesting tokenisation use case. The Australian Carbon Credit Unit (ACCU) is issued under the Emissions Reduction Fund administered by the Clean Energy Regulator. ACCUs are property rights that can be bought, sold, and surrendered to offset carbon emissions. Tokenising ACCUs involves creating digital tokens on a blockchain that represent

ownership or beneficial interests in ACCUs held in the Australian National Registry of Emissions Units (ANREU).

Several pilot projects have successfully demonstrated tokenised carbon credit transactions. However, scaling these initiatives requires addressing several legal complexities. The Carbon Credits (Carbon Farming Initiative) Act 2011 (Cth) and associated regulations govern ACCUs but were not designed with blockchain technology in mind. The ANREU serves as the official register of ACCU ownership, and legal title depends on registration in this centralised system. Tokens can represent beneficial ownership through trust or custody arrangements, but they cannot replace the ANREU as the source of legal title unless legislation is amended.

Financial product classification of tokenised carbon credits depends on their structure. If tokens represent direct beneficial ownership of specific ACCUs held in a segregated account, they may not be financial products. However, if tokens represent interests in a pooled portfolio of credits managed by a third party, the structure may constitute a managed investment scheme requiring AFSL authorisation and PDS disclosure.

Personal Property Securities Act Considerations

The Personal Property Securities Act 2009 (Cth) (PPSA) governs security interests in personal property[28] When tokens are used as collateral for financing, or when the underlying asset is used to secure obligations, complex PPSA issues arise. The fundamental question is: what is the collateral—the token itself, or the underlying asset represented by the token?

If a token is classified as 'financial property'[29] special PPSA rules apply. Alternatively, tokens may be 'general intangibles'—a residual category for personal property not otherwise classified. Perfection of security interests (making them effective against third parties and in insolvency) requires registration on the Personal Property Securities Register (PPSR) or other prescribed methods. However, the PPSA and PPSR were designed for traditional asset types and do not have specific provisions for blockchain-based tokens. Adapting PPSA principles to tokenised assets requires careful legal analysis and may reveal gaps in the existing framework.

This is an important issue as it must be remembered that a crypto asset is stored in a distributed leger structure which may include many thousands of nodes that reside across multiple jurisdictions. According to Jackman J. in his academic paper concerning "Is Crypto Property", the identification of jurisdiction should be solved by settling of who and where control of the relevant crypto asset resides. Consequently, if person A is located in Australia and person A has sole control over the private key needed to carry out a transaction then from a governing perspective Australian courts should have jurisdiction and enforceability to hear any dispute involving person A's crypto. But what is the solution if 2 or more people located in different jurisdictions each have some control over some designated crypto? It is outside the scope of this paper to deal with this issue and will need to be separately investigated.

Advantages of Tokenising Real-World Assets

Proponents of tokenisation identify numerous potential benefits that could transform capital markets and asset ownership:

- **Fractional Ownership and Accessibility**: Tokenisation enables division of high-value assets into small, affordable units. A commercial property worth $50 million could be tokenised into 500,000 units at $100 each, making institutional-grade assets accessible to retail investors.

This ability to fractionalise high valued assets could create investment opportunities which could significantly broaden capital formation and financial liquidation opportunities.

- **Enhanced Liquidity**: Traditional real-world assets like real estate, private equity, and infrastructure are notoriously illiquid. Tokenisation facilitates creation of secondary markets where tokens can be traded peer-to-peer or through exchanges, potentially providing liquidity for previously illiquid investments. Smart contracts can automate transfer restrictions, ensuring compliance with securities laws while enabling efficient trading.
- **24/7 Trading and Global Markets**: Blockchain networks operate continuously without geographical boundaries. Tokenised assets can be traded around the clock across global markets, eliminating the constraints of traditional exchange hours and jurisdictional barriers.
- **Programmable Compliance**: Smart contracts enable encoding of regulatory requirements, investor eligibility criteria, and transfer restrictions directly into tokens. This programmable compliance can automate functions such as investor accreditation verification, trading restrictions during lock-up periods, distribution of dividends or rental income, and tax withholding and reporting.
- **Reduced Intermediation Costs**: Traditional asset management and trading involve multiple intermediaries—brokers, custodians, clearing houses, transfer agents—each extracting fees. Blockchain-based tokenisation can disintermediate or automate many of these functions, reducing costs and settlement times.
- **Transparency and Auditability**: All token transactions are recorded on the blockchain, creating an immutable, transparent audit trail. This enhances regulatory oversight, reduces fraud opportunities, and provides investors with unprecedented visibility into ownership and transaction history.
- **Composability and Integration**: Tokenised assets can be integrated with decentralised finance (DeFi) protocols, enabling new financial products and services. For example, tokenised real estate could be used as collateral in decentralised lending platforms, or fractional ownership tokens could be incorporated into yield-generating strategies.

Disadvantages and Risks of Tokenisation

Despite these potential advantages, tokenisation presents significant challenges and risks that must be carefully evaluated:

- **Regulatory Uncertainty and Compliance Complexity**: The fundamental challenge is that Australian law does not have a comprehensive regulatory framework specifically designed for tokenised assets. Issuers must navigate the uncertainty of whether their token structure constitutes a financial product, and if so, which category applies. This uncertainty creates compliance risks, potential regulatory action, and difficulty obtaining clear legal advice. The cost of legal structuring and ongoing compliance can be prohibitive, particularly for smaller issuances.
- **Misalignment with Property Law Frameworks**: Australian property law, including the Torrens title system for land and the PPSA for personal property, was designed for traditional asset forms and ownership mechanisms. Blockchain-based ownership does not map cleanly onto these systems. For real estate, the land titles register remains the source of legal title; tokens can only represent beneficial interests through trusts or similar structures. This creates a fundamental tension: blockchain promises to eliminate intermediaries and centralized records, but Australian law requires that legal title be evidenced by registration in government-maintained registers.
- **Technology Risks:** Smart contract vulnerabilities could result in loss or theft of tokens. Numerous high-profile hacks of DeFi protocols and token platforms have resulted in hundreds

of millions of dollars in losses. Private key management is critical—if an investor loses their private key, they permanently lose access to their tokens. Unlike traditional financial accounts, there is no 'forgot password' recovery mechanism. Furthermore, different blockchain platforms have varying levels of decentralisation, security, and finality, creating platform selection risks.

- **Custody and Security Concerns**: While blockchain provides transparent ownership records, the custody of tokens and private keys creates unique security challenges. Should tokens be held in self-custody by investors, or through professional custodians? ASIC has indicated that custody arrangements for digital assets must meet certain standards, but the regulatory framework for crypto asset custody is still developing. Professional custody services add costs and reintroduce intermediaries, potentially negating some of tokenisation's efficiency benefits.
- **Market Liquidity May Not Materialise**: The promise of enhanced liquidity through tokenisation assumes that active secondary markets will develop. However, many tokenised assets have struggled to achieve meaningful trading volumes. Without sufficient market participants, bid-ask spreads widen, trading becomes costly, and liquidity benefits evaporate. Additionally, regulatory restrictions on secondary trading (such as requirements that buyers be wholesale investors) may significantly limit market depth.
- **Valuation and Pricing Challenges**: Traditional assets have established valuation methodologies and market pricing mechanisms. Tokenised assets, particularly those representing fractional interests in unique assets like specific properties, may lack reliable pricing benchmarks. Thin trading volumes can lead to price manipulation, stale pricing, or significant price discovery problems.
- **Investor Protection Concerns**: Retail investors may not fully understand the risks associated with tokenised investments, including technology risks, market risks, and the legal complexity of token structures. The risk of fraud is significant in largely unregulated token markets. Misleading marketing, Ponzi schemes, and outright scams have plagued the cryptocurrency and token sectors. Ensuring adequate disclosure, investor education, and enforcement mechanisms is essential to protect consumers.
- **Operational and Governance Issues**: Tokenised asset structures require ongoing management: Who manages the underlying asset? How are corporate actions (distributions, voting, asset disposals) implemented on-chain? How are token holder rights enforced if the issuer or manager defaults? Traditional governance mechanisms may not translate seamlessly to tokenised structures, creating potential for disputes and uncertainty.

Recommendations for Australian Tokenisation Policy

To unlock the potential benefits of tokenisation while managing risks, Australian policymakers should consider several reforms:

- **Develop a Comprehensive Taxonomy**: As recommended by the Digital Finance CRC and Digital Economy Council of Australia, Australia needs a comprehensive taxonomy mapping various tokenisation structures to existing Corporations Act categories. This would provide clarity on which regulatory requirements apply to different token types and reduce uncertainty for market participants.
- **Implement Regulatory Sandboxes**: ASIC should establish specific regulatory sandbox arrangements for tokenisation projects, similar to those implemented by the Monetary Authority of Singapore and the UK Financial Conduct Authority. These sandboxes would allow controlled experimentation with tokenised structures under modified regulatory requirements, generating practical insights to inform permanent regulations.
- **Adapt Property Law Frameworks**: Consideration should be given to amending land titles legislation to explicitly provide for blockchain-based subsidiary registers or notation of

beneficial interests. While the Torrens register would remain the source of legal title, recognised blockchain registers could provide transparency and efficiency for beneficial ownership tracking.

- **Proportionate Regulation**: Full financial services regulation may not be appropriate for all tokenised structures. A risk-based, proportionate approach that scales regulatory requirements based on the nature of the asset, the sophistication of investors, and the size of the offering would better support innovation while maintaining investor protection.
- **Custody Standards**: Develop clear standards for custody of tokenised assets, addressing security requirements, insurance, segregation of assets, and operational controls. These standards should apply whether custody is provided by traditional financial institutions or specialised crypto asset service providers.

The global market for tokenised real-world assets is projected to reach trillions of dollars in the coming decade. Australia has the opportunity to position itself as a leading jurisdiction for tokenisation by creating clear, balanced regulations that encourage innovation while protecting investors. However, this requires proactive policy development rather than reactive regulation aftermarket failures occur.

CONCLUSION

The intersection of crypto assets and property law represents one of the most significant legal and technological developments of our time. As this paper has demonstrated, Australian courts have made substantial progress in recognising crypto assets as property, with Justice Attiwill's decision in Re Blockchain Tech Pty Ltd providing definitive judicial authority that Bitcoin—and by extension, other crypto assets—possess the essential characteristics of property under Australian law. This recognition aligns Australia with other leading common law jurisdictions and provides important legal certainty for crypto asset holders seeking to assert property rights and access legal remedies. However, judicial development alone cannot address all the complexities raised by crypto assets. The UK's enactment of the Property (Digital Assets etc) Act 2025 demonstrates the value of legislative intervention to provide comprehensive, prospective certainty. Australian policymakers should consider whether similar legislation would benefit the Australian market, particularly given the jurisdictional divergence between the Victorian and Tasmanian approaches to crypto asset characterisation.

The question of whether stablecoins constitute derivatives under section 761D of the Corporations Act remains unresolved, with strong arguments on both sides. This uncertainty creates challenges for stablecoin issuers and users, highlighting the need for regulatory guidance or legislative clarification. Given that stablecoins increasingly serve important functions in digital payments and cross-border transactions, providing legal certainty around their classification is essential for market development.

The potential use of stablecoins in real property transactions offers tantalising efficiency gains, including 24/7 availability, near-instantaneous settlement, and reduced intermediary costs. However, significant legal and practical obstacles currently impede implementation. Australia's property settlement infrastructure, embodied in the PEXA system and governed by the Electronic Conveyancing National Law, was designed for traditional banking mechanisms and does not currently accommodate cryptocurrency-based payments. Integration of stablecoins into property settlements would require coordinated amendments to land titles legislation, electronic conveyancing frameworks, stamp duty systems, and AML/CTF compliance processes. While

technically feasible, such integration requires political will, regulatory approval, and substantial infrastructure investment.

The tokenisation of real-world assets presents perhaps the most transformative opportunity and the most complex regulatory challenges. Tokenisation promises to democratise access[30] to high-value assets enhance liquidity for traditionally illiquid investments and create more efficient capital markets through programmable compliance and reduced intermediation[31],. However, realising these benefits requires navigating a regulatory framework designed for traditional asset forms and ownership structures. The fundamental misalignment between blockchain-based ownership models and Australian property law frameworks—particularly the Torrens system for land and the PPSA for personal property—creates significant obstacles to scaling tokenisation.

From an Australian legal perspective, tokenisation presents both advantages and disadvantages. On the positive side, tokenisation can increase market access for retail investors, improve transparency and auditability, reduce transaction costs, and enable innovative financial products. On the negative side, regulatory uncertainty creates compliance risks and costs, technology vulnerabilities pose security concerns, promised liquidity may not materialise, and investor protection challenges must be addressed.

Moving forward, Australian policymakers face critical choices about how to regulate this evolving landscape. A hands-off approach risks allowing fraud and market failures while potentially missing the opportunity to position Australia as a leading tokenisation jurisdiction. An overly prescriptive approach risks stifling innovation and driving activity to more permissive jurisdictions. The optimal path likely involves targeted regulatory reforms that provide clarity while preserving flexibility for technological evolution.

Key policy recommendations include developing a comprehensive taxonomy of tokenised assets and their regulatory treatment, implementing regulatory sandboxes for controlled experimentation, adapting property law frameworks to accommodate blockchain-based ownership records, applying proportionate, risk-based regulation scaled to investor sophistication and offering size, and establishing clear custody standards for digital assets.

The legal profession, including property lawyers, conveyancers, and corporate advisers, must develop expertise in crypto asset law and blockchain technology to effectively serve clients in this emerging area. Professional bodies should provide education and training, practice guidelines should address crypto asset transactions, and professional indemnity insurance should be adapted to cover this new risk profile.

In conclusion, crypto assets and property law are converging in ways that will fundamentally reshape how we conceive of ownership, transfer value, and structure investments. Australian law has made important strides in recognising crypto assets as property, but significant work remains to create a comprehensive, coherent regulatory framework that supports innovation while protecting market participants. The integration of stablecoins into property settlements and the broader tokenisation of real-world assets hold tremendous potential, but realising this potential requires thoughtful, coordinated action from regulators, legislators, technology providers, and legal practitioners. The decisions made in the coming years will determine whether Australia emerges as a leader in this digital transformation or is left behind as other jurisdictions seize the opportunity.

The intersection of property law and blockchain technology is not merely an academic curiosity—it represents the future of how we will own, transfer, and invest in both physical and digital assets. Engaging constructively with these developments is essential for ensuring that Australian law remains fit for purpose in an increasingly digital economy.

FootNotes

[1] It is this fractional ownership of value that is probably the greatest economic advantage which involves distributed ledger technology.
[2] https://www.novatti.com/blog/novatti-announces-audd-stablecoin-to-go-live-on-1-november
[3] Ibid note 2.
[4] https://www.finder.com.au/cryptocurrency/coins/trueaud
[5] https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC/2024/690.html
[6] This case has not been appealed and as such it currently stands as a final determination until an Appeal Court comes to some alternate position concerning the classification of crypto-currencies.
[7] https://www.scribd.com/document/356444577/National-Provincial-Bank-v-Ainsworth
[8] https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2024/2024fca0822
[9] https://www.fedcourt.gov.au/digital-law-library/judges-speeches/justice-jackman/jackman-j-20240621
[10] https://www.caselaw.nsw.gov.au/decision/5e70069ce4b096e236c2170a
[11] https://victorianreports.com.au/judgment/66-VR-30
[12] https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/tas/TASFC/2025/7.html
[13] Yeates (a pseudonym) v The King [2025] VSCA 288 (26 November 2025) <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSCA/2025/288.html >
[14] National Provincial Bank Limited v. Ainsworth (n. 7)
[15] Yeates (a pseudonym) v The King [2025] VSCA 288 (n13) at para 116
[16] Ibid at para 123
[17] https://www.legislation.gov.uk/ukpga/2025/29
[18] https://lawcom.gov.uk/project/digital-assets/
[19] Op Cit note 13 paragraph 3.1 on page 33.
[20] Op Cit note 13, paragraph 2.45 on page 19. 29,
[21] Section 1 of the "Property (Digital Assets etc) Act 2025". 2025 Chapter 29, 2 December 2025.
[22] Y., Riabchenko , A., Onyshchenko , V., Kudin , O., Kononets , V., Holdskyi, "**Digital assets and property rights: regulation and legal implications within the EU and globally,** *Statute Law Review*, Volume 46, Issue 3, December 2025, hmaf029, https://doi.org/10.1093/slr/hmaf029
[23] https://takeovers.gov.au/sites/takeovers.gov.au/files/2021-04/derivatives_report_december_2001.pdf
[24] https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2012/1200.html?context=1;query=abn%20amro;mask_path=au/cases/cth/FCA
[25] The Anti-Money Laundering/Counter Terrorism Financing Act (Cth) 2006
[26]Treasury "Statement on Developing an Innovative Australian "Digital Asset Industry" March 2025. https://treasury.gov.au/sites/default/files/2025-03/p2025-628504-s.pdf
[27] https://en.wikipedia.org/wiki/Torrens_title
[28] This PPSA is a law about security interests in personal property. A security interest is an interest in personal property provided for by a transaction that secures payment or the performance of an obligation. The form of the transaction and the identity of the person who has title to the property do not affect whether an interest is a security interest.
Personal property includes many different kinds of tangible and intangible property, other than real property. Examples include motor vehicles, household goods, business inventory, intellectual property and company shares. Personal property is known as collateral if it is (or is anticipated to be) the subject of a security interest.
https://www.legislation.gov.au/C2009A00130/asmade/text
[29] The PPSA defines "***financial property"*** *to* mean *any of the following personal property:*
- *(a) chattel paper;*
- *(b) currency;*
- *(c) a document of title;*
- *(d) an investment instrument;*
- *(e) a negotiable instrument*

No crypto/digital asset has been classified as legal tender and as such is not a currency. Australian notes issued by the Reserve Bank of Australia are legal tender throughout Australia by virtue of section 36(1) of the *Reserve Bank Act 1959* without an amount limit. There have been various arguments raised that have identified that a crypto /digital asset may possess certain

monetary characteristics, but this has not resulted in any crypto/digital asset in Australian being officially classified as a currency recognised by law. An outstanding issue is whether a "Private Key" could be classified as a document of title.

[30] The issue of democratising access means that more individuals are able to participate in acquiring and transacting assets that can be traded in an open market. See V., Ciobu "Tokenisation of Assets - The Future of Finance and Investments", https://tesi.univpm.it/bitstream/20.500.12075/23158/1/TESI%20VALERIA%20CIOBU%20.pdf
For example, **Berkshire Hathaway (BRK.A)** is the undisputed leader concerning high priced securities. Its Class A shares are famously expensive, with prices reaching over $700,000+ as of late 2025, partly due to long-term investors. The ability of tokenising Berkshire Hathway shares would open the market substantially as currently, its current shareholder encounter liquidity issues as they can only transact in whole shares. This creates a market impediment as current shareholders need to locate entities who could afford US$700,000 to purchase a single share. Fractionalising Berkshire Hataway shares could in fact create a liquidity market which would correspondingly increase demand and thus price increases.

[31] Ren, C., Lu, L., Ye, N., & Zhou, Y. (in press). Tokenisation of Real-World Asset (RWA): Emerging Practices, Case Studies, and Regulatory Trends in Asia. Journal of International Banking Law and Regulation, (1/2026)