

18. The Eighteenth Constitutional Matters arises as to whether the European system of Advocates General ought to be adapted to the Jurisdictions of the Commonwealth, the States and Territories.
19. The Nineteenth Constitutional Matter arises as to the Application of “**the Bethcar Strategy**” by officers/contractors of the Commonwealth of Australia, officers of the State Courts, Lawyers and State Executive Government is lawful in consideration of applications for compensation from the Victims of Crime Fund, the Assurance Fund and the Fidelity Fund in each state.
20. The Twentieth Constitutional Matter arises as to what are the duties of the Judicial Officers of the Federal Courts, State Courts, Territory Courts and Tribunals.
21. The Twenty First Constitutional Matter arises as to whether Judicial Officers are bound by the Administrative Law obligation to inquire in the administration of Court and Tribunal Proceedings.
22. The Twenty Second Constitutional Matter arises as to whether *the Privy Council (Limitation of Appeals) Act 1968 (Cth)*, *Privy Council (Appeals from the High Court) Act 1975 (Cth)*, *the Australia Acts (Request) Act 1985 (SA), (Vic), (NSW), (Qld), (WA), (TAS), (NT) & (ACT)*; *the Australia Act 1986 (UK)*; *the Australia Act 1986 (Cth)* were effective to abolish the right of citizens to administrative review by the Queen in Council in the light of the Republic Referendum 1999.
23. The Twenty Third Constitutional Matter arises as to whether s74 of the Constitution is both invalid and unlawful within the meaning of the findings of the High Court in *Project Blue Sky*.
24. The Twenty Fourth Constitutional Matter arises as to whether any member of any Legislature ought to make recommendations as to the appointment of Agency Heads of Executive Government or whether a separate National Body be established for that purpose.
25. The Twenty Fifth Constitutional Matter arises as to whether any member of any Legislature ought to make recommendations as to the appointment of Judicial Officers of any Court or Tribunal or whether a separate National Body be established for that purpose.
26. The Twenty Sixth Constitutional Matter arises as to whether the Judicial Officers of the States and Territories should be self-regulated.
27. The Twenty Seventh Constitutional Matter arises as to whether it is lawful or valid for the Legislature of the States and Territories to enact amendments to State Enactments to facilitate the use of Compensation Funds for the purposes of propping up State Budgets.

28. The Twenty Eighth Constitutional Matter arises as to whether any State or Territory should be involved in administering Compensation Claims by Victims from Compensation Funds of any kind
29. The Twenty Ninth Constitutional Matter arises as to whether any State or Territory should be self-insured.
30. The Thirtieth Constitutional Matter arises as to whether s6(2) of the Federal Court of Australia Act 1976 (Cth) is unlawful and/or invalid when read against the Covenant and the Constitution.
31. The Thirty First Constitutional Matter arises as to whether recommendations as to the appointment of the Governor General under *the Constitution*, or the appointment of Governors to be appointed *the Constitution Act 1975 (Vic)*, *the Constitution Act 1975 (NSW)*, *the Constitution Act 1975 (SA)*, *the Constitution Act 1975 (WA)*, *the Constitution Act 1975 (QLD)* and *the Constitution Act 1975 (TAS)*, or the appointment of Administrators of Territories ought to be made by any member of the Legislature or whether a National Separate Independent Body should be established for that purpose.

Facts

1. This Court has improperly interpreted the application of FCR 1.32 and s20 of *the Federal Court of Australia Act 1976 (Cth)*.
2. S6(2) of *the Federal Court of Australia Act 1976 (Cth)* is invalid and unlawful.
3. The Respondents and Counsel obtained sequestration orders against the Applicant by Fraud in;
 - a. ADG90 of 2004 on the 24th September 2004, and
 - b. JL 177 of 2015 on the 15th May 2015
4. The Respondents and Counsel obtained vexatious litigant orders under s37AO of the Federal Court of Australia Act against the Applicant and this Court in VID 600 of 2014 by Fraud.
5. The Provisions of *the Constitution Act 1934 (SA)* and *the Constitution Act 1975 (Vic)* relating to separation of powers are invalid at s109 of the Constitution when read against the Constitution and the Covenant.
6. The following acts are invalid and unlawful;
 - a. South Australian Acts
 - i. *The Acts Interpretation Act 1915 (SA)*
 - ii. *The Legal Practitioners Act 1981 (SA)*,

- iii. *The Freedom of Information Act 1991 (SA)*
- iv. *The Public Sector Act 2009 (SA)*
- v. *Public Sector (Honesty and Accountability) Act 1995 (SA)*
- vi. *The Ombudsman Act 1972 (SA)*
- vii. *The Independent Commission Against Corruption Act 2012 (SA)*
- viii. *The Police Act 1998 (SA)*
- ix. *The Real Property Act 1988 (SA)*
- x. *The Real Property Act (Registration of Titles) Act 1945 (SA)*
- xi. *The Registration of Deeds Act 1935 (SA)*
- xii. *The Real Property Act (Registration of Titles) Act 1945 (SA)*
- xiii. *Law of Property Act 1936 (SA)*
- xiv. *The Victims of Crime Act 1991 (SA)*
- xv. *The Criminal Law Consolidation Act 1935 (SA)*
- xvi. *The Australia Acts (Request) Act 1985 (SA)*
- xvii. *The District Court Act 1991 (SA)*
- xviii. *The Supreme Court Act 1936 (SA)*
- xix. *The Trustees Act 1936 (SA)*
- xx. *The Constitution Act 1934 (SA)*

b. Victorian Acts

- i. *Imperial Acts Application Act 1980 (Vic)*
- ii. *The Legal Profession Act 2004 (Vic),*
- iii. *The Legal Profession Uniform Law Application Act 2014 (Vic)*
- iv. *The Freedom of Information Act 1982 (Vic)*
- v. *The Public Administration Act 2004 (Vic)*
- vi. *Public Administration Amendment (Public Sector Improvement) Act 2014 (Vic)*
- vii. *The Ombudsman Act 1973 (Vic)*
- viii. *The Independent Broad Based Commission Against Corruption Act 2011 (Vic)*
- ix. *The Property Law Act 1958 (Vic)*
- x. *The Victoria Police Act 1998 (Vic)*
- xi. *The Charter of Human Rights and Responsibilities Act 2006 (Vic)*
- xii. *The Victorian Inspectorate Act 2011 (Vic)*
- xiii. *The Victims of Crime Assistance Act 1996 (Vic)*
- xiv. *Workplace Injury Rehabilitation and Compensation Act 2013 (Vic)*
- xv. *The Crimes Act 1958 (Vic)*
- xvi. *The Australia Acts (Request) Act 1985 (Vic)*
- xvii. *The Supreme Court Act 1986 (Vic)*
- xviii. *The Constitution Act 1975 (Vic)*

7. All decisions of the Legal Practitioners Conduct Board, the Legal Practitioners Conduct Commissioner, the Legal Services Commissioner and the Legal Services Board in respect to the complaints against Lawyers are invalid and unlawful.
8. The Respondents and Counsel has breached the Crown's Model Litigant Obligations to appraise the court of all of the facts.
9. The Respondents and Counsel have defrauded the Court.
10. The solicitor's and advocate's immunity from prosecution of the Respondents and Counsel is void
11. The Respondents and Counsel have abused process for the improper collateral purpose of avoiding deferring and frustrating the application for compensation by the Applicant which exceeds the judgement debt the subject of this proceeding.
12. This Court, The Respondents and Counsel have inconsistently interpreted the provisions of *the Legal Practitioners Act 1981 (SA)* prior and the amendments arising under *the Legal Practitioners Act 1981 Amendments Act 2014 (SA)* taking effect from the 1st July 2014.
13. The conduct of the Respondents and Counsel is unlawful.
14. *The Supreme Court Act 1935 (SA)* is invalid and unlawful.
15. *The District Court Act 1991 (SA)* is invalid and unlawful.
16. *The Supreme Court Rules 2006 (SA)* are invalid and unlawful.
17. *The District Court Rules 2006 (SA)* and *The Supplementary Rules 2014 (SA)* are invalid and unlawful.
18. The Federal Court Rules are unlawful.
19. The Federal Court Corporations Rules are unlawful.
20. The District Court of South Australia and the Supreme Court of South Australia are not proper receptacles for the exercise of the Federal Jurisdiction and the Common Law.
21. The County Court of Victoria and the Supreme Court of Victoria are not proper receptacles for the exercise of the Federal Jurisdiction and the Common Law.
22. All Judicial Officers of the Federal Court of Australia, The Federal Circuit Court of Australia the Supreme Court of South Australia and the District Court of South Australia take written and implied instructions from executive government and the legislature to make decisions that avoid defer and frustrate claims for compensation.
23. The Tort of Champerty and Maintenance by lawyers and insolvency practitioners against the Respondents is unlawful in circumstances of abuse of process.
24. The application of the Respondents is abuse of process.

25. The relationship between Lawyers, Insolvency Practitioners, the Judiciary, Executive Government and the Legislature of the State of South Australia is unlawful and is a secret society that is a breach of the aforementioned provisions of Australian Treaty Series No 23, the Constitution, the Rule of Law, the Common Law and the Unwritten Law.
26. Self-Regulation of the Judiciary of the States of South Australia and Victoria is unlawful and misregulation.
27. Self-Regulation of the Judiciary of the Federal Court of Australia and the Federal Circuit Court of Australia is unlawful and misregulation.
28. It is unlawful for any court to apply the provisions of *the Bankruptcy Act 1966* (Cth) as a barrier to justice.
29. It is unlawful for any court to apply the provisions of *the Corporations Act 2001* (Cth) as a barrier to justice.
30. It is unlawful for the Respondents, Counsel and any Court to apply the provisions of s39 of *the Supreme Court Act 1936* (SA) and s37AO of *the Federal Court of Australia Act 1976* (Cth) as a barrier to justice.
31. It is unlawful for the States of South Australia and Victoria to borrow from the any compensation fund for the purpose of applying those borrowings to the funding of the State Budget in circumstances where the Legislature has no intention of repaying the advance from the Fidelity Fund.
32. It is unlawful for the Respondents and Counsel to act in a manner that is adversarial to the Applicant during investigations against lawyers in the exercise of the Statutory Powers of the Judge and obligation to inquire.
33. The conduct of the Respondents and Counsel is serious professional misconduct within the meaning of *the Legal Practitioners Act 1981*(SA), *the Legal Profession Act 2004* (Vic) and *the Legal Profession Uniform Law Application Act 2014* (Vic)
34. The conduct of the Court is serious professional misconduct within the meaning of *the Legal Practitioners Act 1981*(SA), *the Legal Profession Act 2004* (Vic) and *the Legal Profession Uniform Law Application Act 2014* (Vic)
35. No Judge of the Federal Court of Australia and the Federal Circuit Court of Australia is a properly appointed Judicial Officer.
36. All Judicial Officers of the Supreme Court of South Australia and the District Court of South Australia have not been properly appointed.
37. All Judicial Officers of the Supreme Court of Victoria and the County Court of Victoria have not been properly appointed.
38. The appointment of the Governors of South Australia and Victoria is improper, unlawful and invalid.

- 39. The conduct of the Respondents and Counsel is corrupt conduct within the meaning of the Constitution, the ICAC Act, the IBAC Act the Common Law, the Rule of Law and the Unwritten Law
- 40. The conduct of the Court is corrupt conduct within the meaning of the Constitution, the ICAC Act, the IBAC Act, the Common Law, the Rule of Law and the Unwritten Law
- 41. The conduct of the Legislature is corrupt conduct within the meaning of the Constitution, the ICAC Act, the IBAC Act, the Common Law, the Rule of Law and the Unwritten Law
- 42. The conduct of the Respondents and Counsel is Criminal and invokes the Summary Jurisdiction of the Federal Court.
- 43. The Conduct of the Court in VID 185, VID 187, VID 197,VID 248, VID 304, VID381, VID 425, VID 557, VID 584, VID 585, VID 600, VID703, VID 731, VID 732, VID 739 of 2014, VID 158-VID 166, VID 361-VID 366, VID 376 and VID 377 of 2015 is judicial misbehaviour and breach of s32, s33 and s34 of *the Crimes Act* 1914 (Cth)
- 44. The court has turned a blind eye to the conduct of the Respondents, Counsel and the lack of separation of powers expressed in the provisions of *the Constitution Act* 1934 (SA) and *the Constitution Act* 1975 (Vic)
- 45. The Court has breached its duties and failed to supervise and/or investigate the conduct of the Respondents and Counsel as public servants, contractors, officers of the court and Legal Practitioners.
- 46. Judicial immunity from prosecution is void.

The Applicant’s address

The Applicant’s address for service is:

Phone: 0424 324 135

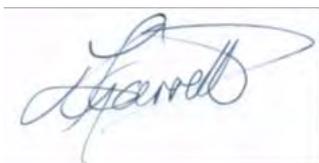
Place: 10/15 Hunter Street, Hobart, Tasmania, 7000

Email: andrew.garrett@taggc.com.au

Service on the Respondents by Counterclaim/the Alleged Applicants, the Second Respondent and the Proposed Cross Respondents by Cross Claim set out in the Schedule

It is intended to serve the Second Respondent, the Respondents by Counter Claim/ Alleged Applicants and the Proposed Cross Respondents by Cross Claim set out in the schedule with this application

Date: 21st October 2018



.....
Signed by Andrew Garrett
The First Respondent, the Applicants by Cross Claim and Applicants by Counter Claim

To:

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THE SCHEDULE

Applicants

Second Applicant: The Truffle Group Pty Ltd ACN 128 049 392 (In Liquidation)

(Controller Appointed)

Third Applicant: Prospero Trading Pty Ltd ACN 123 655 845 (In Liquidation)

(Controller Appointed)

Fourth Applicant: Ouranos Holdings Pty Ltd ACN 162 749 573 (Controller Appointed)

Fifth Applicant: Maiga Pty Ltd ACN 162 744 729 (Controller Appointed)

Sixth Applicant: Manta Wharf Pty Ltd ACN 164 049 450 (Controller Appointed)

Seventh Applicant: Ruma Pty Ltd ACN 067 962 083 (Controller Appointed)

Eighth Applicant: Prospero Group-Bourke Road Pty Ltd ACN 133 247 766 (Controller Appointed)

Ninth Applicant: Rubis Trading Pty Ltd ACN 165 684 122 (Controller Appointed)

Tenth Applicant: Wharfside Pty Limited ACN 122 604 157 (Controller Appointed)

Eleventh Applicant: Manujan Pty Ltd ACN 099 288 650 (Controller Appointed)

Twelfth Applicant: ACN 111 804 383 Pty Ltd ACN 111 804 383 (Controller Appointed) in its own capacity and as Trustee of the Yates Beaggi Lawyers Unit Trust ABN 94 925 098 876

Thirteenth Applicant: Yates Law Pty Ltd ACN 168 284 352 (Controller Appointed) in its own capacity and as trustee of the Yates & Co Unit Trust ABN 75 188 551 271

Fourteenth Applicant: Steven Vlahos

Fifteenth Applicant: Financial Pty Ltd ACN 149 682 128 (Controller Appointed)

Sixteenth Applicant: Brenton Adrian Yates

Seventeenth Applicant: Farshad Amirbeaggi

Eighteenth Applicant: Strut Master No 2 Pty Limited (Controller Appointed) In its own capacity and as trustee of the Yates Amirbeaggi Unit Trust ABN 54 278 630 521

Nineteenth Applicant: Deceased Estate of Juris Voldemars Rubis

Respondents

Second Respondent; The Registrar of the Personal Property Security Register

Proposed Cross Respondents

Proposed First Cross Respondent; Brent Kijurina

Proposed Second Cross Respondent; Richard Albarran

Proposed Third Cross Respondent; Hall Chadwick (NSW) Pty Ltd

Proposed Fourth Cross Respondent; Deceased Estate of Christopher Simon James

Proposed Fifth Cross Respondent; WAVERLEY ENTERPRISES PTY LTD ACN: 099 113 4

Proposed Sixth Cross Respondent; The Trustee for AETOS UNIT TRUST ABN 21 469 827 125

Proposed Seventh Cross Respondent; STRATEGIC ACCOUNTING ADVISERS PTY LTD ACN 105 232 960

Proposed Eighth Cross Respondent; The Federal Court of Australia

Proposed Ninth Cross Respondent; Chief Justice Alsop

Proposed Tenth Cross Respondent; ASIC

Proposed Eleventh Cross Respondent; The Law Society of NSW

Proposed Twelfth Cross Respondent; The Legal Services Commissioner of NSW

Proposed Thirteenth Cross Respondent; Justice Thawley

Proposed Fourteenth Cross Respondent; Peter Donkin

Proposed Fifteenth Cross Respondent; Andrew Dunstan

Proposed Sixteenth Cross Respondent; National Australia Bank Limited

Proposed Seventeenth Cross Respondent; ANZ Banking Group Limited

Proposed Eighteenth Cross Respondent; Suncorp Metway Limited

Proposed Nineteenth Cross Respondent; Delegate Elizabeth Bennet

Proposed Twentieth Cross Respondent; Commonwealth Ombudsman

Proposed Twenty First Cross Respondent; Director Susan Whitaker

Proposed Twenty Second Cross Respondent; Commonwealth Attorney General

Proposed Twenty Third Cross Respondent; Members of the Senate Standing Committee on Legal and Constitutional Affairs

Proposed Twenty Fourth Cross Respondent; The Members of the House of Representatives of the Parliament of the Commonwealth of Australia

Proposed Twenty Fifth Cross Respondent; The Members of the Senate of the Parliament of the Commonwealth of Australia

Proposed Twenty Sixth Cross Respondent; Vincent Tavoraro

Proposed Twenty Seventh Cross Respondent; Sue Anne Thompson

Proposed Twenty Eighth Cross Respondent; News Limited

Proposed Twenty Ninth Cross Respondent; Director of Public Prosecutions

Proposed Thirtieth Cross Respondent; Adelaide Magistrates Court

Proposed Thirty First Cross Respondent; Justice Nettle

Proposed Thirty Second Cross Respondent; Justice Crennan

Proposed Thirty Third Cross Respondent; Andrew Phelan

Proposed Thirty Fourth Cross Respondent; High Court of Australia

The Proposed Thirty Fifth to Two Hundred Fifty Forth Cross Respondents as set out in the Interlocutory Application dated 21st October 2018 attached

Date; 21st October 2018

Lodgment Details

Lodgment ID: 649960 **Transmission Date:** 21/10/2018 2:03:49 PM AEDT
Lodgment Date: 21/10/2018 2:03:49 PM AEDT

Cause of Action Details

Filing: Existing **Jurisdiction:** Federal Court of Australia (FCA)
Filing Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA **File Number:** NSD1848/2018
File Title: ROBERT VOLDEMARS RUBIS & ORS v ANDREW MORTON GARRETT AS TRUSTEE OF THE ANDREW GARRETT FAMILY TRUST TRADING AS DYNAMIC COMMERCIAL WORKFORCE SOLUTIONS
Cause of Action: MISCELLANEOUS ACTION filed by THE TRUFFLE GROUP(A) on 02-OCT-2018

Lodged Documents

Original Document	Document Type	Document Status	Fee	Requests
NSD 1848 of 2018 Interlocutory Application dated 21.10.2018 Annexures.pdf	Interlocutory Application - Form 35 - Rule 17.01(1)(a)	Supporting Document	AUD\$ 505.00	
NSD 1848 of 2018 Affidavit of First Respondent & Vol 1 Exhibits 26052016.pdf	Affidavit - Form 59 - Rule 29.02(1)	Supporting Document	AUD\$ 0.00	
NSD 1848 of 2018 Vol 2 of Exhibits to Affidavit of First Respondent 26052016.pdf	Tender Bundle	Supporting Document	AUD\$ 0.00	
NSD 1848 of 2018 Affidavit of First Respondent dated 30.08.2011 & Vol 1 of Exhibits.pdf	Affidavit - Form 59 - Rule 29.02(1)	Supporting Document	AUD\$ 0.00	
NSD 1848 of 2018 Vol 2 of Exhibits to Affidavit of First Respondent dated 30.08.2011.pdf	Tender Bundle	Supporting Document	AUD\$ 0.00	

Total Cost (\$AUD): AUD\$ 505.00

Parties for this Action

Sequence	Representative	Name	Matter Role Type	Lodged on behalf of	Corporate Type
1		Garrett, Andrew	Respondent	<input checked="" type="checkbox"/>	other

Payment Details

Based on the Corporation Type and Document(s) selected, the total transaction cost is AUD\$ 505.00.

By proceeding to payment the Liable Party warrants that the Corporation Type chosen is correct. Criminal penalties can apply to a person who knowingly makes an untrue representation to obtain a benefit from the Commonwealth.

By continuing to payment I confirmed that I had read, understood and agreed to the above statement.

Payment Method:	Exemption - General	Amount (\$AUD):	AUD\$ 505.00
Party applying for Exemption (General):	Garrett, Andrew	Exemption (General) Reason:	Pensioner Conc Card
Exemption (General) Document:	Appln-Exemption-from-Paying-Court-Fees-General (1).pdf		
Payer:	Garrett, Andrew		

Interlocutory Application

No. NSD 1848 of 2013

Federal Court of Australia
District Registry; NSW
Division: General

ROBERT RUBIS and others set out in the Schedule

First Applicant
&

ANDREW MORTON GARRETT as Trustee of the Andrew Garrett Family Trust trading as Dynamic Commercial Workforce Solutions and others set out in the Schedule

The First Respondent

To the Respondents by Counterclaim/the Alleged Applicants, The Second Respondent and the Proposed Cross Respondents by Cross Claim,

The First Respondent; Personally as the First Respondent, all other Respondent capacities and as the Applicants by Cross Claim and Counter Claim applies for orders and declaration of right under s20(5)(da), s21 & s31A of the Federal Court of Australia Act 1976 (Cth), and as set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below.

Time and date for hearing:
Place:

Date:

Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of (name & role of party) Andrew Morton Garrett, The First Respondent
Prepared by (name of person/lawyer) The First Respondent
Law firm (if applicable)
Tel 0424 324 135 Fax
Email andrew.garrett@taggc.com.au

Address for service
(include state and postcode) 10/15 Hunter Street, Hobart, Tasmania, 7000

Details of claim

On the grounds to be stated in this application, a Statement of Counterclaim, Affidavits, Filed Tender Bundles or other document prescribed by the Rules the First Respondent (in all of his capacities) set out in the Interlocutory Application dated the 10th, 14th, 18th & 19th October 2018 filed in these proceedings claims relief as follows;

Claim for declaration of a Right and other relief

1. That this Honourable Court make such orders as it deems fit in the administration of justice so that justice is not only seen to be done but is done
2. That an order is made joining the Judicial Officers presiding in the Actions Listed in Annexure 1 as the Thirty Fifth to One Hundred Seventy Seventh Cross Respondents by Cross Claim respectively.
3. That an Order is made joining;
 - a. The Australian Human Rights Commissioner as the One Hundred Seventy Eighth Cross Respondent
 - b. The Federal Circuit Court of Australia as the One Hundred Seventy Ninth Cross Respondent
 - c. The Administrative Appeals Tribunal as the One Hundred Eightieth Cross Respondent
 - d. Victorian Civil Administrative Appeals Tribunal as the One Hundred Eighty First Cross Respondent
 - e. The South Australian Civil Administrative Appeals Tribunal as the One Hundred Eighty Second Cross Respondent
 - f. Michael Rann, MP (retired) as the One Hundred Eighty Third Cross Respondent
 - g. Michael Atkinson, MP as the One Hundred Eighty Fourth Cross Respondent
 - h. Jay Wetherill, MP as the One Hundred Eighty Fifth Cross Respondent
 - i. John Rau, MP as the One Hundred Eighty Sixth Cross Respondent
 - j. The Adelaide Magistrates Court as the One Hundred Eighty Seventh Cross Respondent
 - k. The District Court of South Australia as the One Hundred Eighty Eighth Cross Respondent
 - l. The Supreme Court of South Australia as the One Hundred Eighty Ninth Cross Respondent
 - m. The South Australian Ombudsman as the One Hundred Ninetieth Cross Respondent
 - n. The South Australian ICAC Commissioner as the One Hundred Ninety First Cross Respondent
 - o. The South Australian Commissioner of Police as the One Hundred Ninety Second Cross Respondent
 - p. The Legal Practitioners Conduct Commissioner as the One Hundred Ninety Third Cross Respondent
 - q. Gregory Mornington May as the One Hundred Ninety Fourth Cross Respondent

- r. Minter Ellison Lawyers South Australia as the One Hundred Ninety Fifth Cross Respondent
- s. Finlayson's Lawyers as the One Hundred Ninety Sixth Cross Respondent
- t. Griffins Lawyers as the One Hundred Ninety Seventh Cross Respondent
- u. James Marsh as the One Hundred Ninety Eighth Cross Respondent
- v. The Law Society of South Australia as the One Hundred Ninety Ninth Cross Respondent
- w. Martin Pakula MP as the Two Hundredth Cross Respondent
- x. The Melbourne Magistrates Court as the Two Hundred First Cross Respondent
- y. The Supreme Court of Victoria as the Two Hundred Second Cross Respondent
- z. The Victorian Ombudsman as the Two Hundred Third Cross Respondent
- aa. The Independent Broad Based Commissioner Against Corruption as the Two Hundred Fourth Cross Respondent
- bb. The Victorian Police Commissioner as the Two Hundred Fifth Cross Respondent
- cc. The Legal Services Commissioner as the Two Hundred Sixth Cross Respondent
- dd. The Legal Services Board as the Two Hundred Seventh Cross Respondent
- ee. The Legal Practitioners Liability Committee as the Two Hundred Eighth Cross Respondent
- ff. Francis Michael Cahill as the Two Hundred Ninth Cross Respondent
- gg. Meng Cheong as the Two Hundred Tenth Cross Respondent
- hh. Peter Hambros as the Two Hundred Eleventh Cross Respondent
- ii. Altius Partners Pty Ltd as the Two Hundred Twelfth Cross Respondent
- jj. Coors Chambers Westgarth as the Two Thirteenth Cross Respondent
- kk. Bend Davidson as the Two Hundred Fourteenth Cross Respondent
- ll. Matthew Critchley as the Two Hundred Fifteenth Cross Respondent
- mm. Treasury Wine Estates Vintners Limited (Controller Appointed) as the Two Hundred Sixteenth Cross Respondent
- nn. Treasury Wine Estates Limited (Controller Appointed) as the Two Hundred Seventeenth Cross Respondent
- oo. Foster's Brewing Group Pty Ltd (Controller Appointed) as the Two Hundred Eighteenth Cross Respondent
- pp. SAB Miller Beverage Investments Pty Ltd (Controller Appointed) as the Two Hundred Nineteenth Cross Respondent
- qq. National Australia Bank Limited (Controller Appointed) as the Two Hundred Twentieth Cross Respondent
- rr. Simon John Illsley as the Two Hundred Twenty First Cross Respondent
- ss. Graham Softly as the Two Hundred Twenty Second Cross Respondent
- tt. Royal Commissioner Haynes and the Royal Commission into Financial Services as the Two Hundred Twenty Third Cross Respondent

- uu. The Royal Commissioner into Institutional Responses to Complaints of Child Sex Abuse as the Two Hundred Twenty Fourth Cross Respondent
 - vv. The Reserve Bank of Australia as the Two Hundred Twenty Fifth Cross Respondent
 - ww. The Secretary of the Reserve Bank of Australia as the Two Hundred Twenty Sixth Cross Respondent
 - xx. The Board of Governors of the Reserve Bank of Australia as the Two Hundred Twenty Seventh Cross Respondent
 - yy. The Payments Systems Regulation Board as the Two Hundred Twenty Eighth Cross Respondent
 - zz. APRA as the Two Hundred Twenty Ninth Cross Respondent
 - aaa. ACCC as the Two Hundred Thirtieth Cross Respondent
 - bbb. The Commissioner of Taxation as the Two Hundred Thirty First Cross Respondent
 - ccc. Trevor Coulter as the Two Hundred Thirty Second Cross Respondent
 - ddd. Siobhan Unwin as the Two Hundred Thirty Third Cross Respondent
 - eee. Neville Thomas as the Two Hundred Thirty Fourth Cross Respondent
 - fff. Peter Ivan Macks as the Two Hundred Forty Fourth Cross Respondent
 - ggg. Stephen James Duncan as the Two Hundred Forty Fifth Cross Respondent
 - hhh. Timothy Shuttleworth Holden as the Two Hundred Forty Fifth Cross Respondent
 - iii. Michael Luhede as the Two Hundred Forty Sixth Cross Respondent
 - jjj. The South Australian Registrar General as the Two Hundred Forty Seventh Cross Respondent
 - kkk. The South Australian Registrar of Deeds as the Two Hundred Forty Eighth Cross Respondent
 - lll. Ian Gant as the Two Hundred Seventy Fourth Ninth Respondent
 - mmm. Don Mackintosh as the Two Hundred Fiftieth Cross Respondent
 - nnn. Regina as the Two Hundred Fifty First Cross Respondent
 - ooo. The Governor General as the Two Hundred Fifty Second Cross Respondent
 - ppp. The Governor of South Australia as the Two Hundred Fifty Third Cross Respondent
 - qqq. The Governor of Victoria as the Two Hundred Fifty Fourth Cross Respondent
4. That the Court makes orders under the Common Law of Judicial Review in the nature of Quo Warranto and/or Mandamus and/or Certiorari and/or Prohibition and/or Habeas Corpus reviewing the Administrative, Quasi-Judicial and Judicial Decisions related to the First Respondent/the First Applicant by Cross Claim set out in Annexures 2 – 4 and otherwise related to the List of Proceedings at Annexure No 1.
5. That an order is made for discovery to be made by the Respondents by Counterclaim and the Cross Respondents in a form this Court deems fit and/or that the Cross Respondents and Respondents by Counter Claim comply with Supreme Court of South Australia Court Rule 200B (Annexure 5)

6. That an order is made on the papers in chambers adjourning this application Sine Die
7. Costs,
8. Disbursements
9. Interest
10. Damages
11. Such other orders and declarations as this Honourable Court deems fit

The Applicant's address

The Applicant's address for service is:

Phone: 0424 324 135

Place: 10/15 Hunter Street, Hobart, Tasmania, 7000

Email: andrew.garrett@taggc.com.au

Service on the Respondents by Counterclaim/the Alleged Applicants, the Second Respondent and the Proposed Cross Respondents by Cross Claim set out in the Schedule

It is intended to serve the Second Respondent, the Respondents by Counter Claim/ Alleged Applicants and the Proposed Cross Respondents by Cross Claim set out in the schedule with this application

Date: 21st October 2018



.....
Signed by Andrew Garrett

The Applicant by Cross Claim and Applicant by Counter Claim

THE SCHEDULE

Applicants

Second Applicant: The Truffle Group Pty Ltd ACN 128 049 392 (In Liquidation)

(Controller Appointed)

Third Applicant: Prospero Trading Pty Ltd ACN 123 655 845 (In Liquidation)

(Controller Appointed)

Fourth Applicant: Ouranos Holdings Pty Ltd ACN 162 749 573 (Controller Appointed)

Fifth Applicant: Maiga Pty Ltd ACN 162 744 729 (Controller Appointed)

Sixth Applicant: Manta Wharf Pty Ltd ACN 164 049 450 (Controller Appointed)

Seventh Applicant: Ruma Pty Ltd ACN 067 962 083 (Controller Appointed)

Eighth Applicant: Prospero Group-Bourke Road Pty Ltd ACN 133 247 766 (Controller Appointed)

Ninth Applicant: Rubis Trading Pty Ltd ACN 165 684 122 (Controller Appointed)

Tenth Applicant: Wharfside Pty Limited ACN 122 604 157 (Controller Appointed)

Eleventh Applicant: Manujan Pty Ltd ACN 099 288 650 (Controller Appointed)

Twelfth Applicant: ACN 111 804 383 Pty Ltd ACN 111 804 383 (Controller Appointed) in its own capacity and as Trustee of the Yates Beaggi Lawyers Unit Trust ABN 94 925 098 876

Thirteenth Applicant: Yates Law Pty Ltd ACN 168 284 352 (Controller Appointed) in its own capacity and as trustee of the Yates & Co Unit Trust ABN 75 188 551 271

Fourteenth Applicant: Steven Vlahos

Fifteenth Applicant: Financial Pty Ltd ACN 149 682 128 (Controller Appointed)

Sixteenth Applicant: Brenton Adrian Yates

Seventeenth Applicant: Farshad Amirbeaggi

Eighteenth Applicant: Strut Master No 2 Pty Limited (Controller Appointed) In its own capacity and as trustee of the Yates Amirbeaggi Unit Trust ABN 54 278 630 521

Nineteenth Applicant: Deceased Estate of Juris Voldemars Rubis

Respondents

Second Respondent; The Registrar of the Personal Property Security Register

Proposed Cross Respondents

Proposed First Cross Respondent; Brent Kijurina

Proposed Second Cross Respondent; Richard Albarran

Proposed Third Cross Respondent; Hall Chadwick (NSW) Pty Ltd

Proposed Fourth Cross Respondent; Deceased Estate of Christopher Simon James

Proposed Fifth Cross Respondent; WAVERLEY ENTERPRISES PTY LTD ACN: 099 113 4

Proposed Sixth Cross Respondent; The Trustee for AETOS UNIT TRUST ABN 21 469 827 125

Proposed Seventh Cross Respondent; STRATEGIC ACCOUNTING ADVISERS PTY LTD ACN 105 232 960

Proposed Eighth Cross Respondent; The Federal Court of Australia

Proposed Ninth Cross Respondent; Chief Justice Alsop

Proposed Tenth Cross Respondent; ASIC

Proposed Eleventh Cross Respondent; The Law Society of NSW

Proposed Twelfth Cross Respondent; The Legal Services Commissioner of NSW

Proposed Thirteenth Cross Respondent; Justice Thawley

Proposed Fourteenth Cross Respondent; Peter Donkin

Proposed Fifteenth Cross Respondent; Andrew Dunstan

Proposed Sixteenth Cross Respondent; National Australia Bank Limited

Proposed Seventeenth Cross Respondent; ANZ Banking Group Limited

Proposed Eighteenth Cross Respondent; Suncorp Metway Limited

Proposed Nineteenth Cross Respondent; Delegate Elizabeth Bennet

Proposed Twentieth Cross Respondent; Commonwealth Ombudsman

Proposed Twenty First Cross Respondent; Director Susan Whitaker

Proposed Twenty Second Cross Respondent; Commonwealth Attorney General

Proposed Twenty Third Cross Respondent; Members of the Senate Standing Committee on Legal and Constitutional Affairs

Proposed Twenty Fourth Cross Respondent; The Members of the House of Representatives of the Parliament of the Commonwealth of Australia

Proposed Twenty Fifth Cross Respondent; The Members of the Senate of the Parliament of the Commonwealth of Australia

Proposed Twenty Sixth Cross Respondent; Vincent Tavoraro

Proposed Twenty Seventh Cross Respondent; Sue Anne Thompson

Proposed Twenty Eighth Cross Respondent; News Limited

Proposed Twenty Ninth Cross Respondent; Director of Public Prosecutions

Proposed Thirtieth Cross Respondent; Adelaide Magistrates Court

Proposed Thirty First Cross Respondent; Justice Nettle

Proposed Thirty Second Cross Respondent; Justice Crennan

Proposed Thirty Third Cross Respondent; Andrew Phelan

Proposed Thirty Fourth Cross Respondent; High Court of Australia

The Proposed Thirty Fifth to Two Hundred Fifty Forth Cross Respondents as set out above.

Date; 21st October 2018

**LIST OF PROCEEDINGS RELATED TO THE FIRST
RESPONDENT/ FIRST APPLICANT BY COUNTERCLAIM &
CROSS CLAIM**

**VITIATED BY FRAUD BY THE COURT AND/OR TRIBUNAL ON
THE COURT AND/OR TRIBUNAL**

Sunday, 21 October 2018

The Purpose of this List is to demonstrate the abdication of the roles of the Attorneys General of the Commonwealth the States and Territories of the Commonwealth of Australia as the Champions of the Public Interest; and;

The Systemic Corruption of the Crown and its officers/employees/agents/ licensees/contractors in the rights of the Commonwealth of Nations, the Commonwealth, the States and Territories of Australia; and

The resultant exhaustion of my rights to a Fair Hearing, Property Rights, Intellectual Property Rights, Right to Remedy, Freedom of Speech; and

To a Domestic, AND/OR International,, Court and/or Tribunal with Power in any of the Jurisdiction of;

1. the Common Law
2. United Nations ICCPR Committee and UNCITRAL Committee
3. International Criminal Jurisdiction arising under a Treaty
4. The Commonwealth of Australia Constitution Act 1900 (UK)

The List below should not be considered to be exhaustive of the various Administrative, Quasi-Judicial and Judicial Decisions related to me and entities related to me that I seek reviewed under the Common Law Judicial Review Process as it does not include decisions made by Administrators, Liquidators, Receivers and Managers, Trustees in Bankruptcy, AAT decisions, SACAT decisions, VCAT Decisions and Decisions of Executive Government;

1. SASCCIV-1996-2244; *Andrew Garrett & Anor v Mildara Blass Limited & Anor*
2. SASFC -2003; *CITY OF MITCHAM v M.O.L. PTY LTD & ANOR M.O.L. PTY LTD & ANOR v CITY OF MITCHAM [2003] SASC 17*
3. DCCIV-2003-1666; *Deputy Commissioner of Taxation v Garrett*
4. SASCCIV-2003-1767; *Sunburst Properties Pty Ltd (Receiver and Manager Appointed) v Andrew Garrett*

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5. SASCCIV-2004-127; *Andrew Garrett Wine Resorts Pty Ltd & Anor v National Australia Bank Limited*
6. SASCCIV-2004-162; *Westpac v Andrew Garrett*
7. SASCCIV-2004-247; *International Vintners Australia Pty Ltd v Andrew Garrett & Anor*
8. SASCCIV-2004-1100; *Michael Christopher Coory & Anor v Garrett International Investments Pty Ltd ACN 074 250 409*
9. ADG 90 of 2004; *Deputy Commissioner of Taxation v Andrew Garrett*
10. ADG 93 of 2004; *Andrew Garrett v Peter Ivan Macks & Ors*
11. ADG 95 of 2004; *Averil Gay Garrett v Stephen James Duncan*
12. ADG 187 of 2004; *International Vintners Pty & Anor v Averil Garrett*
13. AZ 90 of 2004; *Andrew Morton Garrett v Deputy Commissioner of Taxation*
14. HCA-A67 of 2004; *Andrew Garrett Wine Resorts Pty Ltd & Anor v National Australia Bank Limited*
15. SASCCIV-2005-57; *Bruce Carter & Anor v Andrew Sandow*
16. SASCCIV-2005-164; *Evajade Pty Ltd v National Australia Bank Limited*
17. SASCCIV-2005-257; *Andre Garrett v Cockatoo Ridge Limited*
18. SASCCIV-2005-327; *Westpac Banking Corporation Limited v Andrew Garrett Wine Resorts Pty Ltd*
19. SAD 29 of 2005; *Stephen James Duncan & Anor v Shu Mu Tseng*
20. SAD 318 of 2005; *Garrett v Shu Mu Tseng & Anor*
21. SASCCIV-2005-422; *Garrett V South Australian Registrar General*
22. SASCCIV-2005-423; *Garrett V South Australian Registrar General*
23. SASCCIV-2005- 1294; *Garrett V National Australia Bank Limited*
24. VICSC-2005-7323; *Berringer Blass Wine Estates Limited v Shu Mu Tseng & Ors*
25. SASCCIV-2006-590; *Garrett V National Australia Bank Limited*
26. SASCCIV-2006-1499; *Antonio Tropeano v Natalie Lauro(AMG by Power of Attorney)*
27. DCCIV-2006-1753; *Declaratory Relief re SPUT assets against PIM & SJD*
28. DCCIV-2006-1754 *Declaratory Relief re Possession of Kelam & Dragon*
29. SAD 5 of 2006; *Mildara Blass Limited v Universal Holidays & Ors*
30. SAD 61 of 2006; *Garrett v Peter Ivan Macks*
31. SAD 62 of 2006; *Garrett v Stephen James Duncan*
32. SAD 93 of 2006; *Garrett v Commissioner of Taxation*
33. SAD 248 of 2006; *In the Matter of Evajade Pty Ltd*
34. SAD 277 of 2006; *Andrew Garrett v Universal Holidays & Ors*
35. SASCCIV-2007-1342; *South Australian Attorney General v Garrett*
36. DCCRM-2007- 742; *Regina v Garrett*
37. MC T02318092 of 2007; *ASIC v Garrett*
38. SAD 9 of 2007; *Garrett v Westpac*
39. SAD 12 of 2007; *Garrett v Berringer Blass Wine Estates*
40. SAD 15 of 2007; *Garrett v State of South Australia Application for pre-action discovery*

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41. SAD 16 of 2007; *Garrett v National Australia Bank Limited*
42. SAD 20 of 2007; *Garrett v Westpac*
43. SAD 21 of 2007; *Garrett v Anderson J & Anor*
44. SAD 185 of 2007; *Garrett v NAB & Ors*
45. SAD 101 of 2008; *Garrett v NAB & Ors*
46. SAD 201 of 2008; *Peter Ivan Macks v Garrett*
47. AAT (Adelaide Registry); *Garrett v Inspector General of Bankruptcy*; **Not Listed**
48. AAT (Perth Registry) 2152/2008; *Garrett v Inspector General of Bankruptcy*; Listed
49. AAT (Perth Registry) 2197/2008; *Garrett v Inspector General of Bankruptcy*; Listed
50. AAT (Perth Registry) 3509/2008; *Garrett v Inspector General of Bankruptcy*; Listed
51. WAD 206 of 2008; *GFT Application for Declaratory Relief*
52. WAD 206 of 2008; *Garrett v Peter Ivan Macks*
53. VCAT A48/2011; *South Pacific v Garrett*
54. VCAT B92/2011; *Garrett v Liquor Licensing Commissioner*
55. VICSCI- 01522-2011; *PJMC Pty Ltd (In Liquidation) v Andrew Garrett & Anor*
56. VID 515 of 212; *Deputy Commissioner of Taxation v Hambros Cahill Lawyers*
57. VICSCI- 06164-2012; *Edwards Motor Company v OenoViva (Australia & New Zealand) Pty Ltd*
58. VICSCI- 04637-2012; *Edwards Motor Company v OenoViva (Australia & New Zealand) Pty Ltd*
59. VICSCI- 04882-2012; *St George Bank Finance Limited v Hospitality Workforce Solutions Pty Ltd*
60. VICSCI- 04883-2012; *Debits Direct Pty Ltd v Hospitality Workforce Solutions Pty Ltd*
61. VICSCI-02968-2013; *Deputy Commissioner of Taxation v Garrett*
62. VICSCI-03073-2013; *Edwards Motor Company Pty Ltd v Garrett*
63. NSD-2429-2013; *Rubis & Ors v Dynamic*
64. AAT (Melbourne Registry) 2568/2013; *Garrett ATF AGFT 3 v Commissioner of Taxation*
65. AAT (Melbourne Registry) 2865/2013; *Garrett ATF AGFT 3 v Commissioner of Taxation*
66. AAT (Melbourne Registry) 4071/2014; *Garrett ATF AGFT 3 v Commissioner of Taxation*
67. AAT (Melbourne Registry) 2320/2013; *Garrett ATF OVPET 2 v Commissioner of Taxation*
68. AAT (Melbourne Registry) 2855/2013; *Garrett ATF OVPET 2 v Commissioner of Taxation*
69. AAT (Melbourne Registry) 4068/2014; *Garrett ATF OVPET 2 v Commissioner of Taxation*

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70. AAT (Melbourne Registry) 4070/2014; *Garrett ATF OVPET 2 v Commissioner of Taxation*
71. AAT (Melbourne Registry) 5901/2012; *Garrett ATF OVPET v Commissioner of Taxation*
72. AAT (Melbourne Registry) 0848/2013; *Garrett ATF OVPET v Commissioner of Taxation*
73. AAT (Melbourne Registry) 2557/2013; *Garrett ATF OVPET v Commissioner of Taxation*
74. AAT (Melbourne Registry) 1300/2014; *Garrett ATF OVPET v Commissioner of Taxation*
- 75.
76. AAT (Perth Registry) 3509/2008; Application for Review of decision of Inspector General of Bankruptcy Listed
77. VID 187 of 2014; *Garrett v Austrade*
78. VID 197 of 2014; *Garrett v Commissioner of Taxation & Ors*
79. HCA-M42-2014; *Garrett v Commissioner of Taxation & Ors*
80. VID 247 of 2014; *Garrett v Make Wine & Ors*
81. VID 304 of 2014; *Garrett v Peter Ivan Macks*
82. SAD 370 of 2014; *In the Matter of Sanctuary Australasia Pty Ltd*
83. MLG 1631 of 2014; *Garrett v Cahill*
84. VICSCI-02728-2014; *Garrett v Legal Services Commissioner*
85. VICSCI-03380-2014; *Garrett v Deputy Commissioner of Taxation*
86. VICSCI-03714-2014; *Garrett v Legal Services Board*
87. VICSCI-06548-2014; *Garrett v Legal Services Board v Altius Partners Pty Ltd*
88. VID 381 of 2014; *Treasury Wine Estates Vintners Limited V Garrett*
89. VID 430 of 2014; *Treasury Wine Estates Vintners Limited V Garrett*
90. VID 425 of 2014; *Garrett v Stephen James Duncan*
91. VID 557 of 2014; *Garrett v Deputy Commissioner of Taxation*
92. VID 584 of 2014; *Garrett v CEO of Austrade*
93. VID 585 of 2014; *Garrett v Austrade*
94. VID 600 of 2014; *Garrett v Commissioner of Taxation & Ors*
95. VID 730 of 2014; *Garrett v Make Wine & Ors*
96. VID 731 of 2014; *Garrett v Peter Ivan Macks*
97. VID 732 of 2014; *Garrett v Stephen James Duncan*
98. VID 739 of 2014; *Garrett v Commissioner of Taxation & Ors*
99. MLG 2265 of 2014; *Garrett v Commissioner of Taxation & Ors*
100. VCAT J77/2014; *Garrett & Ors v Peter Hambros and Francis Cahill*
101. MLG 177 of 2015; *Cahill v Garrett*
102. VID 47 of 2015; *Garrett v Cahill*
103. VID 129 of 2015; *Garrett v Commissioner of Taxation & Ors*
104. VID 158 of 2015; *Treasury Wine Estates Vintners Limited V Garrett*
105. VID 159 of 2015; *Treasury Wine Estates Vintners Limited V Garrett*
106. VID 160 of 2015; *Treasury Wine Estates Vintners Limited V Garrett*
107. VID 161 of 2015; *Treasury Wine Estates Vintners Limited V Garrett*

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108. VID 162 of 2015; *Treasury Wine Estates Vintners Limited V Garrett*
109. VID 163 of 2015; *Treasury Wine Estates Vintners Limited V Garrett*
110. VID 164 of 2015; *Treasury Wine Estates Vintners Limited V Garrett*
111. VID 165 of 2015; *Treasury Wine Estates Vintners Limited V Garrett*
112. VID 166 of 2015; *Treasury Wine Estates Vintners Limited V Garrett*
113. VD 297 of 2015; *Garrett v Cahill*
114. VICSC- *Unlisted-2015; Garrett v Deputy Commissioner Taxation & Cahill and Ors*
115. VICSCI-00644-2015; *Garrett v Legal Services Board*
116. VICSCI-01047-2015; *Garrett v Legal Services Board*
117. VICSCI-01232-2015; *Garrett v Cahill*
118. VICSCI-03133-2015; *Garrett v Victorian Commissioner of Police & Anor*
119. VICSCI-03169-2015; *Garrett v Legal Services Commissioner & Anor*
120. VICSCI-03133-2015; *Garrett v Victorian Commissioner of Police & Anor*
121. VICSC- 030148-2016; *Victorian Attorney General v Garrett*
122. VID 361 of 2015; *Garrett v Treasury Wine Estates Vintners Limited*
123. VID 362 of 2015; *Garrett v Treasury Wine Estates Vintners Limited*
124. VID 363 of 2015; *Garrett v Treasury Wine Estates Vintners Limited*
125. VID 364 of 2015; *Garrett v Treasury Wine Estates Vintners Limited*
126. VID 365 of 2015; *Garrett v Treasury Wine Estates Vintners Limited*
127. VID 366 of 2015; *Garrett v Treasury Wine Estates Vintners Limited*
128. VID 366 of 2015; *Garrett v Treasury Wine Estates Vintners Limited*
129. VID 368 of 2015; *Treasury Wine Estates Vintners Limited V Garrett*
130. VID 376 of 2015; *Garrett v Treasury Wine Estates Vintners Limited*
131. VID 377 of 2015; *Garrett v Treasury Wine Estates Vintners Limited*
132. VID 949 of 2015; *Treasury Wine Estates Vintners Limited v Garrett*
133. MC 151000380 of 2016 ; *ASIC v Garrett*
134. SASCCIV-2016-524; *Natalie Lauro (AMG Power of Attorney) v Antonio Tropeano*
135. SACAT SH0006849/2016; *Garrett v DQL Apartments*
136. SACAT SH0006862/2016; *Garrett v DQL Apartments*
137. SACAT SIR0000052/2016; *Garrett v DQL Apartments*
138. SAD 134 of 2016; *In the Matter of Company A*
139. VID 404 of 2016; *Treasury Wine Estates Vintners Limited (Controller Appointed) & Ors v Garrett*
140. VID 423 of 2016; *National Australia Bank Limited (Controller Appointed) v Garrett*
141. HCA-A30-2016; *Garrett v Beach J & Treasury Wine Estates Vintners Limited (Controller Appointed)*
142. HCA-A31-2016; *Garrett v Beach J & National Australia Bank Limited (Controller Appointed)*
143. VID 477 of 2016; *Treasury Wine Estates Vintners Limited v Andrew Garrett*

18 October 2018

Mr Andrew Garrett
10/15 Hunter Street
Hobart
TASMANIA 7000
By email: Andrew.garrett@taggc.com.au

Dear Mr Garrett

DOCUMENTS PRESENTED TO THE REGISTRY – NSD 2429/2013

I refer to the following documents which were lodged with the Registry on 17 October 2018.

- Interlocutory Application dated 9 October 2018
- Affidavit (Form 59)

I note that the Court ordered on 26 February 2015 that you are “prohibited from instituting in [your] own name; or causing others to institute; or being concerned, whether directly or indirectly, in the institution of, any proceeding in any registry of the Federal Court of Australia without the leave of this Court”.

Consequently, your documents cannot be accepted for filing without leave of the Court first sought and obtained. I refer you to subsection 37AR of the *Federal Court of Australia Act 1976* and rule 6.03 of the *Federal Court Rules*.

Yours faithfully,



Ryan Villamor on behalf of

Kim Lackenby
Judicial Registrar



RESERVE BANK OF AUSTRALIA

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secretary@rba.gov.au
www.rba.gov.au

23 May 2017

Mr Andrew Garrett
10/15 Hunter Street
HOBART TAS 7000

Dear Mr Garrett

As mentioned in the email from Ian Chua on 19 May, the documents are being returned to you.

Yours sincerely

A handwritten signature in blue ink that reads "Lisa Charlton".

Lisa Charlton
Personal Assistant
Secretary's Department

Encl

andrew.garrett@oenoviva.com

From: FOI <foi@rba.gov.au>
Sent: Tuesday, 13 June 2017 2:20 PM
To: andrew.garrett@oenoviva.com
Subject: RBAFOI-161714 - Garrett - documents relating to Mr Garrett and also purported bills of exchange and correspondence with CBA copied to RBA - acknowledgement and answer to request [SEC=UNCLASSIFIED]
Attachments: Document 1 - Email to Moody's - Garrett - purported bill of exchange.pdf; D12 83398 Information Note - Rights of review - from 1 November 2010.pdf

Dear Mr Garrett

I refer to your Freedom of Information request dated 30 May below seeking *'any document or thing in (the Secretary's) possession and or control since my last FOI application and that is related to me and/or the Australian People Future Fund and/or Secured International Bill of Exchange SN;61.00064/17 and/or Secured International Bill of Exchange SN;61.00054/16 and/or Secured International Bill of Exchange SN;61.00057/16 and/or my correspondence with the Commonwealth Bank of Australia that has been copied to you'*.

The documents covered by your Freedom of Information request are as follows:

- communications from or to you, copies of which you already have; and
- one other document, a copy of which is attached to this email. Material irrelevant in terms of section 22 (email address and phone number) has been removed from the document.

I have not been copied on any correspondence between yourself and the Commonwealth Bank of Australia, other than what you yourself have copied to me in your various emails. I have had no communication with the Commonwealth Bank of Australia.

I attach a document detailing your rights to review of my decision. Please note that all correspondence relating to Freedom of Information requests (including requests themselves) should be directed to foi@rba.gov.au.

Yours sincerely,

Anthony Dickman | Secretary
RESERVE BANK OF AUSTRALIA | 65 Martin Place, Sydney NSW 2000
p: +61 2 9551 9710 | f: +61 2 9551 8041 | e: foi@rba.gov.au | w: www.rba.gov.au

From: andrew.garrett@oenoviva.com [<mailto:andrew.garrett@oenoviva.com>]
Sent: Tuesday, 30 May 2017 11:48 AM
To: Secretary
Subject: Australian People Future Fund Freedom of Information Application
Importance: High

The Reserve Bank of Australia
Attn The Secretary, Mr Anthony Leonard Dickman

Dear Sir

Further to my recent correspondence I ask you to consider this communicate as an application in writing pursuant to the provisions of *the Freedom of Information Act 1982* (Cth) for a copy of any document or thing in your possession and or control

since my last FOI application and that is related to me and/or the Australian People Future Fund and/or Secured International Bill of Exchange SN;61.00064/17 and/or Secured International Bill of Exchange SN;61.00054/16 and/or Secured International Bill of Exchange SN;61.00057/16 and/or my correspondence with the Commonwealth Bank of Australia that has been copied to you.

Andrew Garrett

Managing Trustee

OenoViva Global (“OV(Global)”)

OenoViva CapitalResources (“OCR”)

The OenoViva Artisans Trust (“OVA”)

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This footnote also confirms that this message has been checked for computer viruses.

Part 3—Actions for judicial review

199—Order for judicial review

[rule 199 substituted by Supreme Court Civil Rules 2006 (Amendment No. 26)]

- (1) The Court may make an order for judicial review.
- (2) An *order for judicial review* is an order in the nature of an order formerly available by prerogative writ and includes—
 - (a) an order preventing an authority from acting beyond its jurisdiction or in contravention of the requirements of procedural fairness (*prohibition*);
 - (b) an order setting aside the decision of an authority because of absence or excess of jurisdiction, jurisdictional error or error of law on the face of the record, failure to observe the requirements of procedural fairness or fraud (*certiorari*);
 - (c) an order compelling an authority to perform a public duty (*mandamus*);
 - (d) an order preventing a person from wrongfully exercising, or purporting to exercise, functions of a public character (*quo warranto*).

200—Time for commencement of action

[rule 200 substituted by Supreme Court Civil Rules 2006 (Amendment No. 26)]

- (1) An action for judicial review must be commenced as soon as practicable after the date when the grounds for the review arose and, in any event, within 6 months after that date.
- (2) If an action for judicial review is commenced more than 6 months after the grounds for the review arose, the action cannot proceed further in the Court without the Court's permission.
- (3) An application under subrule (2) is to be made by interlocutory application seeking an extension of time in which to commence the action and permission to proceed filed with the originating process supported by an affidavit explaining the delay.
- (4) On the hearing of an application under subrule (3), the Court may grant or refuse the application for an extension of time in which to commence the action and permission to proceed or may order that either or both be determined at trial.

200A—Manner of commencement of action

[rule 200A inserted by Supreme Court Civil Rules 2006 (Amendment No. 26)]

- (1) The originating process for an action for judicial review is a summons in an approved form.
- (2) The summons is to name as defendants to the action—
 - (a) the authority that made the decision, act or omission the subject of the action for judicial review;
 - (b) the person or body (if any) that has the interest in defending the decision, act, or omission the subject of the application for judicial review; and
 - (c) any other person who is a necessary party to the action.
- (3) The summons is to be accompanied by a statement of grounds in an approved form—
 - (a) identifying the nature of the application for judicial review;
 - (b) identifying the decision, act or omission the subject of the action for judicial review;

- (c) setting out in detail the grounds why the decision, act or omission is alleged to be invalid, wrongful or otherwise liable to an order of judicial review (*the grounds of review*); and
 - (d) setting out the orders sought.
- (4) The summons is to be accompanied by an affidavit—
- (a) exhibiting the record of the decision, act or omission the subject of the action for judicial review;
 - (b) exhibiting all materials in the plaintiff's possession that were before the authority for the purpose of the decision, act or omission in question insofar as they are relevant to the grounds of review;
 - (c) exhibiting, or if not documentary deposing to, the evidence upon which the plaintiff relies for an order of judicial review; and
 - (d) identifying any person or class of persons other than a defendant who has an interest in the matter beyond that of a member of the public.
- (5) If rule 200(2) applies, the summons is to be accompanied by an interlocutory application for the Court's permission to proceed with the action.
- (6) An action for judicial review may include claims for other relief.

Example—

An action for judicial review might include a claim for declaratory relief.

- (7) The plaintiff is to serve upon the defendants the summons, statement of grounds, affidavit and, when applicable, the interlocutory application for the Court's permission to proceed with the action.

200B—Response

[rule 200B inserted by Supreme Court Civil Rules 2006 (Amendment No. 26)]

- (1) Subject to rule 200C, a defendant who wishes to oppose the plaintiff's claim is to file in the Court notice of address for service and a response to the statement of grounds.
- (2) The notice of address for service is to be filed in accordance with rule 59(3).
- (3) The response to the statement of grounds is to be in an approved form —
 - (a) setting out the defendant's response to the plaintiff's grounds of review; and
 - (b) setting out any preliminary issue or special defence by reason of which the orders sought should not be granted.

Examples—

- 1 An assertion that the plaintiff lacks standing to seek the orders.
- 2 An assertion that the action is out of time.
- 3 An assertion that relief should be denied for discretionary reasons.

- (4) **The response is to be accompanied by a responding affidavit—**
- (a) exhibiting the record of the decision, act or omission the subject of the action for judicial review insofar as it has not already been exhibited by the plaintiff or another party;**
 - (b) exhibiting all materials in the defendant's possession that were before the authority for the purposes of the decision, act or omission in question insofar as**

they are relevant to the grounds of review and insofar as they have not already been exhibited by the plaintiff or another party;

- (c) exhibiting, or if not documentary deposing to, the evidence upon which the defendant relies in opposing an order of judicial review insofar as it has not already been exhibited by the plaintiff or another party.

- (5) Subject to rule 200C and unless the Court otherwise orders, the response and any responding affidavit is to be filed within 28 calendar days after service of the summons, statement of grounds and supporting affidavit.

200C—Summary dismissal

[rule 200C inserted by Supreme Court Civil Rules 2006 (Amendment No. 26)]

- (1) If within 14 calendar days of service a defendant files an application for summary dismissal under rule 232, or to strike out the action or the statement of grounds under rule 104, 117 or 193, insofar as an order for judicial review is sought, or if the plaintiff applies for permission under rule 200(2), the defendant may but is not required to file a response or responding affidavit until determination of the application.
- (2) If a defendant files an application under subrule (1) or the plaintiff applies for permission under rule 200(2), the Court must dismiss or strike out the action or statement of grounds, as the case may be, insofar as an order for judicial review is sought, unless satisfied that there is a reasonable basis for the claim for an order for judicial review.
- (3) If the Court dismisses or strikes out the action or statement of grounds, the Court may give directions for the further conduct of the action insofar as other forms of relief are claimed.
- (4) If the Court does not dismiss or strike out the action or statement of grounds, the Court will give directions for filing a response and responding affidavit if not already filed and for the further conduct of the action under rule 201.

201—Further conduct of the action

[rule 201 substituted by Supreme Court Civil Rules 2006 (Amendment No. 26)]

- (1) At the first directions hearing, if the action is to proceed, the Court will give directions for the further conduct of the action.
- (2) The Court will determine at an appropriate time whether the action is to be heard by a single Judge or the Full Court.
- (3) The Court may at any time—
 - (a) order a stay of proceedings to which the action for judicial review relates; or
 - (b) suspend the operation of a decision or act subject of the action for judicial review,

until completion of the judicial review or some other time determined by the Court or until further order.

The convergence of wired and wireless (mobile) technologies providing similar or the same services has led to development of a regulatory framework which is largely technology neutral. The recent EU Directives on interconnection of telecommunication networks and licensing, apply equally to both mobile and fixed network operators. However, a specific Directive on mobile telecommunications, already mentioned above, removes all remaining monopoly rights in the mobile sector. In addition, this mobile Directive enables a mobile operator to interconnect with other mobile operators as well as enabling the construction of its own infrastructure/microwave links (or connection to use those owned by third parties). There is also now a requirement that at least one DCS 1800 operator be licensed in each EU Member State after 1 January 1998, as well as an immediate requirement to licence DECT (Digital European Cordless Telephone) systems.

Case by Case Application of the EU Competition Rules

The European Commission published guidelines in 1991 on the application of the competition rules to the telecoms sector. The merger control rules have also been used to prevent operators or service providers from forming alliances which could distort the telecommunications or information market or inhibit competition. The forming of ever larger telecommunication alliances which could dominate the EU market or smaller EU Member State markets has been the subject of regulatory constraints on a number of occasions by the European Commission. Most of the more important recent approvals or prohibitions are set out in the section on 'Competition Rules in the Information Society'.

Although these comments on the EU's competition rules generally apply, some commentators have noted a certain flexibility in interpretation of the EU competition rules in the telecommunications sector. It is argued that the competition rules have been relaxed by the European Commission in exchange for political acceptance in key EU Member States to open-up competition in their telecoms markets. This is believed to have occurred before the European Commission would approve a strategic alliance between the respective public telecommunications operators of France and Germany.

Directories

In a related development, the EU Council has recently approved liberalisation of telephone directories. Publishers and suppliers of directory services must be given access to information contained in public directories under equitable and non-discriminatory conditions. In France, telephone directories are already on-line through the Minitel system and Germany has just released a relatively cheap CD version of its directory.

In Brief

Australia EU Trade and Cooperation Framework Agreement Proposed

The European Commission has proposed an agreement with Australia to give a legal and contractual framework to Australia's trade and cooperation with the EU. A political declaration on justice, home affairs and political cooperation will accompany the agreement. The proposed agreement is expected to be similar to those between the EU and other OECD countries.

The proposed agreement will be on a non-preferential basis, given both parties membership of the World Trade Organisation (WTO). The aim is to enhance trade, investment and industrial development between the parties. (It will also allow the European Commission to have a specific budget allocation for relations with Australia). Areas expected to be in the proposed agreement are cooperation on competition matters, consumer protection, exchange of statistics, training and education etc. It will be remembered that Australia already has specific agreements with the EU on science and technology, on wine and on uranium as well as a number of understandings on various agricultural products.

EU negotiations with Australia for the Framework Agreement are expected to commence immediately. Once the scope of the proposed agreement is finalised and it comes into force, a joint committee will monitor developments under the agreement.

New EU Strategy to Access International Markets

In February this year the European Commission adopted a paper entitled 'The Global Challenge of International Trade: A Market Access Strategy for the European Union.' One of the aims of the paper is to set out a list of all the existing obstacles to trade with third countries and to attack the most difficult and persistent of them.

The principal measures to be taken to achieve greater market access for EU enterprises are:

- to identify obstacles to trade and establish priorities. A database will be established which would be available on-line to all interested parties in the EU.
- to improve coordination within the European Commission by setting up an action group on market access. This action group will deal with enquiries from business and enhance coordination between the various Directorates of the Commission which deal with trade policy issues.
- to involve industry more closely with the work of the European Commission, mainly through individual firms and trade associations providing the Commission with information on trade obstacles. (This information would remain confidential.)

It seems likely that one of the main mechanisms which will be used to force market access in non-EU countries is the so far little used Regulation (introduced in 1994) designed to ensure the exercise of the EU's rights under international trade rules.

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PRIVACY AND REPUTATION

What is the prohibition on interference with privacy and attacks on reputation?

The prohibition on interference with privacy and attacks on reputation prohibits unlawful or arbitrary interferences with a person's privacy, family, home and correspondence. It also prohibits unlawful attacks on a person's reputation. It provides that persons have the right to the protection of the law against such interference or attacks.

Where does the prohibition on interference with privacy and attacks on reputation come from?

Australia is a party to seven core international human rights treaties. The prohibition on interference with privacy and attacks on reputation is contained in article 17 of the [International Covenant on Civil and Political Rights \(ICCPR\)](#).

See also article 16 of the [Convention on the Rights of the Child \(CRC\)](#) and article 22 of the [Convention on the Rights of Persons with Disabilities \(CRPD\)](#).

When do I need to consider the prohibition on interference with privacy and attacks on reputation?

The prohibition on interference with privacy and attacks on reputation has an impact on a wide range of government legislation, policies and programs, such as those that:

- involve the collection, storage, security, use, disclosure or publication of personal information
- regulate information held on a public register
- restrict access by individuals to their own personal information
- create or change confidentiality or secrecy provisions relating to personal information
- create an identification system, such as a national identity card
- provide for sharing of personal information across or within agencies
- relate to the use of personal information for statistical purposes
- authorise powers of entry to premises or search of persons or premises
- authorise surveillance (for instance by closed-circuit television)
- provide for compulsory physical intervention on a person (for instance to collect fingerprints, a DNA sample or biometric information)
- provide for mandatory disclosure or reporting of information (for instance by a doctor in relation to a patient)



- regulate matters pertaining to the family, such as the recognition of close or enduring personal relationships, the removal of children from a family by a public authority, adoption or guardianship
- authorise the compulsory occupation or acquisition of a home or regulate planning or environmental matters that may affect a person’s home
- authorise the interception of communications, including written, verbal, electronic or telephonic
- affect the law relating to defamation, or
- affect the exemptions relating to disclosure of personal information under freedom of information legislation.

This list should not be regarded as exhaustive.

Under the *Privacy Act 1988*, personal information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Laws that affect privacy should be precise, and not give decision-makers too much discretion in authorising interferences with privacy. They should provide proper safeguards against arbitrary interference. To avoid being considered arbitrary, any interference with privacy must be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in the particular circumstances.

What is the **scope** of the prohibition on interference with privacy and attacks on reputation?

Article 17 of the ICCPR prohibits unlawful or arbitrary interferences with a person’s privacy, family, home and correspondence. It also prohibits unlawful attacks on a person’s reputation. It provides that persons have the right to the protection of the law against such interference or attacks.

The UN Human Rights Committee has not defined ‘privacy.’ It should be understood to comprise freedom from unwarranted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy. In a case involving Australia, the Committee stated that laws that criminalised homosexual conduct between consenting adults in private violated the right to privacy.

Attacks are prohibited when they are unlawful. However, interferences authorised under domestic law may still be found to be arbitrary under international law. For further discussion on these terms, see the section below ‘Can the prohibition on interference with privacy and attacks on reputation be limited?’

The Committee has stated that the term family should be given a broad interpretation to encompass the varied conceptions of the family as understood in different societies (see also Guidance Sheet on **Respect for the family**). In relation to Indigenous Australians, it is important that family be understood

to include kinship structures, which encompass an extended family system often including distant relatives.

The Committee has given a liberal interpretation to the term home, which includes a person’s workplace. The Committee states that searches of a person’s home should be restricted to those necessary to gather evidence and should not amount to harassment. Searches of a person should be carried out in manner consistent with the dignity of the person.

Interceptions of communications are not prohibited if they are authorised by law and not arbitrary. They are less likely to be regarded as arbitrary if they are subject to oversight by independent, preferably judicial, bodies.

The Committee has stated that countries have an obligation to adopt legislative and other measures to give effect to the prohibitions in article 17, including the prohibition on attacks on reputation. Laws should provide effective remedies.

Can the prohibition on interference with privacy and attacks on reputation be limited?

Derogation

Under article 4 of the ICCPR, countries may take measures derogating from certain of their obligations under the Covenant, including the prohibition on interference with privacy and attacks on reputation ‘in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed.’ Such measures may only be taken ‘to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.’

Limitation

Article 17 of the ICCPR does not set out the reasons for which the guarantees in it may be limited. However, limitations contained in other articles, for example, those which are necessary in a democratic society in the interests of national security, public order, the protection of public health or the protection of the rights and freedoms of others, might be legitimate objectives in appropriate circumstances in respect of the prohibition on interference with privacy and attacks on reputation. In any event, limitations on privacy must be authorised by law and must not be arbitrary. The term unlawful means that no interference can take place except as authorised under domestic law. The law should be precise, and not give decision-makers too much discretion in authorising interferences with privacy.

The use of the term arbitrary in the ICCPR means that any interferences with privacy must be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in the particular circumstances. An interference that is authorised under domestic law may still be arbitrary,



and consequently prohibited under article 17. For example, the UN Human Rights Committee has stated that a law that precluded persons from changing their names to accord with their religion was not reasonable and accordingly constituted an arbitrary interference with privacy. In another case, the Committee found that a law that enabled the censoring of the mail of prisoners was reasonable on the basis that it was restricted to mail that posed a threat to the staff or the operation of the prison.

Which domestic laws relate to the prohibition on interference with privacy and attacks on reputation?

The *Privacy Act 1988* provides for the protection of personal information in the Commonwealth public sector and in the private sector. The Privacy Act sets out Information Privacy Principles to the Commonwealth public sector and National Privacy Principles which apply to many private sector organisations. The Principles deal with all stages of the processing of personal information, setting out standards for the collection, storage, security, use, disclosure and quality of personal information. They also create obligations on agencies and organisations regarding access to, and correction of, an individual's own personal information.

The Office of the Australian Information Commissioner (OAIC), which includes the Office of the Privacy Commissioner, is responsible for investigating breaches of the Principles.

Other Commonwealth legislation may also affect privacy, for instance in the fields of telecommunications, medical and pharmaceutical benefits, government data-matching, criminal records, anti-money laundering and healthcare identifiers. There are also secrecy and confidentiality provisions that protect various types of personal information held by Commonwealth agencies.

The *Freedom of Information Act 1982* provides for access to information held by the government and sets out a legally enforceable mechanism for ensuring this access. The right to access is subject to certain limitations that ensure that sensitive information, including information unreasonably affecting personal privacy is properly protected. Protections also apply to other classes of documents, including those affecting national security, defence or international relations. The *Freedom of Information Amendment (Reform) Act 2010* made a number of reforms to the freedom of information regime. The Act implemented the Government's commitment to promote a pro-disclosure culture across government and to build a stronger foundation for more openness in government. Key features are:

- a revised objects provision in the Freedom of Information Act which makes clear that the underlying rationale of the Freedom of Information Act is to strengthen Australia's representative democracy through increasing participation in government processes and increasing the accountability of government
- a new, single form of public interest test weighted towards disclosure, and
- the establishment of a new web-based Information Publication Scheme that provides a framework for agencies to proactively disclose more information to the public.

The amendments complement the structural reforms implemented by the *Australian Information Commissioner Act 2010*. Those measures comprised the establishment on 1 November 2010 of the OAIC and the new independent statutory positions of Australian Information Commissioner (as head of the OAIC) and Freedom of Information Commissioner. The statutory position of Privacy Commissioner (which existed prior to 1 November 2010) was also established within the OAIC. In relation to freedom of information, the Australian Information Commissioner, supported by the Freedom of Information Commissioner, acts as an independent monitor for freedom of information and is entrusted with a range of functions designed to make the OAIC both a clearing house for freedom of information matters and a centre for the promotion of the objects of the Freedom of Information Act.

A link to the 2010 Reform Act and the Australian Information Commission Act is contained in the ‘Where can I read more about the prohibition on interference with privacy and attacks on reputation?’ section below.

Section 121 of the *Family Law Act 1975* provides for an offence of publication of details of family law matters that identifies the parties to a proceeding, balancing the need for openness of court proceedings with the need for privacy in family law matters.

What other rights and freedoms relate to the prohibition on interference with privacy and attacks on reputation?

Circumstances which give rise to the consideration of the prohibition on interference with privacy and attacks on reputation may also be relevant to:

- the protection of families and children in articles 23 and 24 (ICCPR)
- the right to freedom of opinion and expression in article 19 (ICCPR), and
- the right to a fair hearing and certain rights in criminal proceedings under article 14 (ICCPR).

Articles from relevant Conventions

International Covenant on Civil and Political Rights

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

See also: CRC article 16; CRPD article 22

Where can I read more about the prohibition on interference with privacy and attacks on reputation?

[United Nations, Office of the High Commissioner for Human Rights, Human Rights Bodies](#) (human rights treaty bodies that monitor implementation of the core international human rights treaties)

[UN Human Rights Committee General Comment No 16](#)

[Privacy Act 1988](#)

[Freedom of Information Act 1982](#)

[Freedom of Information Amendment \(Reform\) Act 2010](#)

[Australian Information Commissioner Act 2010:](#)

[Office of the Australian Information Commissioner](#)

[Privacy Commissioner](#)

[Department of the Prime Minister and Cabinet on privacy](#)

[Australian Law Reform Commission \(ALRC\) report on privacy law and practice](#)

[Government response to ALRC privacy report](#)

[UN Human Rights Committee decision in *Toonen v Australia*](#) (on whether that laws that criminalised homosexual conduct between consenting adults in private violated the right to privacy)

This material is provided to persons who have a role in Commonwealth legislation, policy and programs as general guidance only and is not to be relied upon as legal advice. Commonwealth agencies subject to the *Legal Services Directions 2005* requiring legal advice in relation to matters raised in this Guidance Sheet must seek that advice in accordance with the *Directions*.

6. Property Rights

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A common law right

6.1 The common law has long regarded a person's property rights as fundamental. William Blackstone said in 1773: 'There is nothing which so generally strikes the imagination, and engages the affections of mankind, as the right of property.'¹

6.2 However, many laws have been made that interfere with property rights. This chapter discusses the source and rationale of the protection of vested property rights; how these rights are protected from statutory encroachment; and when laws that interfere with these rights may be justified.

6.3 The ALRC calls for submissions on two questions about these rights.

Question 6–1 What general principles or criteria should be applied to help determine whether a law that interferes with vested property rights is justified?

Question 6–2 Which Commonwealth laws unjustifiably interfere with vested property rights, and why are these laws unjustified?

6.4 In his *Commentaries*, Blackstone called the right to property an absolute right,² anchored in the *Magna Carta* (1215), and described the limited power of the legislature to encroach upon it in terms that are still reflected in laws today:

The third absolute right, inherent in every Englishman, is that of property: which consists in the free use, enjoyment, and disposal of all his acquisitions, without any

1 William Blackstone, *Commentaries on the Laws of England* (The Legal Classics Library, 1765) Book 2.
2 Blackstone named two other absolute rights: the right of personal security and the right of personal liberty.

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control or diminution, save only by the laws of the land ... The laws of England are ... extremely watchful in ascertaining and protecting this right. Upon this principle the great charter has declared that no freeman shall be disseised, or divested, of his freehold, or of his liberties, or free customs, but by the judgment of his peers, or by the law of the land.

So great moreover is the regard of the law for private property, that it will not authorize the least violation of it; no, not even for the general good of the whole community. If a new road, for instance, were to be made through the grounds of a private person, it might perhaps be extensively beneficial to the public; but the law permits no man, or set of men, to do this without consent of the owner of the land ... Besides, the public good is in nothing more essentially interested, than in the protection of every individual's private rights, as modelled by the municipal law. In this and similar cases the legislature alone can, and indeed frequently does, interpose, and compel the individual to acquiesce. But how does it interpose and compel? Not by absolutely stripping the subject of his property in an arbitrary manner; but by giving him a full indemnification and equivalent for the injury thereby sustained ... All that the legislature does is to oblige the owner to alienate his possessions for a reasonable price; and even this is an exertion of power, which the legislature indulges with caution, and which nothing but the legislature can perform.³

6.5 Arguably, for many centuries the common law principles reflected a view that the rights of property owners were more deserving of protection than the personal rights of liberty and safety of non-property owners.⁴

6.6 Property and possessory rights are explicitly protected by the law of torts and by criminal laws and are given further protection by rebuttable presumptions in the common law as to statutory interpretation, discussed below. An interference with real property in the possession of another may give rise to the tort of trespass to land or of nuisance. In *Entick v Carrington* (1765), Lord Camden LCJ said:

By the laws of England, every invasion of private property, be it ever so minute, is a trespass. No man can set his foot upon my ground without my licence, but he is liable to an action, though the damage be nothing ... If he admits the fact, he is bound to shew by way of justification, that some positive law has empowered or excused him.⁵

6.7 These rights have long been exercisable against the Crown or government officers acting outside their lawful authority. After citing the passage above, Mason CJ, Brennan and Toohey JJ in *Plenty v Dillon* (1991) said that the principle in *Entick v Carrington* 'applies to entry by persons purporting to act with the authority of the

3 Blackstone, above n 1, Book 2.

4 For example, the common law's slow-to-develop protection of uninvited entrants from intentional or negligent physical injury by occupiers. It was only in 1828 in *Bird v Holbrook* (1828) that the courts declared the deliberate maiming of a trespasser, albeit only if it was without prior warning, to be unlawful: *Bird v Holbrook* (1828) 4 Bing 628. For negligent injury, trespassers were at first owed no duty of care; then, after *Southern Portland Cement v Cooper* [1974] only a duty of common humanity; until 1984 when the High Court of Australia in *Hackshaw v Shaw* (1984) recognised a limited duty of reasonable care when there was a real risk that a trespasser might be present and injured: *Southern Portland Cement v Cooper* [1974] AC 623 (PC); *Hackshaw v Shaw* (1984) 155 CLR 614.

5 *Entick v Carrington* [1765] EWHC KB J98 1066.

Crown as well as to entry by other persons'.⁶ Their honours then quoted Lord Denning adopting a quotation from the Earl of Chatham:

The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail—its roof may shake—the wind may blow through it—the storm may enter—the rain may enter—but the King of England cannot enter—all his force dares not cross the threshold of the ruined tenement.' So be it—unless he has justification by law.⁷

6.8 Similarly, in *Halliday v Nevill* (1984), Brennan J said:

The principle applies alike to officers of government and to private persons. A police officer who enters or remains on private property without the leave and licence of the person in possession or entitled to possession commits a trespass and acts outside the course of his duty unless his entering or remaining on the premises is authorized or excused by law.⁸

6.9 Implicit in this statement of the law is the recognition that the law—common law or statute—may authorise entry onto private property. Examples of such statutes are discussed in Chapter 7, which deals with laws authorising what would otherwise be a tort.

6.10 Similarly, the common law provides protection against unauthorised interference or detention of chattels. *Entick v Carrington*⁹ concerned not just an unauthorised search but also a seizure of private papers. *Wilkes v Wood* (1763)¹⁰ set out enduring common law principles against unauthorised search and seizure, later reflected in the 4th amendment to the *United States Constitution*.

6.11 Unauthorised interferences with chattels may be a trespass or conversion of the chattels, while unauthorised detention, even if initially authorised by statute, may give rise to tort actions in conversion or detinue once that authority has lapsed. For example, in *National Crime Authority v Flack* (1998), the plaintiff, Mrs Flack successfully sued the National Crime Authority and the Commonwealth for the return of money found in her house and seized by the National Crime Authority. Heerey J noted a common law restriction on the seizure of property under warrant:

[A]t common law an article seized under warrant cannot be kept for any longer than is reasonably necessary for police to complete their investigations or preserve it for evidence. As Lord Denning MR said in *Ghani v Jones* [1970] 1 QB 693 at 709: 'As

6 *Plenty v Dillon* (1991) 171 CLR 635, 639 (Mason CJ, Brennan and Toohey JJ).

7 *Southam v Smout* (Unreported, [1964] 1 Q.B.) 308, 320.

8 *Halliday v Neville* (1984) 155 CLR 1, 10 (Brennan J). Brennan J was quoted in *Plenty v Dillon* (1991) 171 CLR 635, 639 (Mason CJ, Brennan and Toohey JJ). In *Plenty v Dillon*, Gaudron and McHugh JJ said 'If the courts of common law do not uphold the rights of individuals by granting effective remedies, they invite anarchy, for nothing breeds social disorder as quickly as the sense of injustice which is apt to be generated by the unlawful invasion of a person's rights, particularly when the invader is a government official': *ibid* 655.

9 *Entick v Carrington* [1765] EWHC KB J98.

10 *Wilkes v Wood* [1763] 2 Wilson 203; 98 E R 489.

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soon as the case is over, or it is decided not to go on with it, the article should be returned.¹¹

What is vested property?

6.12 The idea of property is multi-faceted. The term ‘property’ is used in common and some legal parlance to describe types of property, that is, both real and personal property. ‘Real’ property encompasses interests in land and fixtures or structures upon the land. ‘Personal’ property encompasses both tangible things—chattels or goods—and certain intangible legal rights,¹² such as copyright and other intellectual property rights,¹³ shares in a corporation, beneficial rights in trust property, rights in superannuation¹⁴ and some contractual rights, including, for example, many debts.¹⁵

6.13 In law, the term ‘property’ is perhaps more accurately or commonly used to describe types of rights. Dealing with a term ‘property’ in a particular Act, the High Court of Australia said:

In [the Act], as elsewhere in the law, ‘property’ does not refer to a thing; it is a description of a legal relationship with a thing. It refers to a degree of power that is recognised in law as power permissibly exercised over the thing. The concept of property may be elusive. Usually it is treated as a bundle of rights.¹⁶

6.14 For land and goods, both of which may be possessed by someone other than the owner,¹⁷ property rights in the sense of ownership must be distinguished from mere possession of the land or goods, even though the latter may give some rise to qualified legal rights¹⁸ and from mere contractual rights affecting the property. The particular right may be regarded as ‘proprietary’ even though it is subject to certain rights of

11 *National Crime Authority v Flack* (1998) 86 FCR 16, 27 (Heerey J). Heerey J continued: ‘Section 3zv of the *Crimes Act* ... introduced by the *Crimes (Search Warrants and Powers of Arrest) Amendment Act 1994* (Cth) ... did not come into force until after the issue and execution of the warrant in the present case. However it would appear to be not relevantly different from the common law’. For the current law, see, *Crimes Act 1914* (Cth) ss 3ZQX–3ZQZB.

12 Also known in law as ‘choses in action’. Intangible rights are *created* by law. Not all legal rights are part of a person’s property: eg many of the common law rights discussed in this Issues Paper or the human rights recognised in international law and in the ACT and Victorian charters. Tangible things exist independently of law but law governs rights of ownership and possession in them.

13 Patent rights were held to be property rights that attracted the presumption against divesting by legislation or delegated regulations: *UWA v Gray* [2008] FCA 498 [89].

14 *Greville v Williams* (1906) 4 CLR 694.

15 *City of Swan v Lehman Bros Australia Ltd* (2009) 179 FCR 243.

16 *Yanner v Eaton* (1999) 201 CLR 351, 365–366 (Gleeson CJ, Gaudron, Kirby and Hayne JJ). ‘Property, in relation to land, is a bundle of rights exercisable with respect to the land. The tenant of an unencumbered estate in fee simple in possession has the largest possible bundle’: *Minister of State for the Army v Dalziel* (1944) 68 CLR 261, 284 (Rich J).

17 The owner of land is generally the person entitled beneficially to a fee simple estate in freehold tenure: Muray Raff, ‘Environmental Obligations and the Western Liberal Property Concept’ (1998) 22 *MULR* 657, 659.

18 Actual possession may give the possessor better rights than others whose interest does not derive from the true owner: see *Newington v Windeyer* (land) or *National Crime Authority v Flack* (goods) Possession may, in effect, give the possessor rights akin to proprietary rights. Note, ‘Not only is a right to possession a right of property but where the object of proprietary rights is a tangible thing it is the most characteristic and essential of those rights’: *Minister of State for the Army v Dalziel* (1944) 68 CLR 261, 284 (Rich J).

others in respect of the same property: a tenancy of land, for example, gives the tenant rights that are proprietary in nature as well as possessory.

6.15 A ‘property right’ may take different forms depending on the type of property. Implicit in a property right, generally, are all or some of the following rights: the right to use or enjoy the property, the right to exclude others, and the right to sell or give away.¹⁹ Property rights also depend on the statutory framework of laws and property rights affecting the particular type of property, for example, the system of land tenure in a particular state or territory, or a scheme such as the *Personal Property Securities Act 2009* (Cth); and the interaction between that statutory scheme and the common law.

6.16 The ALRC’s Terms of Reference refer to ‘vested property rights’. ‘Vested’ is primarily a technical legal term to differentiate a presently existing interest from a contingent interest.²⁰ However, particularly in the United States, the term has acquired rhetorical force in reinforcing the right of the owner not to be deprived of the property arbitrarily or unjustly by the state²¹ or, in disputes over land use, to reflect the confrontation between the public interest in regulating land use and the private interest of the owner—including a developer—in making such lawful use of the land as he or she desires.²² The tension is particularly strong with respect to retrospective legislation.²³

Protections from statutory encroachments

Australian Constitution

6.17 The *Australian Constitution* protects property from one type of interference: acquisitions by the Commonwealth other than on just terms. Section 51(xxxi) of the *Constitution* provides that the Commonwealth Parliament may make laws with respect to:

the acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws.

19 *Milirrpum v Nabalco* (1971) 17 FLR 141, 171 (Blackburn J). This judgement was quoted in Brendan Edgeworth et al, *Sackville & Neave Australian Property Law* (Lexis Nexis Butterworths, 9th Edition, 2013) 5. Some property rights may however be unassignable: see, *Ibid* 6.

20 That is, contingent on any other person’s exercising his or her rights: ‘an immediate right of present or future enjoyment’: *Glenn v Federal Commissioner of Land Tax* (1915) 20 CLR 490, 496, 501. See also, *Planning Commission (WA) v Temwood Holdings Pty Ltd* (2004) 221 CLR 30. The term ‘vested’ has been used to refer to personal property, including a presently existing and complete cause of action: See below at 6.20 *Georgiadis v AOTC* (1994) 179 CLR 297.

21 *American States Water Service Co v Johnson* 31 Cal App 2d 606,614; 88 P2d 770,774 (1939).

22 Walter Witt, ‘Vested Rights in Land Uses —A View from the Practitioner’s Perspective’ (1986) 21 *Real Property, Probate and Trust Journal* 317. A right is described as immutable and therefore ‘vested’ when the owner has made ‘substantial expenditures or commitments in good faith reliance on a validly issued permit’: Terry Morgan, ‘Vested Rights Legislation’ (2002) 34 *Urban Lawyer* 131.

23 ‘There is no remedial act which does not which does not affect some vested right, but, when contemplated in its total effect, justice may be overwhelmingly on the other side’: *George Hudson Limited v Australian Timber Workers’ Union* (1923) 32 CLR 413, 434 (Isaacs J). For further discussion, see Ch 7.

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6.18 There is no broader constitutional prohibition on the making of laws that interfere with vested property rights. Nevertheless, this constitutional protection is significant. The provision reflects the ideal enunciated by Blackstone in the 1700s that where the legislature deprives a person of their property, fair payment should be made: it is to be treated like a purchase of the property at the market value.²⁴

6.19 A question often arises as to whether or not a person whose rights are affected by a Commonwealth statute had a ‘property’ right. The High Court is said to have taken a wide view of the concept of ‘property’ in interpreting this section. ‘It means any tangible or intangible thing which the law protects under the name of property.’²⁵

6.20 A statute extinguishing a vested cause of action or right to sue the Commonwealth at common law for workplace injuries was treated as an acquisition of property in *Georgiadis v AOTC* (1994).²⁶ Similarly, the High Court in *Greville v Williams* (1906) treated the plaintiff’s right to receive a pension from his superannuation contributions on the abolition of his office as a vested property right attracting the presumption.²⁷

6.21 However, many claimants have failed to show an acquisition of property,²⁸ either because there was no acquisition,²⁹ or because there was no property right.³⁰

Principle of legality

6.22 The principle of legality provides some protection to vested property rights.³¹ When interpreting a statute, courts will presume that Parliament did not intend to

24 ‘It was and has remained the case in England and Australia that compulsory acquisition and compensation for such acquisition is entirely the creation of statute’: *R & R Fazzolari Ltd v Parramatta City Council* (2009) 237 CLR 603, 619 [41] (French CJ). See also *Walker Corporation Pty Ltd v Sydney Harbour Foreshore Authority* (2008) 233 CLR 259, 270.

25 *Minister of State for the Army v Dalziel* (1944) 68 CLR 261, 295 (McTiernan J). In the *Bank Nationalisation Case* (1948), Dixon J said s 51(xxxi) ‘extends to innominate and anomalous interests and includes the assumption and indefinite continuance of exclusive possession and control for the purposes of the Commonwealth of any subject of property’: *Bank of NSW v Commonwealth (Bank Nationalisation Case)* (1948) 76 CLR 1, 349.

26 *Georgiadis v AOTC* (1994) 179 CLR 297. This was upheld in *Commonwealth v Mewett* (1997) 191 CLR 471; *Smith v ANL Ltd* (2000) 204 CLR 493. A majority in *Georgiadis v AOTC* held that the Commonwealth acquired a direct benefit or financial gain in the form of a release from liability for damages: see further, Anthony Blackshield and George Williams, *Australian Constitutional Law and Theory* (Federation Press, 4th ed, 2006) 1280.

27 *Greville v Williams* (1906) 4 CLR 694, 703 (Griffiths CJ). This decision was reversed on other grounds by the Privy Council in *Williams v Curator of Intestate Estates* (1909) 8 CLR 760.

28 Eg, intellectual property laws based on s 51(xviii) of the Constitution may ‘impact upon existing proprietary rights’ or adjust or regulate competing rights, claims, obligations or liabilities without infringing s 51(xxxi): *Nintendo Co Ltd v Centronics Systems Pty Ltd* (1994) 181 CLR 134.

29 What amounts to an acquisition is contentious. Generally, acquisition involves the acquirer receiving something; it involves more than the mere extinguishment of rights. See further, *JT International SA v Commonwealth* (2012) 250 CLR 1.

30 ‘A right to receive a benefit to be paid by a statutory authority in discharge of a statutory duty is not susceptible of any form of repetitive or continuing enjoyment and cannot be exchanged or converted into any kind of property ... That is not a right of a proprietary nature’: *Health Insurance Commission v Peverill* (1994) 179 CLR 226, 243–244 (Brennan J).

31 The principle of statutory interpretation now known as the ‘principle of legality’ is discussed more generally in Ch 1.

interfere with vested property rights, unless this intention was made unambiguously clear. More narrowly, legislation is presumed not to take vested property rights away without compensation.³²

6.23 The general presumption in this context is longstanding and case law suggests that the principle of legality is particularly strong in relation to property rights.³³ The presumption is also described as even stronger as it applies to delegated legislation.³⁴ The wording of a statute may of course be clear enough to rebut the presumption.³⁵

6.24 As early as 1904, Griffith CJ in *Clissold v Perry* (1904) referred to the rule of construction that statutes ‘are not to be construed as interfering with vested interests unless that intention is manifest’.³⁶ More recently in 2009, French CJ stated in the High Court of Australia:

Private property rights, although subject to compulsory acquisition by statute, have long been hedged about by the common law with protections. These protections are not absolute but take the form of interpretive approaches where statutes are said to affect such rights. ... The attribution by Blackstone, of caution to the legislature in exercising its power over private property, is reflected in what has been called a presumption, in the interpretation of statutes, against an intention to interfere with vested property rights.³⁷

International law

6.25 Article 17 of the Universal Declaration of Human Rights provides:

- (1) Everyone has the right to own property alone as well as in association with others.
- (2) No one shall be arbitrarily deprived of his property.³⁸

32 The narrower presumption is useful despite the existence of the Constitutional protection because, first, ‘It is usually appropriate (and often necessary) to consider any arguments of construction of legislation before embarking on challenges to constitutional validity’: *Durham Holdings Pty Ltd v New South Wales* (2001) 205 CLR 399, 414 [27] (Kirby J). Second, the Constitutional limitation in s 51(xxxi) does not apply to acquisitions of property by a state. See also DC Pearce and RS Geddes, *Statutory Interpretation in Australia* (LexisNexis Butterworths, 8th ed, 2014) [5.21]–[5.22].

33 ‘This rule certainly applies to the principles of the common law governing the creation and disposition of rights of property. Indeed, there is some ground for thinking that the general rule has added force in its application to common law principles respecting property rights’: *American Dairy Queen (Old) Pty Ltd v Blue Rio Pty Ltd* (1981) 147 CLR 677, 683 (Mason J). See also, *Marshall v Director-General, Department of Transport* (2001) 205 CLR 603, 623 [37] (Gaudron J).

34 *CJ Burland Pty Ltd v Metropolitan Meat Industry Board* (1986) 120 CLR 400, 406 (Kitto J). Kitto J was citing *Newcastle Breweries Ltd v The King* [1920] 1 KB 854. See also, *UWA v Gray* [2008] FCA 498 [87] (French J).

35 ‘It is of little assistance, in endeavouring to work out the meaning of parts of that scheme [allowing an offeror to compulsorily acquire shares after a takeover on certain conditions under the *Corporations Law NSW*], to invoke a general presumption against the very thing which the legislation sets out to achieve. Furthermore, for the reasons given in the preceding paragraph, it does not help to say that legislation enabling abrogation of property rights should be strictly confined according to its terms, when the legislation confers a power upon a regulatory authority (subject to procedures of review) to alter those terms’: *ASIC v DB Management Pty Ltd* (2000) 199 CLR 321, 340 [43].

36 *Clissold v Perry* (1904) 1 CLR 363, 373.

37 *R & R Fazzolari v Parramatta City Council* (2009) 237 CLR 603, 618–619, [43] (French CJ).

38 A right to property is not provided for in the ICCPR or the ICESCR.

54 *Traditional Rights and Freedoms—Encroachments by Commonwealth Laws*

6.26 This and other international instruments cannot be used to ‘override clear and valid provisions of Australian national law’.³⁹ However, where a statute is ambiguous, courts will generally favour a construction that accords with Australia’s international obligations.⁴⁰

Bills of rights

6.27 In other countries, bills of rights or human rights statutes provide some protection to certain rights and freedoms. Constitutional and ordinary legislation prohibits interference with vested property rights in some jurisdictions, for example the United States,⁴¹ New Zealand⁴² and the state of Victoria.⁴³

Justifications for encroachments

6.28 The most general justification for laws that interfere with vested property interests is that the interference is necessary and in the public interest.

6.29 Protocol 1, Article 1 of the *European Convention on Human Rights* provides:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

6.30 Bills of rights and international law commonly provide exceptions to the right not to be deprived of property, usually provided the exception is reasonable, in accordance with the law, and/or subject to just compensation.⁴⁴ For example, the Fifth Amendment to the *United States Constitution*, part of the Bill of Rights ratified in 1791, provides:

No person shall be ... deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.⁴⁵

6.31 There are many laws and regulations that interfere with property rights. Laws limit land use to protect the environment,⁴⁶ to balance competing private interests or for the public interest. Other laws might regulate the content and advertising of products, such as food, drinks, drugs and other substances, to protect the health and safety of Australians. Many such laws will of course be justified. The ALRC invites submissions identifying those Commonwealth laws that interfere with property rights and that are *not* justified, explaining why these laws are not justified.

39 *Minister for Immigration v B* (2004) 219 CLR 365, 425 [171] (Kirby J).

40 *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273, 287 (Mason CJ and Deane J). The relevance of international law is discussed more generally in Ch 1.

41 *United States Constitution* amend V.

42 *Bill of Rights Act 1990* (NZ) s 21.

43 *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 20.

44 See, *Bill of Rights Act 1990* (NZ) s 21; *Charter of Human Rights and Responsibilities 2006* (Vic) s 20.

45 *United States Constitution* amend V.

46 See Lee Godden and Jacqueline Peel, *Environmental Law* (2010) Ch 4.

**Annexure 6; Commonwealth Attorney General Webpages relating to the
International Covenant of Civil and Political Rights**



Public sector guidance sheets

Rights of equality and non-discrimination

Right to an effective remedy

Right to life

Right to self-determination

Right to freedom from slavery and forced labour

Right to freedom of movement

Right to freedom of opinion and expression

Right to freedom of thought, conscience and religion or belief

Right to human treatment in detention

Right to security of the person and freedom from arbitrary detention

Fair trial and fair hearing rights

Presumption of innocence

Minimum guarantees in criminal proceedings

Prohibition on imprisonment for inability to fulfil a contract

Prohibition on torture and cruel, inhuman or degrading treatment or punishment

Prohibition on retrospective criminal laws

Right to respect for the family

Protection from exploitation, violence and abuse

Right to a name and acquire a nationality

Right to freedom of assembly and association

Right to take part in public affairs and elections

Privacy and reputation

Expulsion of aliens

Rights of parents and children

Right to work and rights at work

Right to maternity leave

Right to education

Fair trial and fair hearing rights

This material is provided to persons who have a role in Commonwealth legislation, policy and programs as general guidance only and is not to be relied upon as legal advice. Commonwealth agencies subject to the *Legal Services Directions 2005* requiring legal advice in relation to matters raised in this Guidance Sheet must seek that advice in accordance with the Directions.

- [What are fair trial and fair hearing rights?](#)
- [Where do fair trial and fair hearing rights come from?](#)
- [When do I need to consider the right to a fair trial and fair hearing?](#)
- [What is the scope of the right to a fair trial and a fair hearing?](#)
- [Can the right to a fair trial and fair hearing be limited?](#)
- [Which domestic laws relate to fair trial and fair hearing rights?](#)
- [What other rights and freedoms relate to fair trial and fair hearing rights?](#)
- [Articles from relevant Conventions](#)
- [Where can I read more about fair trial and fair hearing rights](#)

What are fair trial and fair hearing rights?

The right to a fair and public criminal trial or a fair and public hearing in civil proceedings is one of the guarantees in relation to legal proceedings. Fair trial and fair hearing rights include:

- that all persons are equal before courts and tribunals
- the right to a fair and public hearing before a competent, independent and impartial court or tribunal established by law.

The other guarantees are the presumption of innocence, and minimum guarantees in criminal proceedings, such as the right to counsel and not to be compelled to self-incriminate. For more information on the other guarantees in article 14 of the ICCPR, see the Guidance Sheets on the [Presumption of innocence](#) and [Minimum guarantees in criminal proceedings](#).

Where do fair trial and fair hearing rights come from?

Australia is a party to seven core international human rights treaties. Fair trial and fair hearing rights are contained in article 14 of the [International Covenant on Civil and Political Rights \(ICCPR\)](#).

See also article 40 of the [Convention on the Rights of the Child \(CRC\)](#) and article 13 of the [Convention on the Rights of Persons with Disabilities \(CRPD\)](#).

When do I need to consider the right to a fair trial and fair hearing?

You will need to consider the right to a fair trial and/or fair hearing when you are working on legislation, a policy or a program that:

- creates a new court or tribunal
- regulates the appointment, remuneration or removal of judges or tribunal members from office
- alters the jurisdiction of courts or tribunals, including by restricting the powers of courts to review administrative decisions
- regulates the rules of evidence in courts or tribunals
- provides for special procedures for witnesses to give evidence
- limits the requirement of a court or tribunal to accord fair trial and/or fair hearing rights, for instance in relation to the disclosure of evidence to the accused
- regulates the way in which the media may report on proceedings, for instance by authorising grants of suppression orders or closing court proceedings to the public, or
- provides international legal assistance or cooperation, including development of legislation and/or strengthening criminal justice systems.

This list should not be regarded as exhaustive.

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Right to an adequate standard of living, including food, water and housing

Right to health

Right to social security

Right to enjoy and benefit from culture

Rights of people with disability

Complaints mechanisms under human rights treaties

Absolute rights

Permissible limitations

Human rights guidance sheets glossary

What is the scope of the right to a fair trial and a fair hearing?

The right to a fair trial and a fair hearing applies to both criminal and civil proceedings, and in cases before both courts and tribunals. It also applies to military disciplinary hearings. The right is concerned with procedural fairness, rather than with the substantive decision of the court or tribunal.

Equality

What constitutes a fair hearing will require recognition of the interests of the accused, the victim and the community (in a criminal trial) and of all parties (in a civil proceeding). In any event, the procedures followed in a hearing should respect the principle of 'equality of arms', which requires that all parties to a proceeding must have a reasonable opportunity of presenting their case under conditions that do not disadvantage them as against other parties to the proceedings. The UN Human Rights Committee has found a violation of article 14(1) in a case in which a right of appeal was open to the prosecution but not to the accused.

The right to a public hearing

The right to a public hearing incorporates the principle that justice should not only be done, but be seen to be done, by subjecting legal proceedings to public scrutiny. However, pre-trial decisions made by prosecuting authorities are not required to be made in public. In some cases, appellate decisions may be made 'on the papers', rather than on the basis of a public hearing. This will not breach the right to a public hearing if the material on which the court bases its decision is publicly available, as is the decision itself. The requirement in article 14(1) that decisions be made public is based on the principle that legal proceedings be subject to public scrutiny.

Some methods whereby witnesses give evidence, for example by video link, or where the witness is shielded from the accused, may raise issues regarding the right to a public hearing. Proceedings may also be closed to the public in the interests of national security. However, while each case should be considered on its merits, such measures are likely to be permitted, given their legitimate objectives.

Independent and impartial

In Australia, the requirement of an independent and impartial court is underpinned by the doctrine of the separation of judicial power from executive and legislative power under the *Constitution*. The principle of judicial independence ensures that disputes between people, and between people and governments, are resolved by courts and judges who are impartial and are not subject to improper control or pressure, whether governmental or private. The requirement of impartiality also means that proceedings must be free from bias and the objective perception of bias.

A number of federal tribunals and other bodies have been established to deal with review of administrative decisions and actions taken by government officials. Tribunals are independent bodies which provide 'merits review'. Merits review is the process by which a person or body, other than the primary decision maker, reconsiders the facts, law and policy aspects of the original decision and determines the 'correct or preferable decision'. In a merits review, the whole decision is made again on the facts.

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Can the right to a fair trial and fair hearing be limited?

Derogation

Under article 4 of the ICCPR, countries may take measures derogating from certain of their obligations under the Covenant, including the right to a fair trial and fair hearing 'in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed'. Such measures may only be taken 'to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin'.

The UN Human Rights Committee has indicated that strict limitations would apply to any derogation under article 14.

Limitation

Article 14(1) provides that the press and the public may be excluded from all or part of a trial for reasons of morals, public order, national security, the privacy of the parties, or when in the opinion of the court publicity would prejudice the interests of justice. Suppression orders or closed hearings may be justified in order to protect particularly vulnerable witnesses (for example, child victims of sexual assault).

Article 14 provides that the requirement that decisions be made public does not apply where the interests of children require otherwise, for example, in family law matters.

Which domestic laws relate to fair trial and fair hearing rights?

Chapter III of the *Constitution* establishes the High Court of Australia, defines its jurisdiction and sets parameters for its composition. The Constitution also sets parameters for the vesting of jurisdiction and appointment, tenure, remuneration and removal of judicial officers for each of the federal courts (including the High Court).

The *Judiciary Act 1903* makes provision for numerous matters regarding the exercise of the jurisdiction and judicial power of the Commonwealth. The *Federal Court of Australia Act 1976* establishes the Federal Court of Australia and makes provision for the composition, management, jurisdiction and other operations of the Federal Court. The *Family Law Act 1975* contains provisions governing these matters for the Family Court and the *Federal Magistrates Act 1999* provides for these functions for the Federal Magistrates Court.

The High Court has held that the right to a fair trial may be called into question if certain minimum guarantees in criminal proceedings such as the absence of legal representation where the accused faces a serious criminal charge are not met. See further detail in the Guidance Sheet on [Minimum guarantees in criminal proceedings](#).

The *Administrative Decisions (Judicial Review) Act 1977* enables the review of certain administrative decisions on grounds including that a decision was not procedurally fair. There are also common law procedural fairness protections which may apply.

The *Evidence Act 1995* sets out the rules of evidence that apply in proceedings in federal courts. The *Crimes Act 1914* also makes provision regarding the admissibility of evidence in particular types of cases.

Part 1AD of the Crimes Act contains special provisions for the giving of evidence by child witnesses in some legal proceedings. It also restricts the publication of the identity of child witnesses. Part 1AE of the Crimes Act provides for the giving of evidence by video link in terrorism cases.

Section 121 of the Family Law Act creates an offence punishable by imprisonment for up to one year for publishing or otherwise disseminating to the public information that identifies a party to family law proceedings.

The *National Security Information (Criminal and Civil Proceedings) Act 2004* prevents the disclosure of information in criminal and civil proceedings that would be likely to prejudice national security. Among the matters that a court is required to consider in exercising powers under the Act is the defendant's right to receive a fair hearing.

What other rights and freedoms relate to fair trial and fair hearing rights?

Circumstances giving rise to consideration of the right to a fair trial and fair hearing may also raise the other rights in relation to legal proceedings contained in article 14 of the ICCPR, namely the presumption of innocence, and minimum guarantees in criminal proceedings, such as the right to counsel (if necessary to secure a fair trial) and not to be compelled to self-incriminate.

These circumstances may also be relevant to:

- the prohibition on retrospective criminal laws in article 15 of the ICCPR
- the right of members of the media to freedom of expression, and the right to receive information from the media under the right to freedom of expression in article 19 of the ICCPR
- the right to challenge the lawfulness of detention under article 9(4) of the ICCPR
- the right to challenge decisions regarding the expulsion of aliens in article 13 of the ICCPR.

Articles from relevant Conventions

International Covenant on Civil and Political Rights

Article 14(1)

- All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a