The Regulation of Crypto Assets and DAOs

LCA 2022 Corporations Workshop

5 June 2022

Dr Andrew Godwin (Special Counsel)
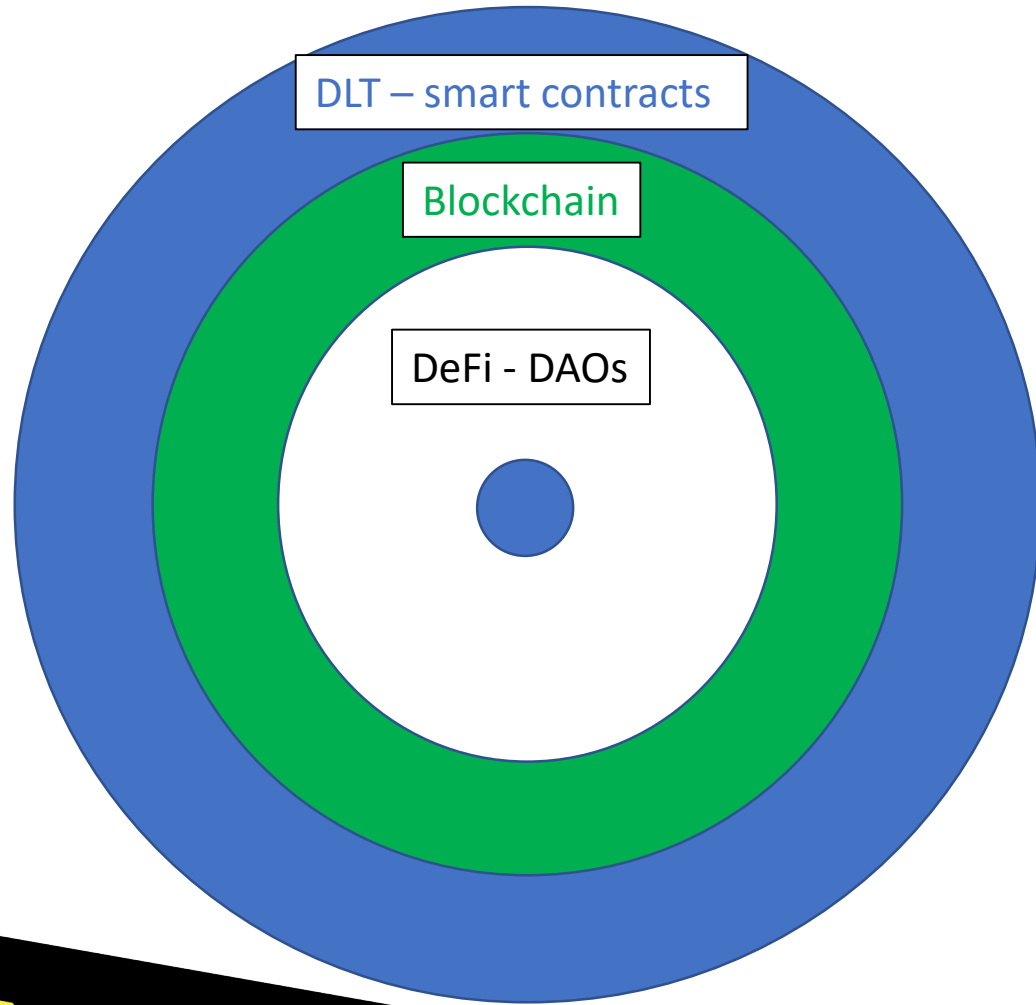
Australian Government
Australian Law Reform Commission

Overview

- Understanding the technology and terminology

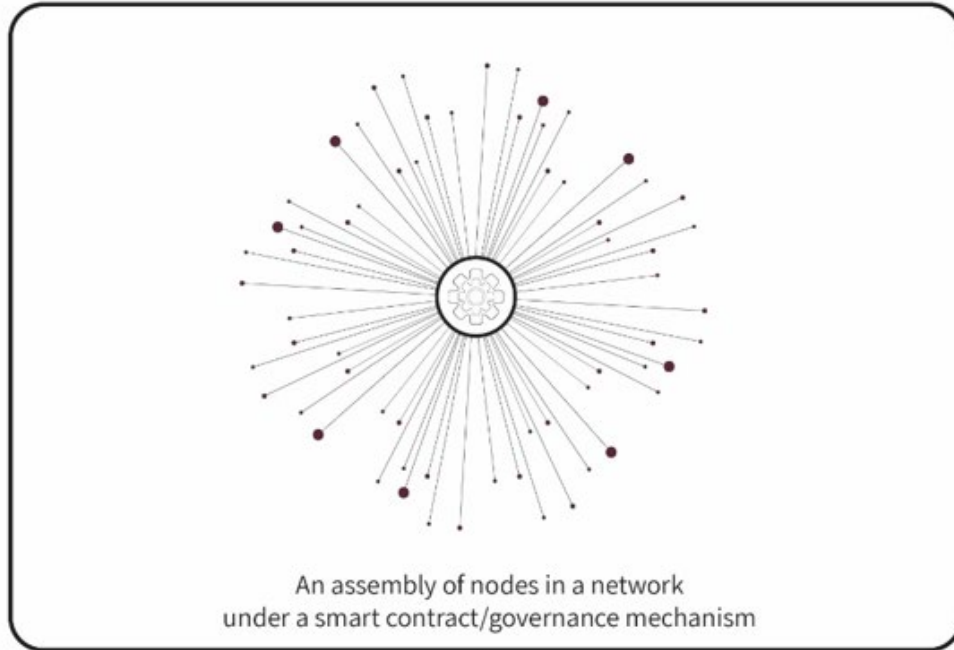- The challenges in regulating DAOs and crypto assets

- Reform suggestions

Australian Government

Australian Law Reform Commission

Technology and Terminology

DAO = decentralised autonomous organisations

| Issue	Design choices	
Access	Permissioned (private)	Permissionless (public)
Governance	Centralised	Decentralised
Jurisdictional nexus	Registered	Unregistered

Australian Government
Australian Law Reform Commission

Technology and Terminology

An assembly of nodes in a network under a smart contract/governance mechanism

From Moshood Abdussalam and Mia Rahim, 'The advent of decentralised autonomous business networks' in Godwin, Lee and Teele Langford (eds), *Technology and Corporate Law* (2021), 319

Application layer

Network layer

Protocol layer
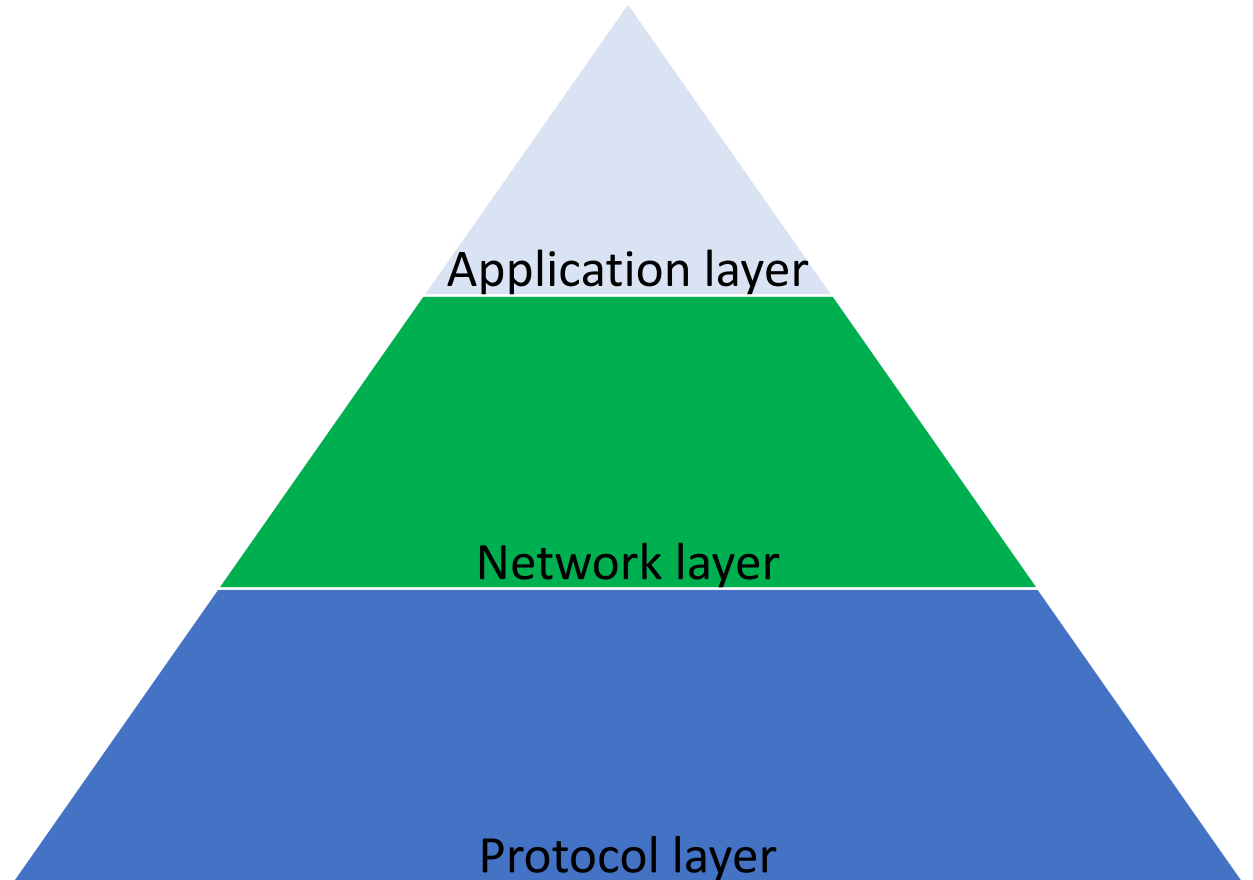
Blockchain technology and its functional constituents

Australian Government
Australian Law Reform Commission

Technology and Terminology

DeFi/DAOs

Initial Coin Offering (ICO)

tokens/coins/crypto assets/
cryptocurrencies:
- Utility tokens
- Exchange tokens
- Security tokens
- Stablecoins
- Non-fungible tokens (NFTs)

Taxonomy and
'token mapping'
(see the proposed EU Markets
in Crypto-Assets Regulation)

Australian Government
Australian Law Reform Commission

How to regulate the crypto economy

Three possible approaches:

- Coherentist

- Regulatory instrumentalist

- Technocratic
  - See Iris H Y Chiu, *Regulating the Crypto Economy - Business Transformations and Financialisation* (Bloomsbury Publishing, 2021)

Recognition on the basis of equivalence:

- See COALA Model Law

Self-regulation

Australian Government
Australian Law Reform Commission

How to regulate DAOs

Jurisdiction/Model Law	Registered/ unregistered	Approach	Comments
Wyoming	Registered	Coherentist - LLC	Wyoming permits 'member-managed' companies to register and receive legal personality and limited liability
Vermont	Registered	Coherentist – BB LLC	Necessary to override unsuitable or contrary provisions
Malta	Registered	Regulatory instrumentalist - 'innovative technology arrangement' (ITA)	Requires an administrator – ITA does not have separate legal personality
COALA Model Law	Unregistered	Recognised on the basis of equivalence	Aspirational in nature – operates outside the regulatory perimeter

Australian Government
Australian Law Reform Commission
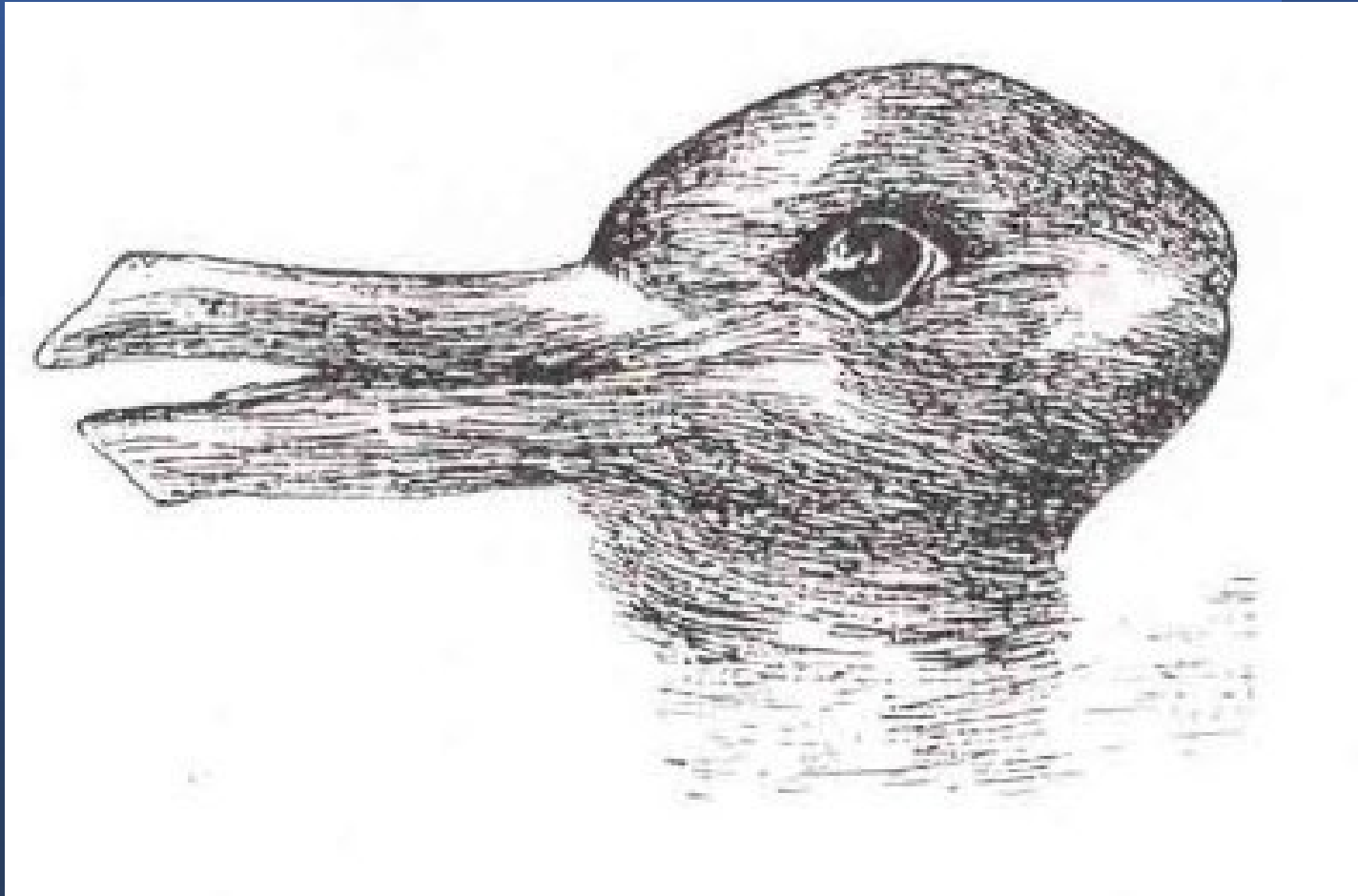
ILLUSION CREDIT
Anynomous Illustrator, 1892. 'Welche Thiere gleichen einander am meisten?'
Fliegende Blätter. Braun & Schneider.

How to regulate DAOs

Possible reform direction for Australia:

- Registered

- Regulatory instrumentalist approach (i.e. new business form)

- Importance and relevance of defined terms/definitions
    - *"**Decentralized Autonomous Organization**" (DAO) refers to smart contracts (i.e. blockchain-based software) deployed on a public Permissionless Blockchain, which implements specific decision-making or governance rules enabling a multiplicity of actors to coordinate themselves in a decentralized fashion. These governance rules must be technically, although not necessarily operationally, decentralized.*

- The benefits of a redesigned legislative hierarchy
    - Coherence – Adaptivity – Flexibility – Navigability

Australian Government
Australian Law Reform Commission

How to regulate crypto assets

Possible reform direction for Australia:

- Coherentist
  - If it has the functionality of a 'financial product', it should be regulated as such

- Importance and relevance of defined terms/definitions
  - *'**Cryptoassets** are a digital representation of value or contractual rights that can be transferred, stored or traded electronically, and which typically use cryptography, distributed ledger technology (DLT) or similar technology.'*

- The benefits of a redesigned legislative hierarchy
  - Coherence – Adaptivity – Flexibility – Navigability

Australian Government
Australian Law Reform Commission

Thank you!