

SHORT PARTICULARS OF CASES
APPEALS

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REDLAND CITY COUNCIL v BURNS (B24/2026)

Court appealed from: Supreme Court of Queensland Court of Appeal
[2025] QCA 222

Date of judgment: 11 November 2025

Special leave granted: 12 March 2026

Factual background

This appeal relates to the clearing of native vegetation on land ('the Land') on North Stradbroke Island. The Land falls within the appellant's ('Redland') local government area and is owned by the State Government. The respondent ('Burns') is a Quandamooka man, a member of the group of Aboriginal Australians recognised by a formal consent determination of the Federal Court ('the Determination') as holding both exclusive and non-exclusive native title rights and interests on North Stradbroke Island. The Land falls within the area subject of non-exclusive native title rights. The non-exclusive rights recognised by the Determination relevantly include rights to live and be present on the area and to take, use, share and exchange Traditional Natural Resources (which includes plants) for personal, domestic and non-commercial communal purposes.

In 2020, Burns engaged a contractor, who used an excavator to clear around 2,400sqm of all native vegetation on the Land, save for one tree, in order to build a permanent house for his daughter. Because of the nature of the vegetation on the Land, any clearing of that native vegetation was categorised as 'prohibited development' unless it fell within one of the recognised types of 'exempt clearing work' prescribed in Schedule 21 of the *Planning Regulation 2017* (Qld) ('the Regulation'). If the clearing was not 'exempt clearing work', the carrying out of that 'development' comprised an offence against s 162 of the *Planning Act 2016* (Qld) ('the Act').

Procedural background

Redland commenced criminal proceedings against Burns. Burns gave evidence that he honestly believed as a Quandamooka man that he was entitled to clear vegetation for building purposes based on historical practices which he considered to be native title rights, and which he believed encompassed modern methods such as the use of an excavator. Burns submitted that the clearing was 'exempt clearing work', because it fell within Schedule 21, item 1(5) of the Regulation, namely: 'An Aboriginal or Torres Strait Islander cultural activity, other than a commercial activity' ('the Cultural Activity exemption'). He contended that the clearing work was carried out pursuant to an honest or 'bona fide claim of right' and was therefore excused pursuant to the provisions of s 22(2) of the *Criminal Code* ('the Code').

Burns was found guilty of 'carrying out prohibited development' under s 162 of the Act. The Magistrate found that the clearing was not carried out under the Cultural Activity exemption. His Honour also held that s 24 of the Code (mistake of fact) did not apply, and further, that s 22(2) of the Code (bona fide claim of right) did not apply, because the offence created by s 162 of the Act was not one relating to property (one of the elements required by s 22).

Burns appealed to the District Court, which also found that the clearing work was not consistent with the rights and interests granted by the Determination and fell outside the Cultural Activity exemption. However, the District Court allowed the appeal and set aside the conviction, on the basis that the offence against s 162 was an 'offence relating to property' and that, because of the Cultural Activity exemption, Burns' claim of right fell within the scope of s 22(2) of the Code.

Redland appealed to the Court of Appeal. Bowskill CJ found that Burns' claim of right to act as he did was based on his mistaken belief as to his native title rights and interests, which rose no higher than ignorance of the law, and so would have allowed the appeal. Doyle JA, with whom Bond JA agreed, followed the reasoning of the District Court Judge and dismissed the appeal. All judges found that the offence created by s 162 of the Act was an 'offence relating to property' (although Bowskill CJ would have decided otherwise had the point been free of authority).

This appeal

The grounds of appeal are:

1. The Court of Appeal majority erred in finding s 22(2) of the *Criminal Code* (Qld) was available, because:
 - a. Section 162 of the *Planning Act 2016* (Qld) is not 'an offence relating to property'; further, or in the alternative,
 - b. The respondent's conduct was not done 'in the exercise of an honest claim of right'.

The Attorney-General of Queensland has been granted leave to intervene as *amicus curiae* in this proceeding.

THE KING v BECHAUD (M40/2026)

Court appealed from: Supreme Court of Victoria Court of Appeal
[2025] VSCA 306

Date of judgment: 4 December 2025

Special leave granted: 9 April 2026

This appeal concerns the statutory interpretation of s 50 of the *Juries Act 2000* (Vic) ('the Act'), which provides for the provision of an 'oath or affirmation of separation' in the form of Schedule 5 of the Act ('the separation oath'), and whether s 50 of the Act imposes a temporal requirement that the separation oath be administered at a time proximate to the jury's separation during deliberations.

Factual background

On 24 July 2024, the respondent was arraigned in the presence of the jury panel and pleaded not guilty to two charges of rape. The jury was then empanelled at about 3.10pm and the trial judge (Judge Gaynor) proceeded to give preliminary directions to the jury. Just before the jury was excused for the day they took the separation oath, undertaking not to discuss the evidence in the case with any other person other than another member of the jury. The trial judge gave no reasons for having the separation oath administered to the jury at this stage of the trial.

The trial then ran its usual course. On 1 August 2024, the trial judge commenced her charge to the jury which concluded on 2 August 2024. On the afternoon of 2 August 2024, the jury retired to consider its verdicts. Following receipt of two questions from the jury, that day the trial judge reconvened the Court and answered the questions, after which the trial judge told the jury that they were excused until the morning of 5 August 2024. The trial judge did not readminister the separation oath. On 5 August 2024, the trial judge had discussions with counsel in the absence of the jury and later gave further directions to the jury relating to the questions asked on 2 August 2024, including a perseveration direction. The jury continued to deliberate on 5 August 2024 and separated again without the separation oath being readministered. After further deliberations on 6 August 2024, the jury returned a verdict that afternoon.

It is not in dispute that at no time after the separation oath had been given by the jurors on 24 July 2024 did the trial judge remind the jury of the taking of that oath, or in any other manner remind the jury that it was impermissible to discuss the evidence in the trial or the deliberations with any person other than another member of the jury.

Procedural background

The jury found the respondent not guilty of the first charge of rape but guilty of the second charge of rape, to which the respondent was sentenced to four years' imprisonment with a non-parole period of 20 months. The respondent made an application for leave to appeal against the conviction in the Court of Appeal on two grounds:

1. that the trial judge erred in allowing the jury to separate after they had retired to consider its verdict, and during its deliberations, without each juror having first taken the separation oath as required by s 50 of the Act on 2 August 2024 shortly prior to the separation of the jury; and
2. that the trial judge erred in the exercise of her discretion in allowing the jury to separate at the end of the afternoon of 2 August 2024 in circumstances where the trial judge had not first reminded the jury of the separation oath and that each juror was therefore bound to comply with the obligations under the separation oath.

The majority of the Court of Appeal (Priest and Kaye JJA; Taylor JA dissenting) concluded that ground 1 of the application for leave to appeal against conviction should succeed and the conviction of the respondent on charge 2 be set aside. The appellant appeals that decision to this Court.

This appeal

The appellant submits that the words of s 50 of the Act are clear and that the Court of Appeal majority's attempt to read in a temporal, or any other, condition that must be proximate to the jury's separation during deliberations invents a requirement not warranted on a plain reading of the statutory text. The appellant contends that there are several provisions in the Act that expressly impose a temporal requirement, and the choice of Parliament not to impose such a requirement in relation to s 50 should be seen as a considered decision by the legislature.

The respondent submits that aspects of the chronology should be emphasised, including that nine days had elapsed since the administration of the separation oath on 24 July 2024 to the trial judge's charge to the jury, after which they retired to consider their verdicts. During those nine days, the trial judge did not remind the jury at any point of the separation oath which they had taken, the obligation imposed by that oath and its continuing effect. The jury were then permitted to separate on further occasions without any such reminder of the importance, or readministering, of the separation oath. The respondent contends that the absence of an expressly stated temporal relationship between the administration of the separation oath and the jury's separation during deliberations does not signal a legislative intent that the administration of the oath at any time in the trial is necessarily sufficient, having regard to the context and purpose of s 50.

The sole ground of appeal is that:

1. The majority erred by holding that the failure to administer the separation oath at a time closely factually and temporally connected to the jury separating during deliberation constituted a fatal and fundamental irregularity or error in the trial.

CHARISIOU v THE KING (M41/2026)

Court appealed from: Supreme Court of Victoria Court of Appeal
[2025] VSCA 277

Dates of judgment: 20 November 2025

Special leave granted: 9 April 2026

Factual background

In 2019, LBA Capital Pty Ltd ('LBA'), a company of which the appellant was the sole director and chief executive officer, entered into a series of investment finance agreements with a Korean company. In the course of LBA's dealings, the appellant provided to the Korean company's underwriter and asset manager false documents in relation to property transactions and an alleged trust that did not exist. Funds transferred into a joint escrow account by the underwriter and asset manager were accessible by LBA and the appellant, who transferred a total of \$1,650,500 for the benefit of his wife.

Procedural background

In June 2023, the appellant pleaded guilty to charges of using false documents and obtaining financial advantage (being credits to LBA's bank account totalling \$38,594,500) by deception. In sentencing the appellant, the primary judge noted that the appellant's wife and adult daughters faced serious health conditions (the details of which are the subject of a suppression order) and that the appellant helped look after his frail and elderly mother. His Honour did not expressly take family hardship into account as a mitigating factor before sentencing the appellant to 12 years' imprisonment, with a non-parole period of 8 years.

The appellant appealed, on grounds which included that the primary judge had erred in considering family hardship. The appellant, while accepting that the circumstances in his case were not exceptional, contended that family hardship should have been taken into account under s 5(1)(a) of the *Sentencing Act 1991* (Vic) ('the Sentencing Act'), which provided that one of the purposes of sentencing was 'to punish the offender to an extent and in a manner which is just in all the circumstances'. To that end, the appellant submitted that the Court of Appeal should revisit its decision in *Markovic v The Queen* (2010) 30 VR 589 ('*Markovic*'), in which it was held that family hardship was to be disregarded as a sentencing consideration unless the circumstances were shown to be exceptional. That submission was on two bases.

Firstly, there should be no discordance in State and Commonwealth sentencing, with s 16A(2)(p) of the *Crimes Act 1914* (Cth) prescribing that the probable effect of any sentence on an offender's family or dependants be considered. Secondly, s 5 of the Sentencing Act should be read with s 17(1) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) ('the Charter'), which provided that '[f]amilies are the fundamental group unit of society and are entitled to be protected by society and the State'.

The Law and Advocacy Centre for Women, which appeared as amicus curiae, additionally observed and submitted that: s 5(2)(g) of the Sentencing Act required that regard be had to any 'mitigating factor concerning the offender or of any other

relevant circumstances'; common law principles ought not constrain the factors in s 5(2) or discriminatorily see family hardship disregarded if a case fell short of 'exceptional circumstances'; and s 17 of the Charter was relevant to the construction of s 5 of the Sentencing Act, since s 32(1) of the Charter provided that all statutory provisions must be interpreted in a way compatible with human rights.

The appeal was dismissed by the Court of Appeal (Priest and Beach JJA; Walker JA dissenting). The majority noted that family hardship was not among the factors enumerated in s 5 of the Sentencing Act and held that the 'circumstances' in ss 5(1)(a) and 5(2)(g) were those only of the offending and of the offender. Their Honours held that nothing in ss 17 or 32 of the Charter altered that position. The reasoning in *Markovic* remained sound; the position in respect of State offences could be altered either by the legislature, by the amendment of s 5 of the Sentencing Act, or by the High Court, effecting a change in the Australian common law. Their Honours also held that when undertaking the sentencing synthesis, the primary judge had not failed to take the appellant's family circumstances into account as mitigatory insofar as imprisonment would subjectively burden the appellant.

Walker JA however would have allowed the appeal and resented the appellant to imprisonment for 10 years and six months, with a non-parole period of seven years, after giving limited weight to 'some limited hardship' that would be experienced by the appellant's family members as a result of his imprisonment. Her Honour considered that *Markovic* did not stand as clear authority for the proper construction of s 5 of the Sentencing Act, as that case involved no consideration of the effect of the Charter. In s 5(2)(g) of the Sentencing Act, 'other relevant circumstances' was to be construed in a manner unconstrained by the common law and informed by rights engaged under the Charter, in view of the imperative prescribed in s 32(1) of the Charter, and s 5(1)(a) of the Sentencing Act providing that a purpose of sentencing was that punishment be 'just in all of the circumstances'. The protection of family members, in accordance with s 17(1) of the Charter, was a relevant consideration. The effect of the imprisonment of the appellant on his family members therefore should have been taken into account, without a requirement that any hardship reach a threshold of being 'exceptional'.

This appeal

The grounds of appeal are:

1. When considering the test for the objective aspect of family hardship as a relevant circumstance in sentencing, the majority of the Court of Appeal erred by failing to properly construct ss 5(1)(a) and 5(2)(g) of the Sentencing Act, including in light of ss 17 and 32(1) of the Charter.
2. The Court of Appeal erred by finding that the common law requires a test of 'exceptional circumstances' before the objective aspect of family hardship can be taken into account as a relevant circumstance in sentencing.

Interveners

The Law and Advocacy Centre for Women and the Victorian Equal Opportunity and Human Rights Commission have each been granted leave to be heard as *amicus curiae* in this appeal, and the Attorney-General for Victoria has been granted leave to intervene as well.

POULTON v CONRAD (H1/2026)

Court appealed from: Full Court of the Supreme Court of Tasmania
[2025] TASFC 7

Date of judgment: 19 September 2025

Special leave granted: 5 February 2026

The issues in this appeal are whether the digital currency Bitcoin is property at common law and, if so, what kind of property it is.

Factual background

In 2013, the respondent paid the appellant \$10,000 to invest in Bitcoin on his behalf. They had agreed that a fee would be paid to the appellant but had not agreed on the amount. The appellant later gave the respondent a 'cold' wallet (a physical device that stored the private keys or PIN granting access to the Bitcoin), telling him that it contained access to 10.5 Bitcoin. A dispute arose after the respondent discovered that the wallet only provided access to 6 Bitcoin. Following a meeting in 2017, the appellant transferred control of a further 3 Bitcoin to the respondent.

Procedural background

The respondent commenced a proceeding in the Magistrates Court of Tasmania in 2020, claiming the appellant owed him 1.5 Bitcoin (plus 4.5 Bitcoin Gold and 4.5 Bitcoin Cash after the Bitcoins were 'forked' in 2017), making claims *inter alia* in detinue and conversion. For the respondent to succeed in this cause of action, he was required to establish that the appellant was in possession of the Bitcoin when his demands for its return were refused. The respondent succeeded in his claim, with the Magistrate finding that several factors supported the conclusion that Bitcoin was proprietary in nature and capable of immediate possession for the torts of detinue and conversion, including its treatment as being valuable and transferrable, that Bitcoin rights involve inherent excludability (because control is restricted to the person in possession of the private key or PIN), such holding rights are definable, identifiable and capable of assumption by third parties, and further, that cryptocurrencies have been recognised as property for the purposes of corporations and taxation legislation.

The Magistrate awarded the respondent damages for wrongful detention and conversion, to be set off by \$1,500 to account for the fee due to the appellant.

The appellant appealed the Magistrate's decision to the Supreme Court of Tasmania, not disputing that Bitcoin was property capable of possession, but disputing that the torts of detinue and conversion had been established on all the evidence. A single Judge upheld the Magistrate's decision, observing that because of its digital nature Bitcoin is intangible. However, the Magistrate's finding concerning Bitcoin amounting to property for the purpose of the causes in action in detinue and conversion was not challenged in that appeal.

The appellant then appealed to the Full Court of the Supreme Court of Tasmania, raising a new appeal point that Bitcoin was intangible property incapable of possession, and therefore incapable of being the subject of the torts of conversion or detinue.

By a majority, the Full Court (Shanahan CJ, with Jago J agreeing) dismissed the appeal on procedural grounds, holding that the appellant should not be permitted to agitate a new appeal point to advance an argument that he had accepted in the intermediate appeal. Estcourt J dismissed the appeal on the substantive ground, rejecting the appellant's argument that Bitcoin could not be possessed.

In finding that Bitcoin was property capable of being the subject of conversion and detinue, Estcourt J concluded that Bitcoin falls into a third category of property that is intangible but capable of possession. His Honour stated that there was a powerful case for reconsidering the dichotomy between tangible and intangible property, concluding that Bitcoin fell into a third category of intangible property that *'is capable of assumption by third parties, that is rivalrous, that is capable of exclusive control, and that is susceptible to possession'*. In doing so, Estcourt J disagreed with the conclusion reached by the Supreme Court of Victoria in *Re Blockchain Tech Pty Ltd* [2024] VSC 690, in which it was held that Bitcoin is intangible property, but incapable of being physically possessed. Estcourt J found that this did not go far enough to meet the exigencies of the digital age and should not be followed to characterise Bitcoin.

Jago J agreed with Estcourt J's reasoning that the torts of conversion and detinue applied to the facts of the case.

Shanahan CJ in obiter agreed that Bitcoin was capable of possession, opining that *'the central premise underpinning the common law concept of possession remains control ... and in the case of crypto currency that is represented by the relevant key or PIN. Those exclusive signifiers, whilst data, are contemporary avatars of the various means by which the common law recognises and secures proprietary rights, whether that be by occupation or other devices by which dominion is claimed over entitlements to wealth'*.

This appeal

The Federal Commissioner of Taxation has been granted leave to intervene.

The grounds of appeal are:

1. The Full Court erred in holding that Bitcoin is property; is intangible property; is capable of possession; and may be the subject of detinue and conversion.
2. The Full Court erred in dismissing the appeal on the basis that the appellant should be prohibited from agitating the appeal before the Full Court on the basis that Bitcoin is intangible property and cannot be possessed, given the diametrically opposed position that was taken before Brett J on the intermediate appeal.

CONNOR YEATES (A PSEUDONYM) v THE KING (M36/2026)

Court appealed from: Supreme Court of Victoria Court of Appeal
[2025] VSCA 288

Date of judgment: 26 November 2025

Special leave granted: 9 April 2026

Factual background

The appellant ('Yeates') is charged on indictment with one count of abusing public office contrary to s 142.2(1) of the *Criminal Code* (Cth), and one count of theft contrary to s 74(1) of the *Crimes Act 1958* (Vic).

In January 2019, a search warrant was executed as part of a drug operation. Persons present included officers from Victoria Police and the Australian Border Force, as well as a single Australian Federal Police Agent. During the search, a Victoria Police officer located and seized a Trezor crypto hardware wallet connected by USB to a computer tower. Officers present at the time were instructed to search for a seed phrase, being a list of 12 to 24 words. Two versions of an identical list of 24 words were located: one stamped into a metal tag and the other in a paper leaflet labelled 'Trezor'. The Federal Agent sent images of the metal tag and leaflet to Yeates, asking if he had ever seen such a list and whether it was a 'crypto currency thing'. Yeates, an agent in the Cybercrime Division of the AFP, said that each image depicted 'a private key'. The respondent ('the prosecution') alleges that the list was not a private key but a seed phrase, which functions as a backup of a private key and enables the reconstruction of both the public and private keys associated with the relevant 'Bitcoin'.

The prosecution alleges that Yeates used the seed phrase (not the private key as Yeates claimed) to rebuild (i.e. unlock) the Trezor wallet, which at that time facilitated access to 81.61677759 Bitcoin, then valued at about \$492,607 AUD. It is alleged Yeates transferred that Bitcoin to a second wallet under his control. This is the alleged dishonest appropriation of property belonging to another that is said to found the theft charge. The prosecution evidence is said to demonstrate that, via a series of complicated cryptocurrency transfers, the Bitcoin was ultimately exchanged for \$AUD and, in a series of deposits totalling \$879,942.87, was deposited into Yeates' bank account between January 2019 and August 2022.

Procedural background

Yeates argued before the trial judge that Bitcoin was neither money nor property, but instead a string of code in a distributed computer database. This code was said to amount to nothing more than information. As it was neither money nor property, it was contended that Bitcoin could not be stolen. The trial judge found that *'in the context of the present case, the allegation that the accused appropriated Bitcoin in practical terms alleges that he dishonestly appropriated a public key, recognised by the Bitcoin software and its many users as an unspent transaction output, with its matched private key. In doing so, it will be alleged that he acquired an item of commercial value that can be used as a medium of exchange, that was recognisable by third parties as such, and which could be readily exchanged for money. In my view, that is sufficient to enable Bitcoin to be characterised as property; that is, to use the words of the statute, as 'other intangible property.'*

The judge held Bitcoin to be a specie of intangible property other than a chose in action. In a separate ruling, the judge certified pursuant to s 295(3)(b) of the *Criminal Procedure Act 2009* (Vic) that the question of whether Bitcoin is property was of sufficient importance to the trial to justify it being determined on an interlocutory appeal.

The Court of Appeal noted that a transaction in Bitcoin involves two steps: transaction and publication. The subject Bitcoin is sent to a public address in the decentralised system. The relevant public and private keys are then matched to authenticate the transaction. That transaction is then sent to the 'mempool', being a collection of transactions yet to be finalised by being published to the blockchain. A miner will pick up a number of transactions and then solve the proof of work to create a block. Once that is done, the block is published to the blockchain. Bitcoin is self-executing and designed to be free of State control. The block is stateless and knows no law. There is no remedy in law against the miners. The only protection in Bitcoin is the algorithms of the software. The Court assessed whether Bitcoin possessed the qualities of property described by Lord Wilberforce in *National Provincial Bank Ltd v Ainsworth* [1965] AC 1175. The Court concluded that it did, rejecting Yeates' submissions that Bitcoin is information and therefore cannot be stolen. The Court observed that '*viewing Bitcoin as nothing more than the mere data manifesting its existence ignores its larger functionality in the same manner as treating a physical coin as a mere metal disc ignores its economic and legal significance.*'

There have been only two other Australian cases that have concluded that cryptocurrency is property. Namely, *Re Blockchain Tech Pty Ltd* (2024) 76 VR 578, a decision of a single judge of the Supreme Court of Victoria; and *Poulton v Conrad* [2025] TASFC 7, a decision of the Full Court of the Supreme Court of Tasmania, which is on appeal to the High Court and is listed for hearing the day before this appeal.

This appeal

The grounds of appeal are that the Court of Appeal erred in holding that:

1. Bitcoin is property, is intangible property, and falls within the definition of property in s 71 of the *Crimes Act 1958* (Vic);
2. a charge of theft proffered in relation to the dishonest appropriation of Bitcoin pursuant to s 72 of the *Crimes Act* is sound in law;
3. the County Court Judge's rulings to the foregoing effect were correct.