

Thursday, August 14, 2025 at 7:35:13 AM Australian Eastern Standard Time

Subject: Re: Response to Minter Ellison Email – 11 August 2025
Date: Wednesday, 13 August 2025 at 7:19:08 pm Australian Eastern Standard Time
From: DORIS <dorismorkowski@bigpond.com>
To: Brisbane Litigation Minter Ellison <Brisbane.Litigation@minterellison.com>, Jacob Coppel <jacob.coppel@vgso.vic.gov.au>
CC: DJCS-VEOHRC-LEGAL (DJCS) <legal@veohrc.vic.gov.au>, Malaika Khattak <Malaika.Khattak@vgso.vic.gov.au>, JudicialReview@supcourt.vic.gov.au <JudicialReview@supcourt.vic.gov.au>, Ramona.Thambiratnam@veohrc.vic.gov.au <Ramona.Thambiratnam@veohrc.vic.gov.au>
Attachments: image001.png, image002.png

Dear All,

We respond to Minter Ellison’s email of 11 August 2025 and place on the record:

1) Wording shift — confirming the absence of judicial issuance

On 6 Aug you stated: “...there is a sealed version of the warrant.”

By 11 Aug this became: “...a filing confirmation sheet (which has the Court’s stamp).”

A filing confirmation sheet — even if treated as an “administrative seal” — is **not** judicial issuance. It is not the product of a judge’s consideration, signature, or order. No judicial officer has ever determined that a warrant should issue. This is now established as fact.

2) Jurisdictional defect — cannot be cured

The warrant of possession relied upon was never issued by a judge. It was generated administratively via solicitor upload and registry processing, bypassing judicial scrutiny entirely.

In the absence of a judicially issued warrant, **all enforcement steps** — including Sheriff entry, removal of our family from our registered property and family home, transfer of possession and eCT control, and imposition of enforcement costs — are **null and void ab initio**.

This is a jurisdictional defect that cannot be retrospectively validated. **No post-handover actions or procedural “cures” are possible.**

3) Constitutional and statutory breaches

- *Supreme Court Act 1986* (Vic) s 29 – duty to administer equity concurrently with law;
- *Transfer of Land Act 1958* (Vic) ss 78–84 – statutory right of redemption before dispossession;
- *Chapter III, Constitution of the Commonwealth of Australia* – judicial power in matters determining substantive proprietary rights must be exercised by a judge;
- *Boilermakers’ Case* (94 CLR 254) – separation of powers;
- *Crimes Act 1958* (Vic) s 81 – obtaining property by deception (continuing offence while unlawful deprivation persists).

Registry rules (rr 21.01, 60A.02, 68.04) concern administrative mechanics only.

They do not and cannot authorise a registrar to exercise judicial power to dispossess in a matter with live disputes over **standing, securitisation/LMI, statutory redemption rights,**

and equitable rights (including the right to redeem), hardship, and other substantive proprietary entitlements.

4) Established factual matrix

- No executed mortgage/credit contract or deed/assignment ever produced; arrears-only claim;
- Loan split unilaterally without consent;
- Securitisation and LMI trigger concealed and mischaracterised;
- Hardship and redemption rights obstructed;
- Affidavits omitting material facts;
- Enforcement proceeded on an administratively created instrument with no judicial act.

5) Legal effect

As no judicial warrant exists, the enforcement chain collapses. **All possession, title, and control derived from it is unlawful.**

Westpac and Minter Ellison are now on notice that the only lawful course is:

- Immediate cessation of all enforcement activity;
- Unconditional restoration of possession, title, and status quo ante;
- Removal of all adverse registry entries;
- Compensation for all loss and damage.

Failure to comply will be treated as the *knowing continuation of unlawful conduct*, constituting **including but not limited to:**

- **Contempt of court;**
- Breach of **Chapter III of the Constitution of the Commonwealth of Australia;**
- Breach of **section 29 of the Supreme Court Act 1986 (Vic)** (duty to administer equity concurrently with law);
- Breach of **sections 78–84 of the Transfer of Land Act 1958 (Vic)** (statutory redemption rights); and
- Breach of the **Charter of Human Rights and Responsibilities Act 2006 (Vic)**, including sections 8, 13, 17, 20, 21 and 22.

The absence of a judicially issued warrant renders all enforcement actions **null and void ab initio**, incapable of validation, and the continuation of such actions after this notice will be relied upon in the Supreme Court as evidence of deliberate defiance of constitutional, statutory, and equitable limits on enforcement powers.

Given your stated refusal to “ventilate” these issues by correspondence, this notice will be placed before the Supreme Court and relevant regulators as evidence of the established absence of judicial authority and the unlawful nature of all enforcement actions taken.

Regards,

Dorota-Donata & Michael Mark Borkowski

Registered Proprietors – 15 Jacaranda Dr, Taylors Hill VIC 3037

Self-represented Plaintiffs

From: Brisbane Litigation Minter Ellison <Brisbane.Litigation@minterellison.com>
Date: Monday, 11 August 2025 at 1:30 pm
To: DORIS <doriseborkowski@bigpond.com>, Jacob Coppel <jacob.coppel@vgso.vic.gov.au>
Cc: "DJCS-VEOHRC-LEGAL (DJCS)" <legal@veohrc.vic.gov.au>, Malaika Khattak <Malaika.Khattak@vgso.vic.gov.au>, "JudicialReview@supcourt.vic.gov.au" <JudicialReview@supcourt.vic.gov.au>, "Ramona.Thambiratnam@veohrc.vic.gov.au" <Ramona.Thambiratnam@veohrc.vic.gov.au>
Subject: RE: Misrepresentation by Minter Ellison to VGSO – No Sealed Judicial Warrant Exists | S ECI 2025 02829 [ME-ME.FID7622671]

Dear All

We refer to the email from Mrs Borkowski and Mr Borkowski below.

We deny any allegations that our office or Westpac has made knowingly false statements. We note that pages 26 – 29 of affidavit of Shufei Qu contain a copy of the warrant with the filing confirmation sheet (which has the Court's stamp).

Given the Supreme Court Proceeding is on foot, Westpac does not propose to ventilate the various issues raised in Mrs Borkowski and Mr Borkowski's email below via correspondence. However, Westpac reserves its rights to do so in the future should that become necessary.

If there is anything further we can assist, please let us know.

Regards

Brisbane Litigation Minter Ellison
brisbanelitigation@minterellison.com
MinterEllison One Eagle – Waterfront Brisbane 1 Eagle Street Brisbane QLD 4000
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MinterEllison.

From: DORIS <doriseborkowski@bigpond.com>
Sent: Wednesday, 6 August 2025 4:51 PM
To: Brisbane Litigation Minter Ellison <Brisbane.Litigation@minterellison.com>; Jacob Coppel <jacob.coppel@vgso.vic.gov.au>
Cc: DJCS-VEOHRC-LEGAL (DJCS) <legal@veohrc.vic.gov.au>; Malaika Khattak <Malaika.Khattak@vgso.vic.gov.au>; JudicialReview@supcourt.vic.gov.au; Ramona.Thambiratnam@veohrc.vic.gov.au
Subject: Misrepresentation by Minter Ellison to VGSO – No Sealed Judicial Warrant Exists | S ECI 2025 02829

Dear Mr Coppel,

We write in direct response to the correspondence from Minter Ellison dated 6 August

2025, 2:06pm, in which they falsely assert that:

“The warrant attached to the plaintiffs' email is unsealed and there is a sealed version of the warrant.”

We state unequivocally: **no sealed version of the warrant exists.**

On 22 April 2025, we submitted a formal request to the County Court of Victoria specifically seeking a **sealed and judicially issued warrant of possession** in proceeding CI-23-01883. In response, the Court provided **only one version: an unsigned, unsealed, solicitor-uploaded warrant**, with no judicial endorsement or issuance.

We attach that document again here, along with the **email from the County Court registry** confirming that this is the version provided directly by the Court.

We have also included a copy of the Warrant of Possession (COPY) which we located in the County Court file made available to us on 3 June 2025. This document, like the other provided by the Court, bears no judicial seal, no signature, and no evidence of having been issued by a judge or registrar. **It confirms once again that enforcement was carried out without lawful judicial authority.**

We respectfully submit that a warrant copy received **directly from the Court**, in response to a formal judicial document request, holds **greater evidentiary authority** than any version filed or attached by an interested party such as Westpac or Minter Ellison.

Minter Ellison's claim that a “sealed version” exists is therefore knowingly false and must be corrected. Their affidavit of Shufei Qu exhibits only the same solicitor-uploaded copy, without seal, signature, or judicial authorisation.

This falsehood forms part of a broader and escalating pattern of **procedural deception, jurisdictional overreach, and structural abuse of process**, which we summarise below:

SYSTEMIC FRAUD: THE THREE-PART JURISDICTIONAL FAILURE

1. No Standing

Westpac never proved it held the legal or beneficial interest in the mortgage:

- No mortgage contract ever produced;
- No deed of assignment or valid proof of debt;
- Internal memos confirm the loan documents were missing and was securitised or indemnified (ARCH / RMBS Trust);
- Only arrears (\$33,000+) were pleaded — no full debt, no acceleration, no contractual proof.

Result: Westpac had no legal capacity to sue or enforce.

2. Wrong Court

The matter was filed in the County Court, which:

- Has **no jurisdiction** to adjudicate land repossession under the *Transfer of Land Act 1958 (Vic)*;
- Cannot issue orders for possession over Torrens title land;
- Is expressly excluded under s 89(1), which gives exclusive authority to the Supreme Court.

Result: Even if standing existed, the forum was incompetent and ultra vires.

3. No Judicial Order

Possession was executed under a document that was:

- **Not signed by a judge;**
- **Not issued by a registrar;**
- **Not supported by judicial reasons or findings;**
- **Never verified against any contract.**

Result: The final act — eviction — occurred without judicial authority. This is a breach of **Chapter III of the Constitution**, the *Charter*, and the **separation of powers**.

4. Breach of the Torrens System and Indefeasibility of Title

Under the Torrens title system — codified in the *Transfer of Land Act 1958 (Vic)* — the Register may only be altered pursuant to **lawfully issued court orders** or **express statutory powers**.

The County Court possesses **no jurisdiction** to issue possession orders over registered land. That power lies exclusively with the Supreme Court under **section 89(1)**.

No judicial order was ever issued in this case. The purported Warrant of Possession was not signed, not sealed, and not issued by a court of competent jurisdiction. Therefore:

- The change in possession was not lawfully effected;
- Any subsequent title dealings are void;
- The Register has been compromised by solicitor-uploaded documents, **not judicial authority**.

Result: The Torrens system has been breached. Indefeasibility of title cannot be overridden by administrative convenience or electronic uploads.

The claim by Minter Ellison that a “sealed warrant” exists is therefore not only false, but part of a larger, ongoing effort to **retroactively legitimise an unlawful enforcement** that violated multiple layers of law and due process.

We are not seeking clarification. We are demanding **correction of the record**. This was a **deliberate misrepresentation** made to your office and the Supreme Court. It is part of a broader pattern of procedural deception, used to **retroactively legitimise** an enforcement that was never judicially authorised.

This matters for three reasons:

1. **Rule of Law:** Possession was executed without lawful court order. Judicial power was simulated — not exercised. This is a breach of Chapter III of the Constitution and the separation of powers.
2. **Institutional Integrity:** The Court has now become a passive registry for solicitor-generated documents. This is not a procedural oversight; it is a structural failure in the administration of justice.
3. **Abuse of Process:** This misstatement comes after repeated concealment of foundational defects: no loan contract, no proof of debt, no full debt claimed, incompetent court, no judicially authorised enforcement, no eCT control legitimacy.

We now call upon the Victorian Government Solicitor's Office to:

- **Formally reject and correct** Minter Ellison's misrepresentation;
- **Confirm on the record** that the document supplied by the Court is the only version received and relied upon;
- **Acknowledge** that enforcement occurred without judicially issued authority.

This is not a mere error. It is a continuation of a pattern of unlawful conduct, enabled by solicitor uploads, procedural concealment, and systemic abdication of judicial oversight. During the County Court hearing on 30 April 2025, the issue of solicitor-uploaded documents and the absence of a signed judicial warrant was explicitly raised. The Plaintiffs stated on the record that:

"No monetary judgment, no warrant ever presented. Solicitor-generated orders [...] there is no valid judgment or order."

Judge Burchell did **not dispute or correct this**, nor did she direct the production of a judicially signed warrant. Instead, she proceeded to judgment, tacitly relying on procedural assumptions of validity.

Counsel for Westpac, Ms Gaber, argued:

"In short, the Rules permit documents to be filed electronically and a filing confirmation notice issued in respect of a document filed electronically is taken to be the court's seal. [...] The defendant's arguments that the judgment and warrant aren't validly sealed or signed by the court are entirely misconceived and devoid of any merit."

These statements confirm that the Court **relied on solicitor-uploaded documents via online portal** — not on any signed, judicially issued warrant or order — to justify enforcement. This amounts to a denial of judicial oversight, a breach of procedural fairness, and a violation of Chapter III of the Constitution.

We are forwarding this correspondence to the Victorian Equal Opportunity and Human Rights Commission and to the Office of the Governor-General. The Australian public has a right to know how simulated justice is being deployed under colour of authority, and how rights, especially property rights, are being extinguished without lawful court order.

We reserve our rights to escalate this further to the Legal Services Commissioner, IBAC, and other regulatory and constitutional bodies. Unless this falsehood is retracted and corrected immediately, it will remain on the record as a **deliberate and material misstatement in the face of the Court**.

Attachments:

1. County Court email dated 22 April 2025 (PDF)
2. Warrant of Possession provided by the Court (PDF)
3. Warrant of possession (COPY) directly from the County Court file

Kind regards,

Dorota-Donata and Michael Mark Borkowski
Self-represented Plaintiffs
dorisborkowski@bigpond.com | 0405 107 365
All Rights Reserved

From: Brisbane Litigation Minter Ellison
Date: Wednesday, 6 August 2025 at 2:06 pm
To: Jacob Coppel
Cc: "DJCS-VEOHRC-LEGAL (DJCS)" , Malaika Khattak , DORIS
Subject: RE: Instructions to the Attorney-General – Borkowski v Westpac – S ECI 2025 02829 Charter and Constitutional Notice [ME-ME.FID7622671]

Dear Mr Coppel

We act for the second respondent, Westpac Banking Corporation (**Westpac**) in the Supreme Court of Victoria proceeding no. S ECI 2025 02829 (**Supreme Court Proceeding**). We have copied the plaintiffs to this correspondence.

We refer to your email of 5 August 2025 in which you requested from the plaintiffs copies of the following documents:

- the transcript of the County Court dated 30 April 2025; and
- a copy of the warrant of possession issued by the County Court.

We also refer to the plaintiffs' email below which, among other things, attached a copy of the transcript of the County Court hearing on 30 April 2025 and the warrant of possession dated 26 June 2024. However, we note that:

1. the warrant attached to the plaintiffs' email is unsealed and there is a sealed version of the warrant; and
2. the County Court transcript attached to the plaintiffs' email does not contain the oral ruling delivered by her Honour Judge Burchell.

To assist your office in considering this matter, we **attach** the following documents filed by Westpac in the Supreme Court Proceeding:

1. Westpac's summons dated 3 July 2025;
2. Affidavit of Shufei Qu affirmed on 2 July 2025 in support of Westpac's summons. This affidavit contains a brief procedural history of the matter and exhibits, among other things, the transcript of the ruling of her Honour Judge Burchell on 30 April 2025 and a sealed copy of the warrant of possession; and
3. Westpac's submissions dated 18 July 2025.

Please let us know if we can be of any further assistance.

Regards

Brisbane Litigation Minter Ellison
brisbanelitigation@minterellison.com

MinterEllison One Eagle – Waterfront Brisbane 1 Eagle Street Brisbane QLD 4000

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MinterEllison.

From: DORIS

Sent: Wednesday, 6 August 2025 7:47 AM

To: Jacob Coppel

Cc: Brisbane Litigation Minter Ellison ; DJCS-VEOHRC-LEGAL (DJCS) ; Malaika Khattak

Subject: Re: Instructions to the Attorney-General – Borkowski v Westpac – S ECI 2025 02829
Charter and Constitutional Notice

Dear Mr Coppel,

Thank you for your correspondence dated 5 August 2025 regarding the Attorney-General's consideration of intervention in the above proceeding.

We welcome the opportunity to assist and now provide the requested documents as follows:

1. Transcript of the County Court hearing dated 30 April 2025 (attached);
2. Copy of the Warrant of Possession issued in the County Court proceeding CI-23-01883 (attached).

We respectfully note that the warrant of possession supplied to us (and attached here) was not made available at the time of execution and was only later obtained from the County Court and solicitors. The copy is unsigned, bears no judicial seal, and appears to have been uploaded electronically by a private solicitor without any record of formal judicial issuance.

These issues were squarely raised and discussed in both the County Court hearing before Judge Burchell (30 April 2025) and in the interlocutory injunction application before Justice MacDonald in the Supreme Court on 4 July 2025. While Justice MacDonald ultimately declined the injunction, His Honour acknowledged that the plaintiffs had raised serious procedural questions — including:

- The warrant's lack of seal;
- The absence of judicial authorisation or service of a judicially signed warrant;
- Denial of procedural fairness due to lack of opportunity to contest the enforcement.

We understand the Attorney-General's instructions may take time, and we are grateful for the careful consideration of these matters, which we believe go to the heart of procedural fairness, access to justice, and human rights under sections 8, 20, and 24 of the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*.

For completeness, we also enclose transcript extracts containing the ruling of Justice

MacDonald dated 4 July 2025, which address the plaintiffs' arguments concerning the validity of the warrant of possession and denial of procedural fairness.

We also wish to advise that new evidence has recently come to light confirming that the original possession proceedings were improperly commenced in the County Court of Victoria, which lacks jurisdiction under the relevant legislative framework.

Specifically, the enforcement of mortgage repossession proceedings — including claims for possession and extinguishment of proprietary interests — falls within the scope of the *Supreme Court Act 1986 (Vic)* and the *Transfer of Land Act 1958 (Vic)*. These Acts require such matters to be brought before a court of competent jurisdiction and do not confer that jurisdiction upon the County Court.

This misuse of an inferior court, which enabled default judgment and enforcement without judicial scrutiny of the underlying mortgage, indemnity, or contractual basis, represents a serious departure from due process and statutory requirements.

What has occurred here is not a mere procedural irregularity, but a structural failure in the administration of justice — one that risks undermining public confidence in the rule of law, and the integrity of land title enforcement in Victoria.

This revelation — that Westpac initiated and obtained enforcement orders in a court lacking jurisdiction under the *Transfer of Land Act* and *Supreme Court Act* — strikes at the heart of the rule of law. Not only did the County Court act *ultra vires* in granting possession, but the Supreme Court, when later seized of the matter, failed to identify or rectify this foundational jurisdictional error.

Compounding this is the continued reliance on COVID-era emergency filing rules, which permit solicitor-uploaded warrants to be accepted as valid without judicial signature, seal, or oversight.

This matter is exceptional not only because it involves a clear jurisdictional defect, but because enforcement was permitted to proceed despite multiple opportunities — at both the County and Supreme Court levels — for judicial scrutiny to arrest the error.

The combined effect is a systemic breakdown in the separation of powers, procedural safeguards, and access to a court of competent jurisdiction — resulting in unlawful enforcement and the deprivation of property without lawful authority. These matters, now documented and formally raised before the Court and relevant oversight bodies, engage the *Charter*, the Victorian Constitution, and the Crown's constitutional duty to uphold proper administration of land title.

We respectfully submit that the present matter transcends the ordinary bounds of litigation. It reflects a confluence of errors — jurisdictional, procedural, and constitutional — which were neither identified nor remedied at first instance or on review. The case squarely raises questions about the limits of judicial power, the continuing effect of emergency procedural rules, and the systemic vulnerability of land title enforcement in the absence of judicial oversight.

It is in this light that we urge the Attorney-General to consider the broader institutional and constitutional implications of what has occurred — not only for the plaintiffs, but for the administration of justice in Victoria.

Please let us know if any further information or materials are required.

Kind Regards,

Dorota-Donata and Michael Mark Borkowski
Self-represented Plaintiffs
dorisborkowski@bigpond.com | 0405 107 365

From: Jacob Coppel

Date: Tuesday, 5 August 2025 at 5:26 pm

To: DORIS

Cc: "brisbane.Litigation@minterellison.com", "DJCS-VEOHRC-LEGAL (DJCS)", Malaika Khattak

Subject: RE: Borkowski v County Court of Victoria and Anor (S ECI 2025 02829) – Charter and Constitutional Notice

OFFICIAL

Dear Mr and Ms Borkowski,

We are seeking instructions urgently. I'm not able to advise as to the exact timeframe as this depends on the competing priorities for the attention of the Attorney-General - however, we would hope to have instructions within a fortnight.

These will be instructions as to whether the Attorney-General wishes to intervene or not. If she elects to intervene, she will make submissions. There is no 'referral' mechanism to the Solicitor-General. The Solicitor-General provides legal advice to the Attorney-General and may appear on behalf of the Attorney-General in matters where she decides to intervene.

To facilitate briefing the Attorney-General in this matter, we would be grateful if the following documents could be provided:

- the transcript of the County Court dated 30 April 2025 (referred to at p. 16 of the outline of submissions)
- if available, a copy of the warrant of possession that was issued by the County Court.

Kind Regards,

Jacob Coppel | Managing Principal Solicitor

Victorian Government Solicitor's Office

T:03 9375 5607 **F:**03 8684 0449 **M:**0408652665 **E:**jacob.coppel@vgso.vic.gov.au

Level 25, 121 Exhibition Street, Melbourne VIC 3000

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(Please note: I work Monday, Tuesday, Thursday and Friday)

We acknowledge the traditional Aboriginal owners of country throughout Victoria and pay our respect to them, their culture and their Elders past, present and future.

OFFICIAL

From: DORIS

Sent: Monday, 4 August 2025 4:40 PM

To: Jacob Coppel ; Supreme Court-Judicial Review and Appeals List

Cc: brisbane.Litigation@minterellison.com; DJCS-VEOHRC-LEGAL (DJCS) ; Malaika Khattak

Subject: Re: Borkowski v County Court of Victoria and Anor (S ECI 2025 02829) – Charter and Constitutional Notice

Dear Mr Coppel,

Thank you for your letter dated 1 August 2025 confirming that the Attorney-General has received our Charter and constitutional notice in compliance with the orders of Registrar Lorenz.

We respectfully request confirmation as to when the Attorney-General's position — whether to intervene, refer to the Solicitor-General, or make submissions — will be communicated to the Court and parties.

Given the live nature of these questions in proceeding S ECI 2025 02829, we are keen to ensure procedural clarity and invite further guidance as appropriate.

Kind regards,
Dorota-Donata Borkowski
Michael-Mark Borkowski
Email: dorisborkowski@bigpond.com
Ph: 0405 107 365

From: Jacob Coppel <jacob.coppel@vgso.vic.gov.au>

Date: Monday, 4 August 2025 at 12:21 pm

To: Supreme Court-Judicial Review and Appeals List <judicialreview@supcourt.vic.gov.au>

Cc: "dorisborkowski@bigpond.com" <dorisborkowski@bigpond.com> ,

"brisbane.Litigation@minterellison.com" <brisbane.Litigation@minterellison.com> , "DJCS-

VEOHRC-LEGAL (DJCS)" <legal@veohrc.vic.gov.au> , Malaika Khattak

<Malaika.Khattak@vgso.vic.gov.au>

Subject: Borkowski v County Court of Victoria and Anor (S ECI 2025 02829) – Charter and Constitutional Notice

OFFICIAL

Dear parties,

Please find attached correspondence in this matter on behalf of the Attorney-General.

I apologise for the lateness of this acknowledgement letter - due to an administrative error, the letter was omitted to be sent at the time the documents were served.

Kind Regards,

Jacob Coppel|Managing Principal Solicitor

Victorian Government Solicitor's Office

T:03 9375 5607 F:03 8684 0449 M:0408652665 E:jacob.coppel@vgso.vic.gov.au

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ACKNOWLEDGEMENT OF COUNTRY

MinterEllison respectfully acknowledges the Traditional Custodians on whose lands we live, work and learn. We offer our respects to Elders past and present.



Victorian Government
Solicitor's Office

All correspondence to:
PO Box 4356
Melbourne VIC 3001 Australia
DX 300077 Melbourne

Your reference: S ECI 2025 02829

Our reference: 2503845

Contact details

Jacob Coppel
(03) 9375 5607 (direct line)
Jacob.Coppel@vgso.vic.gov.au

Malaika Khattak
0408 114 928 (direct line)
Malaika.Khattak@vgso.vic.gov.au

15 August 2025

Supreme Court of Victoria
Common Law Division
436 Lonsdale Street
Melbourne VIC 3000

By email: judicialreview@supcourt.vic.gov.au

Dear Registrar

Borkowski v County Court of Victoria & Anor (S ECI 2025 02829) – Charter and Constitutional Notice

We refer to the above proceedings and to the documents and correspondence from the Plaintiffs raising questions of law with respect to the *Charter of Human Rights and Responsibilities Act 2006* as well as matters arising under the Constitution.

We write to advise that the Attorney-General will not be intervening in the proceedings.

Yours faithfully
Victorian Government Solicitor's Office

A handwritten signature in blue ink, appearing to be 'Jacob Coppel', written over a horizontal line.

Jacob Coppel
Managing Principal Solicitor

cc: *Applicant c/o doriskorkowski@bigpond.com*

Second respondent c/o brisbane.Litigation@minterellison.com

legal@veohrc.vic.gov.au

AMG 9077b

The Honourable Jaclyn Symes MP
Attorney-General of Victoria
Department of Justice and Community Safety
Level 30, 121 Exhibition Street
Melbourne VIC 3000

By Email

To: Sera.Somyurek@vgso.vic.gov.au

CC: jacob.coppel@vgso.vic.gov.au;

legal@veohrc.vic.gov.au; Malaika.Khattak@vgso.vic.gov.au;

judicialreview@supcourt.vic.gov.au; brisbane.Litigation@minterellison.com;

Date: 21 August 2025

Re: Request for Reasons for Non-Intervention — County Court Proceeding CI-23-01883 and Supreme Court Proceeding S ECI 2025 02829

Dear Attorney-General,

We write in relation to the above matters, and in particular to the Department's response declining intervention. With respect, we now formally request the Attorney-General's reasons for declining to intervene in a case that has exposed a wholesale collapse of statutory, equitable, and constitutional safeguards, from the initiation of proceedings through to execution of possession.

Absence of Judicial Authority from Commencement

From the initiation of County Court proceeding CI-23-01883, there has never been any judicial issuance or consideration. The initiating writ, the default judgment, and the warrant of possession were all solicitor-uploaded documents processed under e-filing rules — each unsigned and unsealed, and never issued by a judicial officer.

This means that from commencement, the proceeding operated without judicial authority. Judicial power under Chapter III of the Constitution was displaced by administrative processes.

Systemic Collusion and Abdication of Duties

Every institutional actor failed in its statutory role, amounting to collusive abdication:

- **Westpac and its solicitors** concealed not only the true nature of the alleged debt (including the mortgage contract and LMI indemnity) but also the very existence of dispute. They deliberately misrepresented the matter as a routine arrears case, suppressing the fact that we had made multiple good faith offers of redemption backed by substantial resources, and disregarding our equitable rights as registered proprietors. By framing the proceeding as uncontested, they misled the Court and ensured that no judicial scrutiny was applied to questions of standing, contract, equity, or redemption.
- **The Sheriff's Office** executed possession without a judicial warrant, contrary to the *Sheriff Act 2009 (Vic)*, which permits execution only under lawful judicial order. The *Sheriff Act 2009 (Vic)* defines a civil warrant as one "directed to the sheriff" following a judgment or order of a court. In our case, no such judicial warrant was ever issued. What the Sheriff acted upon was a solicitor-uploaded document, unsigned and unsealed, falling outside the statutory definition. Because the Sheriff's powers are expressly bounded by the *Supreme Court Act 1986*, the *County Court Act 1958*, and the *Transfer of Land Act 1958*, execution in these circumstances was not only irregular but wholly unlawful. It represents a complete breakdown of statutory checks: equity under s 29 of the *Supreme Court Act*, indefeasibility under s 42 of the *Transfer of Land Act*, and ministerial execution under the *Sheriff Act* were all disregarded.
- **The Registrar of Titles** allowed instruments to be recorded against title without verifying the existence of any valid court order, undermining the indefeasibility guaranteed by s 42 of the *Transfer of Land Act 1958 (Vic)*.
- **The Court Registry** failed in its statutory role. Registrars are empowered only to issue instruments pursuant to a judicial act or under explicit rule-based delegation. Here, no Registrar signed, sealed, or authorised any writ, judgment, or warrant. What was filed and acted upon were solicitor-uploaded documents entirely lacking judicial or registrar oversight. This represents not mere irregularity but a collapse of judicial process, where the Court's own officers abdicated their duty to safeguard against misuse of the Court's process.

- **The County Court and the Supreme Court** failed to identify or correct these defects, despite the issues being expressly raised by us in pleadings, affidavits, and oral submissions.

These failures also contravened our human rights under the Charter:

- **Section 8 (Recognition and equality before the law):** We were treated unequally before the law, with our evidence and jurisdictional arguments dismissed while solicitor-uploaded documents were accepted.
- **Section 24 (Fair hearing):** We were denied a fair and impartial hearing.

This was not mere oversight, but a systemic collapse of the very safeguards that distinguish the rule of law from the colour of law.

Good Faith Settlement Efforts and Equitable Rights Ignored

At all times we remained the registered proprietors of the land. We made multiple good faith settlement offers to Westpac, backed by substantial resources:

- Over \$100,000 in superannuation;
- A pending \$100,000+ TPD insurance claim;
- Additional family assistance — totalling in excess of \$200,000.

These offers were refused, not because they were inadequate, but because Westpac could not produce the mortgage contract or prove its standing as lawful creditor. These facts were before both the County Court and the Supreme Court, yet both courts dismissed or ignored them entirely.

The result was denial of:

- **Our equitable right of redemption**, as part of the concurrent administration of law and equity;
- **Our equitable rights as proprietors under s 29 of the *Supreme Court Act 1986 (Vic)***; and
- **The indefeasibility of our title under s 42 of the *Transfer of Land Act 1958 (Vic)*.**

As registered proprietors, we made repeated good-faith offers of redemption, which were dismissed without consideration. By failing to recognise and administer equity and redemption rights — core to both s 29 of the *Supreme Court Act 1986 (Vic)* and centuries of equitable principle — the courts abdicated their constitutional duty to do justice according to law.

This denial of redemption rights also constitutes a breach of the Charter of Human Rights and Responsibilities Act 2006 (Vic):

- **Section 20 (Property rights):** We were unlawfully deprived of our proprietary interest in the land.
- **Section 24 (Fair hearing):** We were denied a genuine hearing of our rights in equity and redemption. Both the County Court and Supreme Court failed to consider jurisdictional objections, evidence of securitisation, concealment of LMI indemnity, and our good-faith redemption efforts.

Breakdown of Safeguards — A Constitutional Crisis

The collapse of checks and balances in this matter cannot be dismissed as a private dispute. It is a systemic and constitutional crisis.

- Judicial acts were replaced with solicitor uploads;
- Equity and redemption were disregarded;
- Indefeasibility was undermined;
- The Sheriff acted without lawful order;
- The Registrar failed to police the integrity of the Register;
- Courts abdicated oversight when defects were raised.

Rules of court have been applied administratively in place of judicial acts, displacing Chapter III judicial power and the protection it guarantees.

The Attorney-General, as First Law Officer of the State, has a fiduciary duty to safeguard legality and constitutional order. The Department's decision not to intervene represents not neutrality, but further abdication of duty.

As First Law Officer, the Attorney-General has a non-delegable duty to uphold legality in the administration of justice. Declining to intervene where judicial power has been displaced by

administrative filing engages questions of ministerial accountability to Parliament under ss 61 and 64 of the Commonwealth Constitution, as applied in Victoria.

Potential Criminal and Regulatory Breaches

The facts as outlined are not confined to procedural irregularity. They engage serious criminal and regulatory dimensions:

Obtaining Property by Deception

By concealing the absence of a mortgage contract and misrepresenting arrears as an enforceable debt, Westpac and its agents obtained possession of land by deception, contrary to *s 81 of the Crimes Act 1958 (Vic)*.

Fraud on the Court and on Title

The use of solicitor-uploaded documents in place of judicial orders constitutes fraud on the Court. The subsequent reliance upon those documents to alter the Register constitutes fraud on title within the meaning of the *Transfer of Land Act 1958 (Vic)*. Such conduct also falls within *s 83A of the Crimes Act 1958 (Vic)* concerning false documents and fraudulent instruments.

Fraud on the Commonwealth

Westpac's concealment of LMI indemnity payouts, securitisation proceeds, and forced sale recovery created triple recovery streams from the same loan. This amounts to double or triple recovery, unjust enrichment, and fraud on the Commonwealth, corresponding to defined criminal offences under both State and Commonwealth law.

These acts are not merely private or civil irregularities but correspond to defined criminal offences:

- *Crimes Act 1958 (Vic)* s 81 — obtaining property by deception;
- *Crimes Act 1958 (Vic)* s 257D — perverting the course of justice;
- *Criminal Code Act 1995 (Cth)* s 134.2 — obtaining financial advantage by deception;
- *Transfer of Land Act 1958 (Vic)* ss 42, 110 — fraud on title and State indemnity for deprivation of property.

They also engaged obligations under the *ASIC Act 2001 (Cth)* and *Corporations Act 2001 (Cth)*, as well as reporting duties under the *Anti-Money Laundering and Counter-Terrorism*

Financing Act 2006 (Cth). This conduct further undermined constitutional safeguards under Chapter III and breached s 20 of the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*.

Public officers (Sheriff's Office, court registrars, Registrar of Titles) acted on solicitor-uploaded documents absent judicial authority, contrary to their duties of integrity and accountability under the *Public Administration Act 2004 (Vic)* ss 7–8. Further, under the *Independent Broad-based Anti-Corruption Commission Act 2011 (Vic)*, such conduct engages a duty of referral to IBAC.

In these circumstances, does the Attorney-General accept that the Department is under a positive statutory duty to refer these matters to Victoria Police, ASIC, AUSTRAC, and IBAC, consistent with both State integrity obligations and federal regulatory mandates?

Money Laundering and Terrorism Financing Risks

The concealment of securitisation transfers, LMI indemnity, and trust reallocations raises questions under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)*. Transactions structured to evade disclosure obligations risk amounting to money laundering and, by extension, terrorism financing risks within the meaning of AUSTRAC's mandate.

Tax Evasion

The concealment of LMI indemnity payouts and securitisation proceeds raises the question of whether these amounts were properly disclosed to the Australian Taxation Office. If not, the conduct amounts to tax evasion, contrary to the *Taxation Administration Act 1953 (Cth)*, compounding the Fraud on the Commonwealth.

Escalation of Penalties and Unconscionable Conduct

Despite repeated warnings to the courts, Westpac imposed escalating enforcement fees and penalties upon the alleged debt, even while refusing redemption offers. This conduct is contrary to equitable principle, statutory limits on enforcement, and may amount to unconscionable conduct under s 21 of the *Australian Consumer Law* (Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*).

In addition, these enforcement charges appear to contravene the *National Credit Code* (Schedule 1 to the *National Consumer Credit Protection Act 2009 (Cth)*), which restricts the imposition of default fees and charges to amounts that are a genuine pre-estimate of loss. Charges that are excessive or punitive in nature are unlawful under that regime. Further, at common law and in equity, contractual provisions that impose penalties going beyond compensation for actual loss are unenforceable under the penalty doctrine (*Andrews v ANZ Banking Group Ltd* (2012) 247 CLR 205). The escalation of fees and penalties in our case therefore not only raises issues of unconscionability, but also potential statutory breach and invalidity at common law.

These acts are not merely civil irregularities but correspond to defined criminal offences. Under ss 7–8 of the *Public Administration Act 2004 (Vic)*, public officers are bound by duties of integrity and accountability. Does the Attorney-General accept that these duties include a positive obligation to refer evidence of fraud to Victoria Police, ASIC, and AUSTRAC?

Queering Questions — Where Does Authority Truly Lie?

The circumstances of these proceedings raise unavoidable constitutional questions. If judicial power was never exercised, then whose power was?

1. Judicial Authority

- If no judge ever signed, sealed, or issued the writ, judgment, or warrant of possession, then who made the decision to dispossess us?
- Under what authority was such power exercised, if not by a judicial officer under Chapter III of the Constitution?

2. Solicitor-Uploaded Documents

- If solicitor uploads are treated as equivalent to judicial acts, by what statutory or constitutional basis are private legal counsel vested with the powers of a court?
- How can adversarial parties be permitted to generate their own “judicial” instruments without impartial oversight?

3. Court Registries

- If the registry, through electronic filing, becomes the effective issuer of judgments and warrants, does the registry then exercise judicial power?
- If so, where in statute is such authority conferred? If not, on what lawful foundation can the Sheriff and Registrar act on registry-processed documents?
- Registrars may exercise only those powers expressly delegated under court rules (for example, entering judgment in liquidated debt claims). They may never lawfully “issue” judicial instruments such as possession warrants except pursuant to judicial direction. On what statutory basis does the Attorney-General contend that a Registrar may authorise enforcement absent such judicial direction?

4. Sheriff’s Office

- The *Sheriff Act 2009 (Vic)* defines a civil warrant as one “directed to the sheriff” and authorising execution only where founded upon a valid *judgment or order of a court*. In this matter, no such judicially issued warrant exists. What document — and under what statutory footing — is said to have authorised the Sheriff to execute possession?
- If the Sheriff acted only upon a solicitor-uploaded, unsigned document, then the execution was not under law but merely under *colour of law*, exposing the State to liability for trespass and unlawful eviction.
- This practice is constitutionally impermissible. By permitting non-judicial documents to operate as warrants, the Sheriff’s Office has acted in a manner inconsistent with the institutional integrity of State courts, contrary to the principle in *Kable v DPP (NSW) (1996) 189 CLR 51*.

The execution of eviction without a judicially issued warrant also engages Charter protections:

- **Section 13 (Privacy, family and home):** Forced eviction without lawful authority unlawfully interfered with our family life and home.
- **Section 20 (Property rights):** Our proprietary rights as registered proprietors were overridden without lawful justification.
- Does the Attorney-General accept that the Sheriff has no lawful power to execute possession absent a judicial warrant properly issued and sealed, and that such execution amounts to a jurisdictional error and constitutional breach?

5. Registrar of Titles

Court registrars may enter judgment in limited cases but lack authority to issue warrants of possession absent judicial direction.

- On what lawful basis does the Registrar of Titles permit instruments to be recorded where no valid judicial order exists?
- Does administrative processing by PEXA or registry override indefeasibility protections under s 42 of the *Transfer of Land Act 1958 (Vic)*?
- On what statutory basis does the Attorney-General contend a Registrar may authorise enforcement absent judicial direction?

6. Courts Themselves

- When these defects were expressly raised before the County Court and Supreme Court, why were they dismissed without inquiry?
- Do Victorian courts now accept that solicitor uploads and registry processing can substitute for judicial power?

7. Constitutional Legitimacy of Oversight

- The *Constitution Act 1975 (Vic)* is an ordinary statute of the Victorian Parliament, not ratified by referendum. Unlike the Commonwealth Constitution, it does not derive its authority directly from the people but from parliamentary enactment. Its provisions therefore remain subject to the Commonwealth Constitution under ss 106–109.
- Section 106 preserves State constitutions only “subject to this Constitution.” Section 109 provides that where a State law is inconsistent with a Commonwealth law, the latter prevails and the former is invalid to the extent of the inconsistency.
- The High Court in *Kable v DPP (NSW) (1996) 189 CLR 51* established that State courts cannot be conscripted into performing functions that are incompatible with their role as repositories of federal judicial power.

Permitting solicitor-uploaded documents to operate as judicial acts — absent any judicial officer — is incompatible with the essential character of a court under Chapter III.

Does the Attorney-General accept that this practice is inconsistent with the *Kable* principle and therefore constitutionally invalid?

- To the extent that Victorian court rules and registry practices, administered under the *Constitution Act 1975 (Vic)*, have permitted solicitor-uploaded documents to substitute for judicially issued judgments and warrants, there arises a serious constitutional inconsistency. Chapter III of the Commonwealth Constitution vests judicial power exclusively in courts constituted by judges with independence and impartiality. Administrative or party-generated instruments cannot lawfully displace judicial acts.

We therefore ask:

- Whether the Attorney-General accepts that the *Constitution Act 1975 (Vic)* and rules made under it must remain consistent with the Commonwealth Constitution;
- Whether the practice of treating solicitor-uploaded documents as judicial orders is inconsistent with Chapter III, and therefore invalid to the extent of inconsistency under s 109;
- Whether, in circumstances where Victorian processes have displaced judicial acts with administrative filings, the federal constitutional guarantees of judicial power have been breached;
- If so, what remedies or oversight mechanisms exist — Governor, Parliament, or Commonwealth — when both courts and executive agencies proceed under colour of law but outside the authority of Chapter III.

If the Attorney-General's office declines to act despite these defects, **then who else** — Governor of Victoria, Parliament, the Crown, or the Commonwealth — bears ultimate responsibility for ensuring that judicial power is exercised lawfully and consistently with Chapter III of the Constitution?

Jurisdictional Limits under s 85 of the Constitution Act 1975 (Vic)

Section 85 entrenches the Supreme Court as the superior court of unlimited jurisdiction in Victoria. Its jurisdiction cannot be displaced save by express statutory provision. The possession proceeding was commenced in the County Court, which has only the jurisdiction Parliament has expressly conferred. Jurisdiction over constitutional compliance, judicial review, and equitable rights of redemption lies with the Supreme Court, and no express provision has conferred these matters upon the County Court.

By permitting an inferior court to assume jurisdiction over questions reserved to the Supreme Court, State officers acted outside jurisdiction and exposed both the State and the Commonwealth to liability.

Does the Attorney-General accept that, by operation of s 85, the proceeding in the County Court was void ab initio, and that judicial power in Victoria cannot lawfully be displaced by solicitor-uploaded documents or administrative filing?

State and Commonwealth Liability

The defects in process outlined above are not simply irregularities but create legal exposure for both the State of Victoria and the Commonwealth.

1. State Liability

- Does the Attorney-General accept that State officers (Sheriff, registrars) may have exposed the State of Victoria to liability under the *Transfer of Land Act 1958 (Vic)* indemnity provisions by enforcing possession and altering the Register absent judicial authority?
- Fraud on Title and Torrens Liability — By permitting instruments to be registered without valid judicial orders, the Registrar of Titles exposed the State to liability, including compensation for deprivation of property caused by wrongful or fraudulent registration.
- Misuse of Enforcement Powers — The Sheriff's Office executed possession without judicial warrant, exposing the State to liability for trespass, unlawful eviction, and damages flowing from execution under colour of law but without lawful authority.

2. Commonwealth Liability

- Does the Attorney-General accept that concealment of securitisation and LMI indemnity may have created Commonwealth liability through fraud and tax evasion, and what steps will be taken to ensure compliance with federal law?
- Financial Misconduct — Concealment of LMI indemnity payouts, securitisation proceeds, and mortgage enforcement despite lack of standing raises serious issues of unjust enrichment, Fraud on the Commonwealth, potential money laundering, and tax

evasion. To the extent that State processes facilitated these transactions without scrutiny, the State may also share liability in permitting unlawful financial flows.

3. Ongoing Exposure

Further, does the Attorney-General acknowledge that continuing liability is accruing daily, as previously notified to the parties by email, arising directly from the unlawful dispossession, the ongoing denial of redemption rights, and the systemic abdication of statutory safeguards? These accruing liabilities are not hypothetical but represent quantifiable and compounding exposure for both State and Commonwealth.

4. Constitutional Breach

- Failure of Judicial Safeguards (Chapter III Breach) — Where courts permit solicitor-uploaded documents to substitute for judicial acts, they act outside the limits of Chapter III of the Commonwealth Constitution. Such conduct may give rise to claims for constitutional damages against the State and, through the doctrine of inconsistency under s 109, against the Commonwealth for failure to safeguard federally entrenched judicial power.
- As registered proprietors, we made repeated good-faith offers of redemption, which were dismissed without consideration. By failing to recognise and administer equity and redemption rights — core to both s 29 of the *Supreme Court Act 1986 (Vic)* and centuries of equitable principle — the courts abdicated their constitutional duty to do justice according to law.

5. Systemic Liability

- The combined failures of court officers, the Sheriff, and the Registrar constitute not only denial of justice but actionable harm.
- We therefore ask whether the Attorney-General accepts that both the State of Victoria and the Commonwealth may be exposed to claims for restitution, damages, and inquiry arising from the unlawful dispossession and denial of constitutional safeguards in this case.

- If the State facilitated or acquiesced in these unlawful processes, then it must accept responsibility — whether in compensation, inquiry, or referral to the Commonwealth for investigation of fraud, money laundering, and constitutional breach.

These accruing penalties and enforcement fees are not speculative. They were expressly notified to the courts and the Attorney-General's Department by prior correspondence and email. Each day of continued dispossession compounds the exposure of both the State and the Commonwealth. Silence or non-intervention in this context amounts to acquiescence in unlawful enrichment and fraud, rendering both governments directly accountable for restitution, damages, and penalty escalation.

Requests for Clarification

Accordingly, we request:

1. Reasons for Non-Intervention

- Why has the Attorney-General declined to intervene in circumstances where the absence of judicial authority renders the entire proceeding void, raising questions as to who, if anyone, was exercising lawful power?

2. Constitutional Duties of Courts

- Does the Attorney-General accept that Victorian courts are bound under *s 29 of the Supreme Court Act 1986 (Vic)* to administer law and equity concurrently, and under *s 42 of the Transfer of Land Act 1958 (Vic)* to uphold indefeasibility of title?
- If so, how does the Attorney-General explain the denial of these safeguards in our case?

3. Limits on the Sheriff, Court Registrars, and Registrar of Titles

- Does the Attorney-General accept that the Sheriff, court registrars, and the Registrar of Titles may not lawfully act in the absence of a judicially issued order or warrant?
- Does the Attorney-General accept that solicitor-uploaded documents cannot lawfully substitute for judicial orders, and, if so, why has this practice been permitted to continue under court registry processes?

4. Criminal and Regulatory Breaches

- Does the Attorney-General accept that Westpac and its agents' conduct may constitute:
 - Obtaining property by deception (*s 81 Crimes Act 1958 (Vic)*);

- Obtaining financial advantage by deception (*s 134.2 Criminal Code Act 1995 (Cth)*)
- **Fraud on the Court and on Title**
- Fraud on the Court arises from the use of solicitor-uploaded documents in place of judicially issued orders, amounting to perversion of the course of justice (*Crimes Act 1958 (Vic) s 257D*). Fraud on Title arises where such documents are then used to alter the Register, engaging *s 42* and *s 110* of the *Transfer of Land Act 1958 (Vic)*.
- Fraud on the Commonwealth (*s 134.1 Criminal Code Act 1995 (Cth)*);
- Money laundering and terrorism financing risks (*Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)*);
- Tax evasion (*Taxation Administration Act 1953 (Cth)*); and
- Unconscionable conduct through escalation of penalties (*s 12CB ASIC Act 2001 (Cth)* — financial services).
- If so, what action will be taken to refer these matters to appropriate investigative or prosecutorial bodies?

5. **Human Rights Breaches under the Charter of Human Rights and Responsibilities Act 2006 (Vic)**

The facts outlined also engage serious violations of human rights safeguarded under Victorian law:

- **Section 8 – Equality before the law**

We were denied equal treatment and procedural fairness, with our good-faith settlement offers dismissed and our equitable rights as registered proprietors ignored.
- **Section 13 – Privacy, family and home**

The unlawful eviction and loss of our home constituted a direct interference with our family life and privacy, absent lawful justification.
- **Section 20 – Property rights**

We were deprived of our property other than in accordance with law. The absence of a judicially issued warrant and the reliance on solicitor-uploaded documents renders the deprivation unlawful.
- **Section 24 – Fair hearing**

We were denied a genuine hearing of our rights. Both the County Court and Supreme Court failed to consider:

 - jurisdictional objections;
 - evidence of securitisation and concealment of LMI indemnity;

- our good-faith redemption efforts; and
- the equitable rights of redemption attaching to us as registered proprietors.

This denial of equitable recognition and protection meant our rights in property were never substantively adjudicated.

- **Section 32 – Interpretation Consistent with Human Rights**

Section 32(1) of the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* requires that “so far as it is possible to do so consistently with their purpose, all statutory provisions must be interpreted in a way that is compatible with human rights.”

In our case, courts and State officers were bound to construe and apply the *Transfer of Land Act 1958 (Vic)*, the *Supreme Court Act 1986 (Vic)*, the *Sheriff Act 2009 (Vic)*, and all related statutes consistently with:

- **Section 20** – protection from unlawful deprivation of property;
- **Section 24** – the right to a fair hearing; and
- The equitable right of redemption preserved under s 29 of the *Supreme Court Act 1986 (Vic)*.

By treating solicitor-uploaded documents as judicial acts, by refusing to consider good-faith redemption offers, and by allowing dispossession absent a judicial warrant, the courts and officers acted in direct breach of s 32.

Section 32 of the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* requires courts to interpret all statutory provisions consistently with human rights wherever possible. In our case, statutes governing possession, enforcement, and title were interpreted and applied in ways that deprived us of property (s 20) and denied us a fair hearing (s 24). This represents a direct breach of s 32.

We therefore ask: does the Attorney-General accept that the failure to apply s 32 in this context rendered the interpretation of all relevant statutes incompatible with human rights, and that this breach compounds the unlawfulness of the repossession?

- **Section 38 – Conduct of public authorities**

All public authorities involved — the Sheriff’s Office, the courts acting through their registries, and the Registrar of Titles — acted incompatibly with these rights, contrary to their duty under s 38(1).

- Does the Attorney-General accept that the Charter bound all public authorities in this case, and that by failing to act compatibly with Charter rights, they acted unlawfully?

- What steps will the Attorney-General take to remedy the systemic failure of courts and enforcement bodies to apply the Charter in the exercise of judicial and administrative power?

6. **State and Commonwealth Liability**

- Does the Attorney-General accept that State officers (Sheriff, registrars) may have exposed the State of Victoria to liability under the *Transfer of Land Act 1958 (Vic)* indemnity provisions by enforcing possession and altering the Register absent judicial authority?

- Does the Attorney-General accept that concealment of securitisation and LMI indemnity may have created Commonwealth liability through fraud and tax evasion, and what steps will be taken to ensure compliance with federal law?

7. **Departmental Basis**

- On what legal and factual basis did the Department consider non-intervention appropriate in a matter that engages not only constitutional safeguards but also potential criminal, regulatory, and taxation breaches?

- What internal records exist of the Department’s deliberations, and how may these be obtained under the *Freedom of Information Act 1982 (Vic)*?

8. **Accountability of Oversight**

- If the Attorney-General’s office abdicates its role as guardian of legality, **then to whom** do citizens turn — Governor, Parliament, Crown, or other oversight body — for protection of property rights and constitutional safeguards?

- Is oversight to be sought from the Governor of Victoria under the *Constitution Act 1975 (Vic)*, and if so, by what lawful mechanism is that authority conferred in the absence of direct approval by the people through referendum?

Closing

We emphasise that the issues outlined are not only statutory and constitutional breaches but also violations of our human rights under the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*, including equality before the law (s 8), protection from unlawful deprivation of property (s 20), the right to a fair hearing (s 24), and the interpretive obligation on courts and public authorities (s 32).

The Attorney-General, as First Law Officer, bears a **non-delegable duty** to ensure that such rights are upheld in the administration of justice. Declining to intervene where judicial power has been displaced by solicitor-uploaded documents and administrative acts is itself a matter of constitutional accountability under the *Constitution Act 1975 (Vic)* and Chapter III of the *Commonwealth Constitution*.

We reserve our right to seek remedies before the High Court of Australia for breach of Chapter III protections, and before international bodies under Australia's treaty obligations.

In light of the matters raised — which extend beyond private litigation to questions of constitutional validity, fraud, and systemic abuse of process — we respectfully require a substantive response within **seven (7) days** of the date of this letter.

Failing such response, it will be taken that the Attorney-General's office has elected not to discharge its constitutional and statutory obligations. In that event, escalation will proceed to the Governor of Victoria, the Commonwealth Attorney-General, federal regulatory authorities, the United Nations Human Rights Committee under the ICCPR as well as other international oversight bodies as necessary.

We further note that liabilities of both the State of Victoria and the Commonwealth are **accruing daily** as a direct consequence of these unresolved defects, underscoring the urgency of lawful intervention.

We therefore request your urgent and detailed response. Continued silence will constitute constructive confirmation that judicial power in Victoria has been displaced by administrative and private actors, in breach of Chapter III safeguards and contrary to fundamental human rights.

Regards,

Dorota-Donata Borkowski

Michael-Mark Borkowski

Email: dorisborkowski@bigpond.com Ph: 0405 107 365

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Rule 32.03

**IN THE SUPREME COURT OF VICTORIA
COMMON LAW DIVISION
JUDICIAL REVIEW AND APPEALS LIST**

No. S ECI 2025 02829

B E T W E E N:

DOROTA-DONATA BORKOWSKI & MICHAEL-MARK BORKOWSKI

Plaintiffs

-and-

COUNTY COURT OF VICTORIA
First Defendant

WESTPAC BANKING CORPORATION
Second Defendant

Defendants

NOTICE TO PRODUCE

(pursuant to Rule 32.03 of the Supreme Court (General Civil Procedure) Rules 2015 (Vic))

Date of Document: 9 July 2025

Solicitors Code:

Filed on behalf of: Dorota-Donata Borkowski &
Michael-Mark Borkowski

DX:

Prepared by: Dorota-Donata Borkowski

Telephone: 0405 107 365

Ref:

Email: dorisborkowski@bigpond.com

To:

The Proper Officer
Westpac Banking Corporation
275 Kent Street
Sydney NSW 2000

TAKE NOTICE that the Plaintiffs, pursuant to Rule 32.03 of the Supreme Court (General Civil Procedure) Rules 2015 (Vic), require the Second Defendant to produce for inspection, within 14 days of service of this Notice, the **original or complete copies** of the documents listed in the Schedule below. Production must be made at a time and place to be agreed, or as otherwise ordered by the Court.

This Notice is issued in connection with the central issues in these proceedings, including:

- The absence of an executed credit contract or valid proof of debt at the time litigation was commenced;
- The concealment of material facts concerning securitisation, insurance and enforcement;
- The need to test the veracity of affidavits sworn on behalf of the Defendant referencing non-existent or unverified contractual documentation;
- The probative value of internal Westpac memoranda in the Plaintiffs' possession (obtained through the AFCA dispute resolution process, March 2025), which confirm the absence of such foundational material.
- The timing and legality of eCT control transfer from Westpac to its solicitor, Minter Ellison, following physical enforcement, and the implications for Torrens title integrity and statutory compliance;

This request is also made with reference to the sworn affidavits of Mr Alexander Manoel (affirmed 28 April 2025) and Ms Shufei Qu (filed 2 July 2025), both of whom assert the existence of a credit contract and enforceable agreement. The Plaintiffs dispute those assertions and seek production of the alleged documents.

The documents sought are specific, relevant, and within the custody and control of the Defendant. No privilege properly applies to documents already disclosed in substance or referred to in filed affidavits (see *Esso Australia Resources Ltd v FCT* (1999) 201 CLR 49).

The Plaintiffs submit that the above documents are not privileged, having been either referenced or relied upon in affidavits affirmed by Mr Alexander Manoel and Ms Shufei Qu, or previously disclosed in substance by Westpac through the AFCA dispute resolution process (March 2025).

The documents sought are directly relevant to:

- All affidavits filed by the Plaintiffs to date, in particular those sworn on 24 June 2025 and 30 June 2025;
- The Plaintiffs' further affidavit to be filed on or before 9 July 2025 pursuant to Registrar Lorenz's directions;
- The Amended Originating Motion filed on 8 July 2025; and

- The sworn affidavits of Mr Alexander Manoel (28 April 2025) and Ms Shufei Qu (2 July 2025), which assert the existence of a credit contract and enforceable loan documentation now placed in dispute.

Production is required to verify and test these claims, and to support the Plaintiffs' allegations that foundational loan documents were missing when litigation was commenced. The documents sought are precise, material, and necessary to the just determination of the proceeding.

The Plaintiffs specifically request production of any and all documents relied upon by Westpac as **proof of debt**, including any **executed credit contract or enforceable loan agreement** capable of forming the basis of a valid cause of action.

For the purposes of this Notice, "documents" includes but is not limited to:

any written, printed, typed, electronic, or recorded material in any form, including:

- correspondence (including emails, letters, text messages, and online portal messages);
- internal memoranda or instructions;
- file notes;
- system logs, database entries, or metadata;
- transaction reports or ledger extracts;
- drafts, duplicates, and working versions;
- records stored electronically, digitally, or on cloud-based systems such as WI-X, PEXA, or internal Westpac systems.

SCHEDULE OF DOCUMENTS TO BE PRODUCED

The documents are grouped by material category and sought for the purpose of verifying foundational compliance, sworn affidavit accuracy, and the lawfulness of enforcement.

Category 1 – Executed Credit Contract and Legal Instruments

1. All documents constituting, evidencing, annexed to, or relied upon as **proof of debt**, including any **executed credit contract**, loan agreement, facility agreement, or mortgage entered into between Westpac and the Plaintiffs relating to the property at 15 Jacaranda Drive, Taylors Hill VIC 3037, including but not limited to:
 - Counterparts signed by both borrowers and authorised Westpac officer;

- Any general terms and conditions, special conditions, MCPs, and schedules;
- Solicitor certifications, verification of identity (VOI) records, and any certifications provided to the Registrar of Titles;
- Full settlement statement, disbursement ledger, and details of funds advanced.

Category 1A – Foundational Proof of Debt

1A. All documents relied upon as **proof of debt** forming the basis of the legal proceedings commenced against the Plaintiffs, including:

- Any executed credit contract;
 - Any loan facility agreement or acknowledgment of debt signed by the Plaintiffs;
 - Any documents tendered to AFCA or the Court as evidence of enforceable obligation;
 - Any legal advice or internal document asserting that a debt was legally recoverable.
-
- Any internal correspondence between Westpac staff or legal counsel regarding whether the Plaintiffs' file contained a valid or executed loan agreement.

Category 2 – Lenders Mortgage Insurance (LMI)

2. All documents relating to any LMI held, paid, or claimed in respect of the above loan, including, but not limited to:

- The full LMI policy document(s);
- Correspondence with Arch LMI or other insurers;
- All internal records or memos regarding policy claims, offsets, or adjustments, including but not limited to:
 - MEMO 1404231053 “MORT INS: ARCH POLICY NUMBER: 73072788”
 - MEMO 2507231047 “PENDING LMI CLAIM OF \$412,000 – EXPECTED BY END OF QUARTER”
 - MEMO 0109231133 “OFFER ADJUSTMENT OF \$400,000 ENTERED AGAINST COLLECTION BALANCE” • MEMO 0212241730 “LOAN HAS LMI: Y – INSURER: ARCH LMI”

Category 3 – Securitisation and Trust Assignment

3. All documents evidencing the assignment, sale, or securitisation of the Plaintiffs' loan, including, but not limited to:

- Any records of transfer or allocation to MSLA1, MSLA2, MSLA7MTMA or any Residential Mortgage-Backed Security (RMBS) structure;
- MEMO 0912211634: "THESE HAVE BEEN SUPPLIED WITH THE EXCEPTION OF THE WESTPAC WST SERIES RMBS TRUST DOCUMENTS. BORROWERS HAVE BEEN ADVISED BY FORMAL LETTER THAT WESTPAC IS UNDER NO OBLIGATION TO PROVIDE A COPY OF THESE DOCUMENTS."

Category 4 – Document Unavailability and Commencement of Litigation

4. All internal communications or memos created between 1 February 2023 and 30 April 2023 relating to the unavailability of loan documentation and initiation of legal proceedings, including, but not limited to:

- MEMO 2802231742 "UNABLE TO ACTION DUE TO NO LOAN OFFER FOUND IN WI-X"
- MEMO 1303231820 "PLEASE NOTE THAT WE DO NOT HAVE THE CAPACITY TO PROVIDE THE LOAN DOCUMENTS WITHIN OUR TEAM. IN ADDITION TO THE ABOVE, OUR WI-X SYSTEM IS ALSO NOT WORKING."
- MEMO 1304231530 "PLEASE PROCEED WITH THE SOLICITOR UPLOADS PROCESS WITHOUT THE DOCUMENT OF THE LINKED ACCOUNT."

The Plaintiffs contend that enforcement actions, including possession and disposal of property, cannot lawfully proceed without foundational proof of debt, namely a validly executed credit contract. The legitimacy of any enforcement instruments depends on the prior existence of such lawful authority. The documents sought are necessary to establish whether the enforcement was conducted with proper legal basis.

Category 5 – Enforcement Instructions

5. All instructions, emails or communications between **Westpac, Minter Ellison, LegalStream**, real estate agents, contractors, or the Sheriff's Office concerning enforcement at 15 Jacaranda Drive, Taylors Hill VIC 3037, including, but not limited to:

- Instructions to enter, repossess, or change locks;
- Any reference to a valid Order for Possession or Warrant;
- Documentary attachments relied upon;
- Any records of receipt or response to formal notices issued by the Plaintiffs.

Category 6 – Certificate of Title (eCT) Control and Dealings

6. All documents, communications, and transaction records relating to the **transfer of control of the electronic Certificate of Title (eCT)** for the property at **15 Jacaranda Drive, Taylors Hill VIC 3037**, including but not limited to:
- Any dealings, application, or PEXA record confirming transfer of eCT control from Westpac to Minter Ellison or any third party;
 - All internal communications discussing the timing, purpose, or authorisation of such transfer;
 - Any eCT Control Number (ECN) references or title activity status reports from Land Use Victoria;
 - Any documents or attachments provided to the Registrar of Titles in connection with this transfer;
 - Any correspondence between Westpac, Minter Ellison, and Land Use Victoria concerning title control.

INSTRUCTIONS FOR PRODUCTION

- The documents requested in this Notice are to be produced to the Plaintiffs within 14 days of service of this Notice. The Plaintiffs request that the documents be:
 - Supplied electronically in PDF format to dorisborkowski@bigpond.com, or
 - Made available for inspection by appointment at a mutually agreed location.
- The Plaintiffs request that Westpac confirm within 7 days of service whether production will be made electronically, by inspection, or through the Prothonotary. If the Second Defendant asserts privilege over any of the requested documents, a description and basis of such claim must be provided.

The Plaintiffs reserve their right to seek costs of this Notice and any consequential application, should the Second Defendant fail to comply in a timely or complete manner.

TAKE FURTHER NOTICE that if you fail to comply with this Notice, the Plaintiffs may apply for an order under Rule 32.05 requiring production and for such other relief as the Court deems just.

Dated: 9 JULY 2025

Signed:

Dorota-Donata Borkowski

Michael-Mark Borkowski

15 Jacaranda Drive

Taylors Hill VIC 3037

Email: dorisborkowski@bigpond.com

Dorota-Donata Borkowski

On behalf of the Plaintiffs

15 Jacaranda Drive, Taylors Hill VIC 3037

dorisborkowski@bigpond.com

Form 20

Rule 15A.6 Supreme Court (Corporations) Rules 2023

**NOTICE OF FILING OF APPLICATION FOR RECOGNITION OF
FOREIGN PROCEEDING**

IN THE SUPREME COURT OF VICTORIA

NO. S ECI 2025 02829

IN THE MATTER OF THE CROWN (LIQUIDATOR AND MANAGING CONTROLLER
APPOINTED) ABN; 50 785 365 455

AND

COMMONWEALTH OF AUSTRALIA CIK; 0000805157 (LIQUIDATOR AND
MANAGING CONTROLLER APPOINTED) ABN 86 150 409 985

AND

WESTPAC BANKING CORPORATION ABN 33 007 457 141 (LIQUIDATOR AND
MANAGING CONTROLLER APPOINTED) ABN 73 314 764 063

AND

MINTER ELLISON LIMITED ABN 77 478 593 704; ABN 91 556 716 819; ABN 46 001
549 480; ABN 99 009 717 391 (LIQUIDATOR AND MANAGING CONTROLLER
APPOINTED) ABN 92 236 032 942

AND

OTHERS NAMED IN THE SCHEDULE

Plaintiffs: Dorota-Donata Borkowski & Michael-Mark Borkowski, Personally, and as
Trustees of the Borkowski Irrevocable Family Trust: Registered Proprietors 15 Jacaranda Dr,
Taylors Hill Vic 3037

Address for Service: PO Box 155, TULLAMARINE VIC 3043

Email: dorisborkowski@bigpond.com

Phone: +61 405 107 365

To all the Creditors of:

1. THE CROWN (LIQUIDATOR AND MANAGING CONTROLLER APPOINTED)
ABN; 50 785 365 455

AND
2. COMMONWEALTH OF AUSTRALIA CIK; 0000805157 (LIQUIDATOR AND
MANAGING CONTROLLER APPOINTED) ABN 86 150 409 985

AND
3. WESTPAC BANKING CORPORATION ABN 33 007 457 141 (LIQUIDATOR
AND MANAGING CONTROLLER APPOINTED) ABN 73 314 764 063

AND
4. MINTER ELLISON LIMITED ABN 77 478 593 704; ABN 91 556 716 819; ABN 46
001 549 480; ABN 99 009 717 391 (LIQUIDATOR AND MANAGING
CONTROLLER APPOINTED) ABN 92 236 032 942

Take Notice That:

1. An application under *the Cross-Border Insolvency Act 2008* for recognition of a
Foreign Proceeding in relation to:
 - A. THE CROWN (LIQUIDATOR AND MANAGING CONTROLLER
APPOINTED) ABN; 50 785 365 455

AND
 - B. COMMONWEALTH OF AUSTRALIA CIK; 0000805157 (LIQUIDATOR
AND MANAGING CONTROLLER APPOINTED) ABN 86 150 409 985

AND
 - C. WESTPAC BANKING CORPORATION ABN 33 007 457 141
(LIQUIDATOR AND MANAGING CONTROLLER APPOINTED) ABN 73
314 764 063

AND
 - D. MINTER ELLISON LIMITED ABN 77 478 593 704; ABN 91 556 716 819;
ABN 46 001 549 480; ABN 99 009 717 391 (LIQUIDATOR AND
MANAGING CONTROLLER APPOINTED) ABN 92 236 032 942

was commenced by the Plaintiff in the Foreign Proceedings; Tenth Defendant/ First
Cross Claimant/ Enforcer/ Prosecutor in these proceedings, Andrew Morton Garrett
on 11th November 2022 and will be heard by the Justice presiding of the Honourable
Court of the First Instance of the High Court of Hong Kong At No.38 Queensway,
Admiralty, 1/F, High Court, CENTRAL, SAR HONG KONG At Time and Date to be
fixed.

Copies Of Documents Filed May Be Obtained from the Plaintiff in the Foreign
Proceedings/ Tenth Defendant/ First Cross Claimant/ Enforcer/ Prosecutor, Andrew
Morton Garrett's Address For Service.

2. The Plaintiff in the Foreign Proceedings; Tenth Defendant/ First Cross Claimant/ Enforcer/ Prosecutor in these proceedings, Andrew Morton Garrett's:
 - A. Usual Address for Business is: Global Head Office: Level 29, Olaya Towers Tower B, Intersection of Olaya Street & Mohammed Bin Abdul-Aziz Street, Riyadh 11523. Kingdom of Saudi Arabia,
 - B. Address for Service is: Unit 3/ 11 Harvey Street, Nailsworth, SA, 5083
Phone; +61 450 831 708
Email: amg@betterworldfuturefund.org
3. Any person intending to appear at the Hearing must file a Notice of Appearance, on accordance with The Prescribed Form, together with any Affidavit on which the person intends to rely and serve a copy of the Notice and any Affidavit on the Plaintiff in the Foreign Proceedings; Tenth Defendant/ First Cross Claimant/ Enforcer/ Prosecutor in these proceedings at The Plaintiff in the Foreign Proceedings; Tenth Defendant/ First Cross Claimant/ Enforcer/ Prosecutor's in these proceedings address for service at least 3 days before the date fixed for The Hearing.
4. If you are a Foreign Creditor you must file in the Registry of the Court at the address Mentioned in Paragraph 1 an Affidavit setting out the details of any claim, secured or unsecured, that you may have against the Constitutional Corporations listed above at least 3 days before the date fixed for The Hearing.

Date: Tuesday, 22 July 2025



.....
Name of the Plaintiff in the Foreign Proceedings; Tenth Defendant/ First Cross Claimant/ Enforcer/ Prosecutor in these proceedings, is ANDREW MORTON GARRETT

SCHEDULE

To: DOROTA BORKOWSKI AND MICHAEL MARK BORKOWSKI, Personally, and as Trustees of the Borkowski Irrevocable Family Trust

Plaintiffs

To: BURCHELL J as trustee for DEPARTMENT OF JUSTICE AND COMMUNITY SAFETY trading as COUNTY COURT OF VICTORIA (ABN 32 790 228 959)

First Defendant

To: WESTPAC BANKING CORPORATION ABN 33 007 457 141 (LIQUIDATOR AND MANAGING CONTROLLER APPOINTED) ABN 73 314 764 063

Second Defendant

To: MINTER ELLISON LIMITED ABN 77 478 593 704; ABN 91 556 716 819; ABN 46 001 549 480; ABN 99 009 717 391 (LIQUIDATOR AND MANAGING CONTROLLER APPOINTED) ABN 92 236 032 942

Alleged Solicitors for the Second Defendant (Westpac Banking Corporation)

Waterfront Place, 1 Eagle Street, Brisbane QLD 4000

Email brisbanelitigation@minterellison.com

Proposed Third Defendant

To: SUSHEILA VIJENDRAN, REGISTRAR OF TITLES, For and on behalf of the Department of Transport and Planning

1 Spring St, Melbourne, VIC 3000

Email: advice.enquiries@victorianlrs.com.au; Lv.Warrants@transport.vic.gov.au

Proposed Fourth Defendant

To: JACLYN SYMES, ATTORNEY GENERAL OF THE STATE OF VICTORIA,
Together with

MARK DREYFUS, ATTORNEY GENERAL OF COMMONWEALTH OF AUSTRALIA
CIK; 0000805157 (LIQUIDATOR AND MANAGING CONTROLLER APPOINTED) ABN

86 150 409 985 for and on behalf Of the Sherriff's Office, the Department of Justice and Office of the Commonwealth Attorney General,

Ground Level, 277 William Street, Melbourne, VIC 3000

Email: jaclyn.symes@parliament.vic.gov.au ; moneylaundering@ag.gov.au;

processservice@ags.gov.au ;

Proposed Fifth Defendant

To: AUSTRALIAN FINANCIAL COMPLAINTS AUTHORITY LIMITED
ABN 38 620 494 340 (AFCA)

130 Lonsdale Street, Melbourne, VIC 3000

Email. info@afca.org.au

Proposed Sixth Defendant

To: AUSTRALIAN FINANCIAL TRANSACTIONS ANALYSIS REPORTING CENTRE

ABN: 32 770 513 371 (AUSTRAC)

Level 27, Tower 2, 727 Collins Street, Docklands VIC 3008

Email: info@afca.org.au

Proposed Seventh Defendant

TO: OFFICE OF FOREIGN ASSETS CONTROL OF U.S. DEPARTMENT OF THE
TREASURY,

Treasury Annex / Freedman's Bank Building,

1500 Pennsylvania Avenue, NW, Washington, DC 20220

Email: SBLFinstitutions@treasury.gov

Proposed Eighth Defendant

TO: MCDONALD J as trustee for DEPARTMENT OF JUSTICE AND COMMUNITY
SAFETY trading as THE SUPREME COURT OF VICTORIA (ABN 32 790 228 959)

210 William St, Melbourne VIC 3000, Australia

Email: requests@fundsincourt.vic.gov.au ; mcdonald.chambers@supcourt.vic.gov.au

Proposed Ninth Defendant.

TO: ANOTHONY LEONARD DICKMAN as ACTING SECRETARY OF THE RESERVE
BANK OF AUSTRALIA

65 Martin Place, Sydney, NSW, 2000

Email: secretary@rba.gov.au

Proposed Eleventh Defendant.

To be inserted by Court

Case Number: DCCRM-19-73

Date Signed: 29 July 2024

FDN: 158



RECORD OF OUTCOME – ORDER

DISTRICT COURT OF SOUTH AUSTRALIA
CRIMINAL JURISDICTION
CASE NO: DCCRM-19-73

R

V

ANDREW MORTON GARRETT

Defendant

Counts

2 25/07/2016 ATTEMPT TO DISHONESTLY OBTAIN A FINANCIAL ADVANTAGE

GARRETT, ANDREW MORTON - Defendant 1

Count 2 Finalising

Introduction

Hearing

Hearing location: District Court Adelaide - 29 July 2024 12:30 PM

Hearing type: Directions Hearing (General List)

Presiding Officer

Judge Kudelka

Appearances

For Informant: - Represented by Mr Mark Norman KC in person

Defendant 1 in person - self-represented

Date of Order:

29 July 2024

Defendant 1 - ANDREW MORTON GARRETT

Plea and Conviction Status:

Count 2. NOT APPLICABLE 25/11/2020

Orders

It is ordered that:

Count 2

Nolle Prosequi

1. An entry of nolle prosequi be recorded on the charge(s).

Authentication



.....
Signature of Judicial Officer
Judge Kudelka

Malicious Prosecution

Malicious prosecution is a tort or a civil wrong, which enables a person who is the subject of groundless and unjustified court proceedings to seek a civil claim for damages against their prosecutor.

Termination

The following are examples of prosecution proceedings terminated in the plaintiff's favour:

- Acquittal of the plaintiff on the merits of the case;
- Termination of the case where conviction is quashed for technical reasons such as a misdirection to the jury by the trial judge;
- Discontinuance of the prosecution by the prosecutor before verdict;
- Termination of the prosecution because the Crown enters a nolle prosequi.

A nolle prosequi is a formal notice of discontinuance of an action lodged by the prosecution. See *Maxwell v R* [1995] HCA 62.

If the prosecution proceedings are terminated in a way that means that the accused person is not actually found guilty by a Court (such as where a nolle prosequi is entered), the plaintiff does not need to positively prove their innocence in order to recover damages for malicious prosecution.

See *Commonwealth Life Assurance Society Ltd v Smith* (1938) 59 CLR 527 and *Beckett v New South Wales* [2013] HCA 17.

Reasonable cause

The plaintiff must prove that the prosecutor started the prosecution without reasonable cause.

Reasonable cause is established when the following conditions exist:

- The prosecutor must believe that the accused is probably guilty of the offence;
- The belief must be founded upon information in the possession of the prosecutor pointing to such guilt, not upon mere imagination or surmise;
- The information, whether it consists of things observed by the prosecutor or things told to him or her by others, must be believed by him or her to be true;
- This belief must be based upon reasonable grounds;
- The information possessed by the prosecutor and reasonably believed by him or her to be true, must be such as would justify a person of ordinary prudence and caution in believing that the accused is probably guilty.

A close examination of the facts of each case and the elements of the offence for which the plaintiff was charged is necessary in considering whether an action for malicious prosecution is warranted.

It is reasonable for the prosecutor to bring the charge if the question of whether the plaintiff was sufficiently involved in the offence is a matter to be left to the jury. Also, if the plaintiff's involvement is a question of fact to be left to the jury, then the prosecutor's decision to continue the prosecution gives no grounds for the action.

It is necessary for the plaintiff to prove that the prosecutor did not hold the belief, or did not hold the belief on reasonable grounds. The evidence necessary to challenge the belief is not supplied by proof that the prosecutor was aware of facts which might or might not have satisfied the prosecutor of the plaintiff's guilt, or that the defendant had information, some of which pointed to guilt and some to innocence.

To escape liability, the prosecutor need only be found to have had an honest belief in the fact that there was a sufficient case to launch a prosecution against the plaintiff, not a belief that a conviction would be secured.

Malice

Malice is a wrongful or improper purpose in bringing the prosecution. It can be notions of spite, ill-will and improper motive. Malice can be established if it can be demonstrated that the prosecutor has an improper and collateral purpose in bringing the prosecution.

Examples of malice where prosecution was brought:

- in order to silence the plaintiff in other legal proceedings;
- to punish the plaintiff for giving evidence against the police in other proceedings;
- to prevent the holding of a shareholders' meeting.

Malicious prosecution can be similar to abuse of process. However, unlike actions for abuse of process, malice must be established in actions for malicious prosecutions.

Damage

The plaintiff must prove actual damage. This can be done under one of three heads:

- Damage to the plaintiff's reputation
- Damage to the plaintiff's person or property
- Damage to the plaintiff's pecuniary interest.

As regards reputation, the fact that it could have defamatory overtones, that is, capable of being understood in a defamatory sense, is not enough. It may be sufficient damage if the prosecution caused the plaintiff's imprisonment. Pecuniary loss to the plaintiff may include legal costs incurred in defending the charge in the prosecution proceedings.

Being charged and therefore exposed to the risk of loss of liberty has been held to constitute sufficient damage: *Rayson v South London Tramways* [1893] 2 QB 304.

See also:

Commonwealth Life Assurance Ltd v Smith (1938) 59 CLR 527.

Beckett v New South Wales [2013] HCA 17

Nye v State of New South Wales & ors [2003] NSWSC 1212.

Briginshaw v Briginshaw (1938) 60 CLR 336.

Rejtek v McElroy (1965) 112 CLR 517.

Mitchell v John Heine and Son Ltd (1938) SR (NSW) 466.

AMG 3715

NOLLE PROSEQUI / MALICIOUS PROSECUTION/FRAUDULENT TRADING INSTRUCTIONS; Re Australian Taxation Office v Andrew Morton Garrett (AMC-18-5575 & DCCRM-19-073) & Reserve Bank of Australia v Andrew Morton Garrett (HMC-2019- 9596 & AMC-20-2886)

AMG@OVCR <andrew.garrett@oenoviva-capital-resources.com>

Sun 12/09/2021 05:27

To: scott@matthewmitchell.com.au <scott@matthewmitchell.com.au>; ADEReceptionMailboxShared@cdpp.gov.au <ADEReceptionMailboxShared@cdpp.gov.au>; Registry Adelaide Magistrates Court <amregistry@courts.sa.gov.au>; premier@sa.gov.au <premier@sa.gov.au>; attorney.general@commonwealth-attorney-general.org <attorney.general@commonwealth-attorney-general.org>

Cc: Matthew Galasso <matthew.galasso@oenoviva-capital-resources.com>; michelle.scerri@australianpeoplefuturefund.org <michelle.scerri@australianpeoplefuturefund.org>; Peter Kerin <peter.kerin@australianpeoplefuturefund.org>; Paul Rigby <cfo@oenoviva-capital-resources.com>; Paul Rigby <cfo@oenoviva-capital-resources.com>; dae.so@oenoviva-capital-resources.com <dae.so@oenoviva-capital-resources.com>; 'Dae So' <oenovivawashingtoninc@gmail.com>; 'Jay Kim' <Jay@jkimtaxlaw.com>

📎 5 attachments (9 MB)

Steps in a Prosecution.pdf; AMG 20; Model Litigant Submissions dated 5th November 2014.pdf; AMG 5; Rule 49 Notice First Addendum filed 17th April 2020.pdf; AMG 3456 Scott Laidlaw to LSC confirm acting 09.04.2021 attaching Hobart Summons.pdf; AMG 3457 19-90596; Summons brought by CDPP informant AFSA Hobart Summons relied upon by Scott Laidlaw.PDF;

Dear Judge Hribal, Director of Public Prosecutions and Scott,

Further to my email and annexures dated 10th August 2021 below and attached I note that none of the addressees, including the Premier of this State, have taken any steps since that communique

My instructions remain unchanged; both of you are instructed to bring applications before the Court Tomorrow that these proceedings are malicious prosecution/ abuse of power of the state and a declaration of Nolle Prosequi ought to be made.

I require a copy of the relevant certification of compliance with the Legal Service Directions by the Office of Legal Services Coordination as the first step in hearing the Nolle Prosequi application tomorrow.

Although there are differences in practice between the different states and territories, the attorney-general, solicitor-general or designated law officer in each may enter a nolle prosequi, with the effects that the indictment is not proceeded with and the accused person is discharged. Although the general practice is not to revive the proceedings, this may be done if important new evidence comes to light or where it is in the interests of justice to do so. It is not uncommon for a nolle prosequi to be entered because the evidence available to the prosecution is often not reviewed by senior prosecuting counsel, and found to be inadequate a few days before the trial date, or a witness refuses to testify.

Attempts by the prosecution to enter a nolle prosequi in order to avoid a trial which has started from reaching its conclusion, for example, where a jury may have signalled their likely verdict, where the case has gone badly for the prosecution or where the prosecutor has proceeded without an unavailable witness, have been regarded by the Australian courts as an abuse of process, as the prosecution may hope to reinstate the charges before a different jury or with the missing witness. This rule applies even if entering the nolle prosequi was not challenged when it was done.[26] A number of other cases have been brought before the Australian courts, claiming that the reinstatement of charges after enter a nolle prosequi is an abuse of process in other circumstances. None has succeeded, as the relevant circumstances did not constitute abuse, but the appellate court stated that there could be case where making a charge following the entering of a nolle could be oppressive and so an abuse of the court process.

Queensland Consolidated Acts

[\[Index\]](#) [\[Table\]](#) [\[Search\]](#) [\[Search this Act\]](#) [\[Notes\]](#) [\[Noteup\]](#) [\[Previous\]](#) [\[Next\]](#) [\[Download\]](#)
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CRIMINAL CODE 1899 - SECT 563

Nolle prosequi

563 Nolle prosequi

(1) A Crown Law Officer may inform any court, by writing under the officer's hand, that the Crown will not further proceed upon any indictment, or in relation to any charge contained in any indictment, then pending in the court.

(2) A Crown prosecutor or a person appointed by the Governor in Council to present indictments in any court of criminal jurisdiction may inform that court, by signed writing, that the Crown will not further proceed upon any indictment, or in relation to any charge contained in any indictment, then pending in that court.

(3) When such information is given to the court the accused person is to be discharged from any further proceedings upon that indictment or charge.

Andrew Garrett

Chief Executive Officer/ Managing Trustee/ Chairman/ Commonwealth Attorney General/ Liquidator and Managing Controller Appointed to the Crown (Liquidator Appointed and Managing Controller Appointed), Corporate Commonwealth States and Territories of Australia (Liquidator Appointed and Managing Controller Appointed),

Reserve Bank of Australia (Liquidator Appointed and Managing Controller Appointed) and otherwise as disclosed in Public Interest Disclosure Drive at:

<https://onedrive.live.com/?id=13EBD865C7415CD4%2113999&cid=13EBD865C7415CD4>

All Rights Reserved, UCC 1-308a



OenoViva Global ("**OV(Global)**"); OenoViva Business Systems ("**OVBS**"); OenoViva Capital Resources ("**OVCR**") OenoViva Hand Crafting ("**OVHC**") OenoViva Artisans ("**OVA**") *Together hereinafter "OenoViva"*

www.oenoviva-capital-resources.com & www.oenoviva.com & www.oenoviva-artisans.com
& www.carbonhelix.net & <https://vivacoin.org> & www.thecommonwealth.org & www.rba.gov.au

Asia

Hong Kong: Level 19, Two International Finance Centre, 8 Finance Street, Central, Hong Kong

Ho Chi Minh: Suite 103, 140 Nguyen Van Thu Street, District 1, Ho Chi Minh, Vietnam

USA

Washington: 1015 15th ST NW #1000 Washington DC 20005

Australia

Hobart: Level 6, Reserve Bank Building, 111 Macquarie Street, Hobart, TAS, 7000

Adelaide: Level 30 Westpac House, 91 King William Street, Adelaide, SA, 5000

Melbourne: Level 27, 101 Collins Street, Melbourne, VIC, 3000

Sydney: Level 35, Tower One Barangaroo, International Towers Sydney, 100 Barangaroo Avenue, Sydney, NSW, 2000

Brisbane: Level 36, Riparian Plaza, 71 Eagle Street, Brisbane, QLD, 4000

M: +61 450 831 708

E: andrew.garrett@oenoviva-capital-resources.com & attorneygeneral@commonwelath-attorney-general.org

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From: AMG@OVCR <andrew.garrett@oenoviva-capital-resources.com>

Sent: 10 August 2021 11:04

To: ADEReceptionMailboxShared@cdpp.gov.au <ADEReceptionMailboxShared@cdpp.gov.au>; chambers.chiefjustice@courts.sa.gov.au <chambers.chiefjustice@courts.sa.gov.au>; premier@sa.gov.au <premier@sa.gov.au>

Cc: Steven M. Chen <scohen@hoganwillig.com>; scott@matthewmitchell.com.au <scott@matthewmitchell.com.au>; Peter Kerin <peter.kerin@australianpeoplefuturefund.org>; Matthew Galasso <matthew.galasso@oenoviva-capital-resources.com>; Paul Rigby <cfo@oenoviva-capital-resources.com>; michelle.scerri@australianpeoplefuturefund.org <michelle.scerri@australianpeoplefuturefund.org>

Subject: AMG 3458 DOUBLE JEOPARDY: AMG 3327 Re Australian Taxation Office v Andrew Morton Garrett (AMC-18-5575 & DCCRM-19-073) & Reserve Bank of Australia v Andrew Morton Garrett (HMC-2019- 9596 &AMC-20-2886)

Dear Director, Mr Kourakis, Judge Hribal, Mr Marshal,

Please advise the status of my application dated 2nd of August 2021 (copied below) for compliance with the Crown (Liquidator and Managing Controller Appointed) ("**the Crown**") Common Law Model Litigant Continuous Full Disclosure of all documents and things.

DOUBLE JEOPARDY

It is my clear recollection that during the final hearing of the Hobart Proceedings the CDPP withdrew those proceedings which are identical in form to the Adelaide Proceedings.

I did not provide written or oral consent to the transfer of those proceedings which were then at an end.

On the 29th July 2021 I received part disclosure from the Legal Services Commission of SA that Mr Laidlaw relied upon the Summons served in the Hobart Proceedings (**AMG 3457**) per his email to the Legal Services Commission dated 9th April 2021. (**AMG 3456**)

Of particular importance please provide a copy of the order that you appear to infer exists giving legal effect to that transfer and where it is that you say I consented in writing to that Transfer order from Hobart?

A period of 8 days has elapsed since my application for disclosure without compliance and I still have not received a copy of the Brief of Evidence from You, nor have I received a copy of the same from Mr Laidlaw despite 11 requests for a copy made over an extended period of time.

LEGAL SERVICES DIRECTIONS COMPLIANCE CERTIFICATION

Please also provide a copy of certification of Compliance with the Legal Services Directions by the Office of Legal Services Co-Ordination in respect to all proceedings brought against me by the Crown.

It ought be incumbent on any public official exercising judicial discretionary public powers to inquire as a first step in any proceedings to inspect that certification.