HIGH COURT OF AUSTRALIA

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Details of Filing

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IN THE HIGH COURT OF AUSTRALIA

HOBART REGISTRY

BETWEEN **ADAM POULTON**

Appellant

and

JEFF CONRAD

Respondent

APPELLANT'S
OUTLINE OF ORAL SUBMISSIONS

Part I: Certification

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

Part II: Outline of appellant's oral submissions

1. **Bitcoin** is both the name of an item of information described as "cryptocurrency" (**crypto**) and the name of a protocol. Bitcoin is just a string of data (code) on a distributed database (blockchain) within a peer-to-peer decentralised computer network. There is no coin, nothing tangible. There is nothing backing Bitcoin, no promise, no resource: nothing but the hope that somebody else believes in it. A transaction is effected by pairing a private key (a sequence of characters) with a public key (another sequence of characters) at a public address (another sequence of characters), with instructions on how to add further lines to the distributed ledger. Those instructions initially sit in a pool (mempool). Until included in a block through proof of work, they are not confirmed and may be superseded. The user has no control over the blockchain: it may be altered by consensus of the miners (AS [20]-[26]; AR [4], [7]).

2. **Bitcoin and the Law:** "Property" is a legally endorsed concentration of power in respect of a thing or resource. It is a creature of the law. With Bitcoin, there is no thing nor resource. There is no relationship between persons in respect of any thing. There is no relationship with the blockchain (AS [59]-[60], AR [10]). Bitcoin was created to act as a non-government-backed decentralised currency; it was to be free of reliance on trust or any state control. Bitcoin has nothing more than a conceptual existence. It is independent of any legal system or framework and does not depend on any such system or framework for its implementation or for its enforcement. It exists without, and eschews, reliance on

the law. The state may characterise Bitcoin (crypto) and control how its citizens interact with it (AS [57], AR [10]).

3. **Information:** None of data, information or knowledge is property, no matter how valuable or important it may be - unless a criterion can be stated that distinguishes it as property. Confidential information usually has functional and economic significance. It remains information even though it is traded. Confidential information is usually created to be exploited economically, whether by use or disclosure. It is rivalrous; once confidential information is disclosed, it has lost the protection of confidentiality. **(**That it can still be read and seen is not to the point.) Confidential information is protected by the law, but not because it is property. The right to view a commercial spectacle, insider information and product goodwill, no matter how valuable, is not property. Nothing about Bitcoin distinguishes it from such data, even if some may be prepared to pay or provide services for it. A statute may make knowledge etc property (AS [53]-[57], AR [5], [16]).

4. **Full Court Consideration of Bitcoin**: The Court wrongly justified treating Bitcoin as property for various reasons, because it is (a) a species of wealth; (b) traded commercially; (c) widely dealt with as property; (d) as wealth it confers rights; (e) it is more than information; (f) it has transactional power; (g) there is burgeoning legal treatment; (h) there is possession (AS [66] and [71]). Estcourt J wrongly justifies that the appellant was in possession of property by adopting the analysis in earlier decisions (below, para 8) (CAB 73-79, [87]-[96]).

5. **Further to paragraph 2**: **Property** exists as a legally endorsed concentration of power. But Bitcoin intrinsically eschews such legal endorsement. Value is not an inherent characteristic of property. Whatever an aggregate of minds may believe, an item may have no value. If an item is property, it is still property though valueless. That something is paid for does not make it property. Advice is provided for money, as are other services. Advice or services are not property (AS [55]-[56] AR [11]). That Bitcoin is *analogous* to money does not make it property. (AS [60]).

6. **Ainsworth Tests:** These tests apply only if there is an item or thing. If there is nothing more than an idea or data, they have no role. And the tests are circular. If they have any place, it is as 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. That is the only means of identifying Bitcoin, yet some decisions have turned this test into one of <u>excludability</u>. A 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 different number of Satoshi. Bitcoin is volatile, and the only item that persists is the data (the entry on the blockchain) (AS [61]-[65], AR [5]).

7. **Personal Property – Third Category**: Bitcoin is neither a thing in action nor a thing in possession. It is for the legislature to recognise any ‘third category’. Bitcoin does not constitute property at common law (AS [67]-[68] and [74], AR [17]).

8. **Other Courts’ Consideration of Bitcoin**: A common reason for describing Bitcoin as ‘property’ is that it is described as “rivalrous”. This criterion is not used to date in Australia, other than recently in crypto decisions. Numerous other questionable analogies and reasons are employed. Crypto is something new, it does not readily fit existing categories, and it is for parliament to assign its place within the existing body of law. (AS [36]-[52], AR [8], [11]-[15]).

9. **Detinue and conversion** are torts relating to tangible property and involve strict liability. There can be no conversion of a chose in action, as there is no possession. The chattel torts are not subject to a defence of purchaser for value without notice. Extending the chattel torts to intangibles, with strict liability, would be a drastic step. There is no basis in law to extend detinue and conversion to intangibles, let alone to an idea or something merely functional. The Full Court erred to the extent it stated otherwise (AS [30]-[35], [72]-[73], AR [18]-[22]).

10. **Availability of Appeal to the Full Court**: The plurality should have considered the substantive issues raised on appeal. Evidence and arguments on the issues relating to Bitcoin were addressed at the trial before the magistrate. The appeal before the intermediate court was sufficiently broad to embrace the argument, and the decision of the intermediate court addressed the nature of Bitcoin and the defendant’s control, making it clear that the defendant was in possession of the relevant property. That finding was the subject of the appeal; it was a matter of law. The Full Court was empowered to make determinations on matters of fact and law. The plurality acted upon wrong principles, took extraneous or irrelevant matters into account, or failed to take relevant considerations into account (AS [17]-[18], [77]-[81], AR [23]). The Appellant should be permitted to test meritorious points here.

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Dated: 12 August 2026 ....

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