Impact Case Study
Cryptocurrency Regulation

Introduction

Global finance is undergoing radical change with the introduction and expanding use of cryptocurrency – digital-only currency that uses encryption and decentralised blockchain technology for secure transactions. Being decentralised, cryptocurrency has no central issuing body or regulating authority. As a result, financial regulations need to be reviewed in order to keep up with the economic and societal impact of crypto.

Background

With the increased use of cryptocurrency, there is a corresponding increase of interaction between cryptocurrency transactions and the law. In particular, there has been a sense that cryptocurrency isn't quite 'trusted' and a perception that it is associated with the activities of 'cybercriminals', in roles from investment scams and ransomware attacks, to money laundering, illicit 'dark web' transactions and potential tax evasion schemes.

These perceptions have led to the tightening of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) to include Australian cryptocurrency exchanges.

With criminal entrepreneurs apparently among the first to find uses for cryptocurrencies, global law enforcement and regulatory agencies soon established digital taskforces focussing on crime and cryptocurrency. In Australia, the Australian Federal Police's (AFP) Cybercrime Operations Unit and the Australian Transaction Reports and Analysis Centre (AUSTRAC) are key enforcers on this issue, along with the Australian Cyber Security Centre and state and territory police forces.

The Project

Senior Law Lecturer, Dr Aaron M. Lane, of RMIT's Blockchain Innovation Hub, is a specialist in blockchain technology. For this research, Dr Lane combined his legal and blockchain expertise to focus on how the law and cryptocurrency interacted.

Dr Lane conducted an empirical analysis of Australian court cases for the period between 2009 and 2020 that involved cryptocurrency, as it related to bail, extradition, restraining orders, trials and sentencing. The analysis examined 103 court cases, with 59 criminal decisions and 44 other decisions.

Significantly, the study found that when cryptocurrency was used in the commission of an offence, it tended to increase the perceived sophistication or seriousness of the offence, as well as the suggestion that efforts had been made to conceal transactions.

This meant that, in the cases studied, cryptocurrency often became an aggravating factor that prompted harsher sentencing, with courts considering general deterrence above other sentencing purposes in relation to cryptocurrencies.

These perceptions are countered by the reality that cryptocurrencies have range of legitimate and lawful uses as new infrastructure for the digital economy.

One practical outcome of these findings is that, with the perception that in the courts, cryptocurrency can be strongly associated with crime, legal practitioners will need to become blockchain and cryptocurrency literate. This literacy will be needed in order to craft appropriate submissions for their clients, seek appropriate court orders, obtain and review expert witness reports, and understand the commercial and legal significance of cryptocurrency transactions.

Project Outcomes

Dr Lane's report "Crime and Cryptocurrency in Australian Courts", co-written by Lisanne Adam, was published in Monash University Law Review, Vol.48(3), pp.1-44, 2023 in March 2023

https://bridges.monash.edu/articles/journal_contribution/Crime_and_Cryptocurrency_in_Australian_Courts/22207720

The results of the research were discussed across a range of media, including:

- Cointelegraph: "Crypto use an aggravating factor for sentencing: Aussie court study"
  https://cointelegraph.com/news/crypto-use-an-aggravating-factor-for-sentencing-aussie-court-study

- RMIT News, "Cryptocurrency Crime Means Harsher Time"
  https://www.rmit.edu.au/news/all-news/2023/apr/crypto-crime

- Regulation Asia, "Crypto-related Crime in Australia: What Court Records Tell Us, and What Lies Ahead" by Angela Ang
  https://www.regulationasia.com/crypto-related-crime-in-australia-what-court-records-tell-us-and-what-lies-ahead/

- Duxton Hill website, "The Court's perspective and treatment of cryptocurrency crime", by Andrew Tragardh (NB: Duxton Hill specialises in assisting victims of cryptocurrency scams.)
  https://duxtonhill.com.au/the-courts-perspective-and-treatment-of-cryptocurrency-crime/

- The Market Herald, "A deeper dive into crypto-fuelled criminal activity: RMIT University" by Bianca Gimondo
  https://themarketherald.com.au/a-deeper-dive-into-crypto-fuelled-criminal-activity-rmit-university-2023-04-13/

- ABC Radio National, Cryptocurrency in crime:
  https://www.abc.net.au/radionational/programs/lawreport/intersex-law/102162194

Overview of the Impact

The research was presented to State, Federal and International law enforcement agencies and provided specialist officers with an empirical understanding of the court's decisions in addition to their own anecdotal experience. Senior officers noted that "Crime and Cryptocurrency in Australian Courts" is now required reading for trainees.
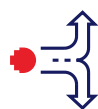
This research has formed engagement opportunities to work with law enforcement to better understand the legal constraints in investigating matters involving cryptocurrency.

Funding Support and/or Institutional Support

The research was supported by the Blockchain Innovation Hub.

Next Steps

This research forms part of a broader research project into cryptocurrency regulation. The next phase will consider the latest dataset of cases, with a focus on family law disputes.

"This study shows that cryptocurrency is being treated as an aggravating factor in sentencing, as it indicates sophisticated offending and therefore calls for sentences that act as a general deterrent," says Dr Lane. "However, as the use of cryptocurrency becomes more widespread, the rationale for this treatment has largely been unchallenged, and deserves more nuance."

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