HIGH COURT OF AUSTRALIA

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IN THE HIGH COURT OF AUSTRALIA
HOBART REGISTRY

BETWEEN: **ADAM POULTON**
Appellant

and

JEFF CONRAD
Respondent

OUTLINE OF ORAL SUBMISSIONS OF THE COMMISSIONER OF TAXATION (INTERVENING)

PART I INTERNET CERTIFICATION

1. This outline of oral submissions is in a form suitable for publication on the internet.

PART II PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT

A. Bitcoin holdings are property

2. "Property" does not refer to things, but to relationships with them, which may be many and varied. Central to the concept is the question of control and excludability: ***Yanner v Eaton*** (1999) 201 CLR 351 at [86] **[JBA Vol 3 Tab 27]**; ***Hocking*** *v Director-General of the National Archives of Australia* (2020) 271 CLR 1 at [89], [171], [202]-[206]. **[JBA Vol 2 Tab 19]**. (**IS [11], [19], [33]-[34], [36]**)

3. A holder of Bitcoin has control over access to their Bitcoin, to the exclusion of others. The relevant thing (the Bitcoin itself) is the token balance as it exists on the distributed ledger in connection with a unique digital address. While the value and address of that Bitcoin is public, the holder has exclusive and excludable control over access through their private key. That control may be transferred by a transaction that extinguishes the Bitcoin balance at the origin address and records it at the new address. The transferee then has exclusive and excludable control through their private key: ***Yeates*** *v The King* (2025) 79 VR 340 at [69]. **[Supp JBA Vol 3 Tab 42]**.

4. For these reasons a Bitcoin holding clearly comes within ordinary common law conceptions of "property". That is so whether analysed against the factors in *National Provincial Bank Ltd v Ainsworth* [1965] AC 1175 or this Court's more modern approach in *Yanner v Eaton* and *Hocking*. (**IS [11]-[20]**) For the same reasons a holder of Bitcoin has more than mere information or knowledge. (**IS [21]-[25]**)

B. That conclusion coheres with comparative jurisdictions and legislation

5. Courts across all common law jurisdictions have concluded that digital asset holdings are property under the common law, including as that concept bears upon relevant statutory provisions. They have done so consistently with the analogical common

law method having regard to the approach taken in other jurisdictions: ***Ruscoe** v Cryptopia Limited (in liq)* [2020] 2 NZLR 809 **[JBA Vol 5 Tab 40]**; ***OxLabs v Bitpay**, Inc* (C.D. Cal. Jan. 24, 2020) **[Not in JBA]**; *Re Gatecoin* (2023) 2 HKLRD 1079 **[Not in JBA]**; *Re Blockchain* (2024) 76 VR 578 **[JBA Vol 4 Tab 39]**.

6. These authorities have been informed by, and have informed, law reform bodies and legislatures: UK Jurisdiction Taskforce *Legal Statement on Cryptoassets and Smart Contracts* **[JBA Vol 7 Tab 73]**; UK Law Reform Commission *Final Report on Digital Assets* (2023) **[Not in JBA]**; *Property (Digital Assets etc) Act 2025* (UK) **[Supp JBA Vol 1 Tab 7A]**.

7. As with legislation in these jurisdictions, existing Australian legislation interacts with the common law concept of property: eg *Crimes Act*, s 71 **[Not in JBA]** (see *Yeates* (2025) 79 VR 340 at [12]); *Bankruptcy Act 1966* (Cth), s 5; *Corporations Act 2001* (Cth), s 9; and *Income Tax Assessment Act 1997* (Cth), s 108-5(1)(a). **[JBA Vol 1, Tabs 1, 2 and 5]**

8. Likewise, recent common law developments have informed the introduction of new Commonwealth legislation regarding digital assets: *Corporations Amendment (Digital Assets Framework) Act 2026* **[JBA Vol 1 Tab 3]**; Explanatory Memorandum to the Corporations Amendment (Digital Assets Framework) Bill 2026 at [1.52]-[1.56]. **[Not in JBA]**. (**Cth [39]-[41]**)

C. Bitcoin is capable of being possessed

9. The answer to the question whether Bitcoin can be possessed need not, in Australia, be dictated by historical notions about the characteristics of different forms of property (such as tangible vs intangible), nor by a resulting classification into choses in action or choses in possession: cf *Colonial Bank v Whinney* **[Not in JBA]**; *OBG Ltd v Allan* [2008] 1 AC 1 **[JBA Vol 4 Tab 34]**; *Property (Digital Assets etc) Act 2025* (UK). **(IS [27]-[29]; RS [37]-[39])**

10. Rather, the question whether Bitcoin can be possessed should be answered by a principled approach working from long-understood conceptions of control and intention which establish possession: **Green and Randall**, *The Tort of Conversion* (2009) at 111 **[JBA Vol 6 Tab 59]**; Pollock and Wright *An Essay on Possession in*

the Common Law (1888) at 11-13, 16, 20, 65. **[JBA Vol 6 Tab 65]**. (**IS [33]-[37]; RS [51]-[64]**) Those principles have already been recognised in this Court: *Hocking* at [205]-[206]. Applying those principles is sufficient to conclude that Bitcoin holdings are a right of a possessory kind. (**CAB 66 [51]-[55]**)

11. This Court may wish to resolve the currently unsettled questions of classification considered below. If so, there is merit in the view that Bitcoin is a chose in possession. A central characteristic of a chose in action is "intangibility": *National Trustees Executors v Federal Commissioner of Taxation* (1954) 91 CLR 540 **[JBA Vol 2 Tab 22]**at 584; Green and Randall at 128-9. Although Bitcoin cannot be seen and handled directly, and so may be described as "intangible" in that sense **(IS [31]-[31])**, it does have a physical existence on the hard drives of numerous computers. It is thus, like other choses in possession, physical and corporeal: Green and Randall at 119-124; *Ruscoe* [2020] 2 NZLR 809 at [97]-[98]; *OxLabs v Bitpay* (C.D. Cal. Jan. 24, 2020); *Tulip Trading Limited Ltd v van der Laan* [2023] EWCA Civ 83 at [72] **[JBA Vol 5 Tab 41]**; *D'Aloia v Persons Unknown* [2024] EWHC 2342 (Ch) at [112]-[114], [165], [173] **[Not in JBA]**; *Yeates* (2025) 79 VR 340 at [73].

12. It can be accepted that this physical existence is highly diffuse, complex and minute in ways that were unimaginable when concepts of tangibility and corporeality shaped the law. However, this is only a difference of physical degree; it does not require a differentiation from other physical property objects at the level of legal principle. As the private key affords as much control over access as the nature of Bitcoin permits, a holding of this corporeal thing is relevantly equivalent other choses in possession.

13. In any event, even if not classified as a chose in possession, Bitcoin can still be classified as a chose in action or in some third category. (**CAB 78-79 [92]-[93]**)

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