

# JOURNAL OF BANKING AND FINANCE LAW AND PRACTICE

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## ARTICLES

### **The Origins and Expansion of the Australian Securities and Investments Commission’s Powers to Issue Infringement Notices – Ian Ramsay and Miranda Webster**

There has been a substantial increase in the areas of law administered by the *Australian Securities and Investments Commission* (ASIC) that are subject to infringement notices. Following the introduction of the first infringement notice regime in 2004, additional regimes were introduced in 2010, 2013, 2018, 2019 and 2022. ASIC may now issue an infringement notice in relation to alleged breaches of legislative provisions concerning continuous disclosure, consumer credit, consumer protection, market integrity, derivative transactions, client money, financial benchmarks, insurance contracts and financial advice. The authors examine the origins and expansion of ASIC’s infringement notice powers as well as the benefits and concerns associated with this expansion. The benefits include regulatory flexibility and a faster and less costly enforcement response compared to court proceedings while the concerns include a lack of consistency regarding the purpose of the regimes, a departure from the model guidelines for infringement notice regimes, the possibility of net-widening, and accountability mechanisms for infringement notices that may be inadequate. .... 145

### **Both Sides of the Coin: Developing a Multi-stage Rights Model to Classify Crypto-assets under the Corporations Act – Thomas Humphrey and Niloufer Selvadurai**

In order to establish Australia as an economic hub for fintech, the Australian Government is reviewing the classification of crypto-assets for regulatory purposes. A “crypto-asset” is a digital representation of value which operates on a blockchain. There are many uses for crypto-assets outside of cryptocurrencies, including as coupon-like assets which offer utility within a network. These “utility tokens”, generally do not offer the token-holder any rights to financial benefits. Despite this, investors may be exposed to financial risk if they purchase utility tokens through an Initial Coin Offering (ICO) with the hopes that they will appreciate in value. Whether these assets should be subject to financial markets law is therefore uncertain. ASIC has stated in Information Sheet 225 that utility tokens will be interests in a managed investment scheme if they are sold through an ICO. If so, they will be considered financial products under Chapter 7 of the Corporations Act, and be subject to ongoing disclosure and compliance requirements that may make decentralisation impossible. This policy will undoubtedly hinder developers’ ability to innovate in Australia. This article’s purpose is thus to develop a framework for classifying tokens which protects investors without jeopardising Australia’s ability to attract fintech innovation. .... 176

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