

Episode 64: Summary

Episode name: Outsmarted? Blockchain, Smart Contracts and the Future of Lawyers

Guest(s): Steven Pettigrove

What area(s) of law does this episode consider?

The background and regulation of blockchain and distributed ledger technologies, as well the role of lawyers.

Why is this topic relevant?

Blockchain and digital ledger technologies have been quietly chipping away at a variety of different trust-related problems for industries as diverse as real estate, art, logistics, and legal practice. However, their meteoric rise in popularity has made it difficult for regulators to keep up.

Despite commentary to the contrary, lawyers-as-trusted-advisors play a key role in the development and function of distributed ledger and blockchain technologies - including cryptocurrencies - and will likely do so as new and novel structures such as DAOs gain legal recognition.

What legislation is considered in this episode?

Corporations Act 2001 (Cth)

What are the main points?

- Distributed ledgers have existed for a long time - including in the banking systems of the Roman Empire and Qing Dynasty.
- Modern distributed ledger technology, with the assistance of computers, simultaneously records transactions and events across vast distances.
- A blockchain is a form of distributed digital ledger that records every single transaction or event in a distributed and cryptographically signed 'chain'.
- Non Fungible Tokens (**NFTs**) are tokens whose purchase is recorded on a blockchain and which are intended as an expression of ownership of a specific piece of work.
- Decentralised Autonomous Organisations (**DAOs**) are entities with no central governance where members own tokens which grant voting rights. DAOs are not currently recognised as legal entities in Australia.
- Smart contracts are agreements executed on a blockchain which can programmatically execute once predetermined conditions are met.
- Decentralised Finance (**DeFi**) describes emerging financial applications of blockchain technology. DeFi enables people to financially interact on a

blockchain and do peer-to-peer transactions with one another, without the involvement of a traditional trusted third party.

- In Australia, there is currently no definitive guidance from a court or regulator on whether certain cryptocurrencies are financial products.
- The Australian government has just begun a token mapping exercise in response to recommendations made in the Bragg Report.
- If you wish to become involved in this area of the law, play around and become familiar with the technology in the crypto space. Spend time reading up on developments around the world in the crypto sphere because there are new regulatory developments every week.

What are the practical takeaways?

How to:

How to reconcile whether a cryptocurrency is a financial product:

1. *Ensure you understand* all relevant details of the cryptocurrency or proposed crypto-product.
2. *Navigate to ASIC INFO 225* and reconcile those details against Parts C & D of the information sheet.
3. *Review the requirements of relevant legislation*; including the Corporations Act and *Australian Securities and Investments Commission Act 2001* (Cth).

For further details on ASIC INFO 225, listen to Steven's episode from 33:51.

Show notes

[ASIC Information Sheet 225](#)

[Final Report of Select Committee on Australia as a Technology and Financial Centre \(Bragg Report\)](#)