

Block Earner triumphs in ASIC appeal

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Steven Pettigrove and Luke Higgins explore the Full Federal Court's decision in *ASIC v Web3 Ventures Pty Ltd* [2025] FCAFC 58, which overturned a ruling that Block Earner's fixed-yield product was a financial product. The article examines the Court's reasoning and implications for licensing requirements and innovative blockchain-based financial services in Australia.

In a landmark decision, the Full Federal Court [has allowed a cross-appeal brought by Web3 Ventures Pty Ltd, trading as Block Earner, holding that its fixed-yield 'Earner' product did not constitute a "financial product" under the Corporations Act 2001 \(Cth\) \(Corporations Act\)](#). As a result, Block Earner was not required to hold an Australian Financial Services Licence (AFSL) to offer the product to consumers and did not contravene the Corporations Act.

The decision marks a significant shift from the [Federal Court's earlier ruling](#), which had found that the Earner product required licensing. The Full Court's decision effectively resolves ASIC's case against Block Earner, subject to any High Court appeal by ASIC. The decision provides important clarity on a number of key legal principles relevant to the financial services licensing regime in Australia and could have influence in other common law countries.

Background to the Block Earner Case

Between March and November 2022, Block Earner offered two key products:

1. Earner – a fixed-yield product involving crypto-assets, and
2. Access – a variable-yield product, which the Federal Court earlier held was not a financial product.

ASIC alleged that by offering the Earner product, Block Earner was providing financial services without a licence in breach of Chapter 7 of the *Corporations Act*. It pursued both injunctive relief and pecuniary penalties.

In February 2024, [the Federal Court agreed with ASIC that the Earner product was a financial product](#), finding that it likely constituted a managed investment scheme (MIS), financial investment, or possibly a derivative. A second product, called Access, was found not to be a financial product by the court. Some weight was placed in the decision on a representation by Block Earner on their website, when his Honour said at [42]:

it is clear from the statement which appeared on the Block Earner website from March to May 2022 that the contributions made by users were to be "pooled", "pooling customer funds" being the very term used on the website.

However, in June 2024, [the Court relieved Block Earner of any penalty, principally on the basis that the company had obtained legal advice](#), the company's cooperation, and the novelty of the legal issues raised. ASIC [appealed the penalty decision in June 2024](#). Block Earner cross-appealed the core finding that the Earner product was a financial product.

The Earner Product

The analysis of the Full Federal Court considered whether the Earner product constituted an interest in an MIS, a financial investment product, or a derivative.

The Earner product allowed customers to lend crypto-assets to Block Earner and receive a fixed rate of interest over the term of the loan. Block Earner used the loaned cryptocurrency to generate income by lending the cryptocurrencies to third parties. Under the terms of use of the Earner product, Block Earner was required to pay a fixed rate to its customers regardless of the income it earned in relation to the cryptocurrency which was the subject of the loan, and the terms and conditions made this point clear. This factor was critical to the Full Federal Court's decision which also focused on applicable disclosure in Block Earner's user terms.

Earner was not an interest in an MIS

The Full Federal Court concluded that the Earner product was *not* an interest in an MIS as it did not satisfy key elements of the definition contained in section 9 of the Corporations Act. The judgment emphasized that there must be a nexus between the user's contribution to the scheme and the user's acquisition of rights to specific benefits produced by the scheme.

The Court held that Block Earner users' rights were defined by the applicable user terms and limited to the repayment of principal and interest on loans and that users did not acquire any right to benefits produced by Block Earner for itself from loan proceeds [56]. In so holding, the Court distinguished the returns generated by Block Earner from loan proceeds from the statutory concept of a customer acquiring rights to benefit from a scheme [56].

Further, the Court held that despite the fact Block Earner pooled user's loan proceeds, such proceeds were not pooled for the purpose of generating returns for users [74]. Block Earner did not pass on returns generated from the pooling of loan proceeds. Its only obligation to users was to return the loan principal and interest and users did not have economic exposure to Block Earner's use of those loan proceeds. In so holding, the Court again pointed to specific disclosure in user terms indicating that any interest paid to users was not referable to activities undertaken by Block Earner [72].

In summary, the Full Federal Court found that:

1. the terms of the Earner product did not represent or promise that contributions of money or money's worth made by Block Earner's customers were in consideration for the acquisitions of rights to benefits produced by the scheme (see paragraphs [50]-[64]);
2. the funds of Block Earner's customers were not pooled *for the purposes* of producing financial benefits for the members of the 'scheme' in circumstances where they have acquired rights to those benefits (see paragraphs [65]- [77]).

Earner was not a financial investment product

The Full Federal Court concluded that the Earner product was *not* a financial investment under section 763B of the Corporations Act. The Full Federal Court found that the terms governing the offer of the Earner product did **not** lead to a conclusion that:

1. a contribution would be *used* by Earner to generate a financial return or other benefit for the investor, as profits produced by the scheme were not paid to users (see paragraphs [88]-[91], in particular the extract of affidavit evidence at paragraph [89]); and
2. there was an intention by the investor that the contribution would be used to generate a financial return or other benefit, or that Block Earner intended to use that contribution to generate a financial return or other benefit for the investor (see paragraphs [94]-[98]).

The Court again pointed to the fact that Block Earner used loan proceeds to generate returns for itself rather than for investors [90]-[91]. In analysing investors' understanding of these arrangements, the Court focused on disclosure in Block Earner's user terms and noted the fact that ASIC had failed to adduce primary evidence from

investors of their understanding of these arrangements.

Earners were not a derivative

The Full Federal Court concluded that the Earnings product was not a derivative for the purposes of section 761D of the Corporations Act. The Court distinguished between Block Earnings's exchange, Earnings and Access products and found that they did not constitute a single arrangement. On this basis, it was not open to the Court to find that the Earnings product constituted a derivative in circumstances where money repaid to users was not necessarily converted into Australian Dollars such that the consideration or value of the arrangement varied by reference to the price of cryptocurrency [132]- [133].

In that context, it was not necessary for the Full Federal Court to go on to consider whether the Earnings product was otherwise exempt from being a derivative on the basis that it was a "credit facility" or a contract for the provision of future services [138].

Relief on penalty

While the Full Federal Court allowed Block Earnings's cross-appeal and dismissed ASIC's appeal, it took the opportunity to make an important observation on penalty relief at the end of its judgment – one that litigants would be wise not to overlook.

At paragraphs [139]-[141] the Full Federal Court noted that Block Earnings had been relieved from liability [to pay a pecuniary penalty in part because the primary judge accepted that it had obtained legal advice in relation to the Earnings product](#). However, Block Earnings neither produced the legal advice nor provided evidence as to its contents. The circumstances of the case – both procedural and evidentiary – led the primary judge to accept the advice was obtained, without further elaboration. But in clarifying the principles that would ordinarily apply, the Full Federal Court sounded a cautionary note suggesting that the primary judge may have erred in providing relief.

If a defendant seeks to rely on the fact of having obtained legal advice as a mitigating factor in penalty proceedings, or as a basis for being relieved from liability altogether, they must generally do more than simply assert that advice was received. As the Court put it:

A defendant who seeks to contend either that they should be relieved from liability to pay a pecuniary penalty... or that a penalty should be fixed in an amount lower than it otherwise would be, because they had received relevant legal advice would ordinarily need to give evidence about what advice they had in fact received.

This is a clear statement that invoking legal advice as a shield against regulatory penalties requires a willingness to substantiate the nature and substance of that advice.

Conclusion

The Block Earnings judgment represents a major legal victory for Block Earnings and the crypto industry's resistance to the regulatory perimeter being explored by litigation and provides important clarification of the legal principles which apply in relation to investment products. Unfortunately, considerable ink and expense has been spilled in order to reach this conclusion rather than a collaborative approach being taken to find meaningful pathways to compliance.

The Full Court's decision underscores the difficulties faced by industry participants trying to determine how rules designed for traditional finance will apply, and for regulators struggling to apply the existing financial services framework to innovative and decentralised products and services. The decision reinforces the urgent need for fit for purpose regulation and a more flexible and engagement-driven approach to regulatory relief as well as clear guidance on how new products and services can practically comply with the law.