HIGH COURT OF AUSTRALIA

NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 14 Aug 2026 and has been accepted for filing under the *High Court Rules 2004*. Details of filing and important additional information are provided below.

Details of Filing

File Number:	M36/2026
File Title:	Connor Yeates (a pseudonym) v. The King
Registry:	Melbourne
Document filed:	Form 27F - Appellant's Outline of oral argument
Filing party:	Appellant
Date filed:	14 Aug 2026

Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties and whenever the document is reproduced for use by the Court.

IN THE HIGH COURT OF AUSTRALIA **No M36 of 2026**
MELBOURNE REGISTRY
BETWEEN

Connor Yeates (A Pseudonym)
Appellant
and
The King
Respondent

APPELLANT'S – OUTLINE OF ORAL SUBMISSIONS

Part I: Certification

These submissions are in a form suitable for publication on the internet

The pseudonym used in the VSCA continues here: PD 2/2010, [3].

Part II: Outline of appellant's oral submissions

1. **The second charge**. At Core Appeal Book (**CAB**) pp 45-46 [83], VSCA analyses the second charge as charging neither:
   (a) theft of a seed-phrase (which VSCA said comprises only information); nor
   (b) stealing the alphanumeric data manifesting the subject Bitcoin.
2. It is dishonestly appropriating a quantum of "Bitcoin": see indictment at CAB pp5-6.
3. VSCA focuses on a functional or conceptual existence of Bitcoin, an *ideational asset*: Bridge, *Personal Property* in Poulton v Conrad JBA (**PCJBA**) Tab 47 p 1506 [8-050]. It is not a relationship to anything but an idea: and contextually not *property*: *Yanner v Eaton* PCJBA Tab 27 vol 3 817-819 [17]-[19].
4. **Crimes Act**: The offence is created by s 74(1): Yeates JBA (**YJBA**) Tab 0A p 17. The basic definition of *theft* is at s 72. *Property* is defined at s 71(1). *Appropriation* is expanded at s 73(4). We say there is no *intangible property* nor *chose in action* in terms of s 71(1). In construing the definition of *property*, it is relevant that the subject-matter must be capable of *belonging to another*, and it must be capable of *appropriation*.
5. An Act is given a purposive reading, subject then to last resort principles: *Beckwith v R* (1976) 135 CLR 569, 576.8. The expression *other intangible property* in s 71(1) is not defined but needs *property*. VSCA did not resolve the meaning of *chose in action*.
6. A circular formulation, that property is something capable of being stolen, is no test. Cf RS [30]-[31] CAB p 9, citing *Lakeman* PC-SJBA Tab 38, Vol 3, 219 [48].
7. As analysed by VSCA, the charge leaves nothing capable of being stolen, just an idea. An idea cannot belong to someone nor be appropriated: AS [12]-[18].

8. **Bitcoin and the Law:** We do not say Bitcoin, or its users, are beyond the law. A Bitcoin user has no remedy against the Blockchain. Read with *other intangible property*, *chose in action* in s 71(1) requires an ability to take action against another. Bitcoin gives no such ability. *Property* – and thus *intangible property* - exists as a legally endorsed concentration of power. Bitcoin eschews such legal endorsement. (AS [51], AR [3]).

9. **Information:** Confidential information often is functional and has economic significance. It remains 'information' even when traded. Confidential information is protected by the law, but not because it is property. Nothing about Bitcoin distinguishes it from mere data. (AS [49]-[54], AR [9]-[11]).

10. **Ainsworth Tests:** These apply if there is an item or thing. If there is nothing but an idea or data, they do not. And the tests are circular. They are necessary, not sufficient, conditions. <u>Commerciality or value</u> does not trigger their consideration. Bitcoin is <u>identifiable</u> only as lines in a database or ledger. Yet some decisions have turned this test into one of <u>excludability</u>. Power to exclude or control something, including an entry on the ledger, is not property. There is no <u>transfer</u> of Bitcoin when a private key is matched with a public key and instructions are provided. After the new block is created, another UTXO appears on the blockchain at a different address, with a different public key and private key, and likely expressed in a new number of Satoshi. As to <u>permanence</u>, Bitcoin is volatile. 20% has been lost. The only item that persists is the data, the entry on the blockchain, nothing more (AS [57]-[61], [AR [12]-[16]).

11. **Personal Property – Third Category**: There is no warrant to add a category of personal property AS [63]-[65]).

12. **VSCA consideration of Bitcoin**: Bitcoin is said to be property as it is *rivalrous*. VSCA relies on this - a new criterion with little hold in Australian law. Other criteria applied by VSCA may be questioned, as discrimen and for circularity (AS [25]-[32]).

13. **Other Courts' Consideration of Bitcoin**: Other criteria for characterising Bitcoin and crypto as property include many of the following, some of which may be questioned and are sometimes circular: it is a species of wealth; it is traded commercially; it is valuable; it is widely dealt with as property; as wealth, it confers rights; it is more than information; it has transactional power; there is a burgeoning legal treatment; there is possession; there is power to exclude others; there is a power of control; it is secure; there is said to be no arbitrary cancellation; the transactions are assured without the assistance of the law; it is intended to be a medium of exchange (AS [33]-[48], AR [17]-[19]).

14. **Section 71 and 72 of *Crimes Act 1958* (Vic)**: the English cognate provision does not to apply to information: *Oxford v Moss* (PCJBA Tab 35 vol 4 p 1222). Even if Bitcoin be property, a transaction does not involve a transfer or acquisition of property of another: *R v Preddy* [1996] AC 815, 834 (YJBA Tab 38A vol 4 p 602) The crediting of one bank account and debiting of another (in a double entry book keeping system) does not constitute obtaining that property, property of another. Equally, the change in the Bitcoin system does not involve acquiring the property of another, there is no transfer (VSCA, in [69] CAB pp 42-4, [111]-[112] CAB p 50).

15. Text, context and purpose do not support extending "property" or "property of another" to concepts even more remote, such as Bitcoin, particularly if Bitcoin is nothing more than a "manifestation", "function" and an "idea". The reference to intangible property in section 71 is to address stocks and shares in light of *Colonial Bank v Whinney* (1885) 30 Ch D 261 (YJBA Tab 30B vol 4 p 202).

16. *R v Lakeman* [48]-[50] (PC-SJBA Tab 38 vol 4 p 1277) doubted whether it applied to intellectual property protected by the *Copyright, Designs and Patents Act 1988* (UK). If the concept of property, in this context, is extended to Bitcoin as held by the VSCA, it also, by definition, likely becomes "goods" under section 71, and the other provisions of the legislation apply to it not only as property but as goods, with possibly much broader effect (AS [40], [66], [71]-[74], AR [4]-[8]).

17. **R v Lakeman** holds that, for the purposes of the analogue of the definition of *property*, anything capable of being stolen is property and does not depend on the civil law concepts. But the statute first requires identification of *property*. Section 71(1) uses terms well known to the law. It is wrong to ask whether an item can be "stolen" and, from that, determine whether the item is property, whilst ignoring what the law more broadly recognises as property. It is further submitted that it is out of step with the appropriate approach, and is highlighted by the statement in *Lakeman* in respect of the VSCA approach at [65]-[66] AS ([40], [66], AR [4]-[8]).

Dated: 13 Aug 2026 ....

Mr DW Marks KC
Telephone: 07 3236 5477
Email: dmarks@qldbar.asn.au