

criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

See also: CRC article 40; CRPD article 13.

### Where can I read more about fair trial and fair hearing rights?

- [United Nations, Office of the High Commissioner for Human Rights \(OHCHR\), Human Rights Bodies](#) (human rights treaty bodies that monitor implementation of the core international human rights treaties)
- [UN Human Rights Committee General Comment No 32](#)

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# Legal Practice Briefing

## Number 26

29 August 1996

## EUROPEAN UNION DEVELOPMENTS

While the final section deals with trade developments, this Briefing is principally devoted to the European Union's efforts to achieve the benefits of what has variously been called, amongst others, the 'Information Superhighway' or 'Global Information Infrastructure'. As well as the regulatory and technical aspects of mass market information services implicit in names such as 'information superhighway', the EU is also considering social and cultural changes resulting from easy access to massive amounts of information. The EU has called its approach as one of achieving the 'information society'.

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## The 'Information Society'

In the second half of 1994 the European Commission issued a communication which established four basic areas which needed to be considered in order to enhance the transfer of information electronically and thereby start the journey to achieving the 'information society' in Europe. First, it was recognised that the regulatory and legal framework needed adjustment and enhancement. This necessarily involved reconsideration of the rules concerning Intellectual Property Rights (IPR), privacy, security of information transfers and legal protection of such transfers, standards particularly to enable interoperability of information systems, competition and consumer protection rules. Second, telecommunication and other networks and basic information services needed to be liberalised while at the same time providing new applications and content to be available over the networks. Third, social and cultural aspects were to be considered. Finally, EU promotional activities were necessary to encourage individuals and economic entities to use and enhance the benefits of the 'information society'.

This Briefing will focus on the first two areas, namely the regulatory legal framework and liberalisation of communications services.

## The Regulatory and Legal Framework of the EU's Information Society

### Intellectual Property

## Copyright

The EU countries, like Australia, are very active participants in international copyright matters. The proposed extended rights for authors of works and producers of films through a protocol to the Berne Convention and a 'New Instrument' to extend the rights of performers and producers of sound recordings, in the World Intellectual Property Organisation (WIPO), are two examples of the EU becoming involved in extending rights to content providers for information and entertainment networks. Both of these possible new treaties, the Berne Protocol and New Instrument, are being largely driven by the potential of digital technology to deliver, without needing to make a hard copy, such things as access to software, a recording or viewing of a video, music and film. There is a real concern that the possibility of unrestricted use through digital transmission of copyrighted material on a mass scale could undermine the income of authors, artists, computer programmers, performers, and music and film producers. This could, in turn, diminish the effort, imagination and investment which these people would be prepared to put into their creations.

Currently in all EU countries there are rights granted to creators of works and recordings, films and photographs as well as to performers and broadcasters. The nature and extent of these rights can however, vary considerably between one EU country and another. The EU has tried to harmonise many of the rights granted to creators of works, broadcasters, performers etc. but this has proven so far, to be only partly successful. Several directives have been adopted by the Council of the European Communities to harmonise copyright and related rights across EU countries. While EU countries are obligated to implement these EU Directives, compliance is incomplete.

The Directives are:

- Legal Protection of Computer Programs 91/250
- Rental and Related rights 92/100
- Satellite Broadcasting Cable Retransmission 93/83
- Term of Protection 1993
- Legal Protection of Databases 1996.

## Extension of Copyright and Similar IP Rights

The Computer Programs Directive concluded in 1991 ensures that computer programs are covered by copyright, and enables the creator of software to prevent copying of the software except for certain limited exceptions.

In the latter half of 1995, and in some EU countries not until 1996, following the Term of Protection Directive, new rules were introduced extending the term of protection of copyright and similar IP rights. The main changes are:

- increase in the duration of copyright in literary, dramatic, musical and artistic works of known authorship, to life of the author plus 70 years;
- the term of copyright in films is now linked to the lives of the persons connected with a film and will only expire 70 years after the death of the last of those to die;
- copyright duration concerning works of unknown authorship is increased to 70 years after the date on which the work is made, or if made available to the public during that period, from the date on which it is first made available;
- rights in a performance are changed so that protection is available for 50 years from when the performance takes place or, if a recording of the performance is made available to the public within that time, for 50 years from when the recording is first made available; and
- perhaps most importantly from Australia's point of view, there has been introduced provisions applying reciprocal duration of copyright and performers' rights in the case of works and performances connected with countries not members of the European Economic Area (EEA).

## Databases

In order to encourage information exchange, in February 1996, an EU Directive done in March 1996 introduced an exclusive right for database creators. Databases which involved a substantial investment are now protected throughout the EU for 15 years after they are first made available to the public. This was thought desirable in order to protect investment in time, money and effort, whether or not the database itself was innovative. (Most other intellectual property rights are granted for innovative or original creations, no matter what level of effort or investment the creation entailed.)

The European Commission expects that most services in the 'Information Society' will be provided from an electronic database and that many databases will have a major impact on the creation of new multimedia products. Hence it was considered essential for the EU to provide clear rules on the level of protection for databases thereby encouraging investment in their manufacture.

Under the new Directive, database manufacturers will be able to prohibit the extraction and/or reutilisation of substantial parts of the database by others. A legitimate user of a database can however extract and/or reutilise non-substantial parts of a database as well as:

- extracting parts for the purposes of illustration for teaching or scientific research;
- extracting and/or reutilising the database for the purposes of public security or the proper performance of an administrative or judicial procedure.

The Directive defines a 'Database' as 'a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means'. The Directive also affirms that databases which constitute the author's own intellectual creation are protected by copyright, and that the rights attached to the contents of a database are not affected by the new Directive.

This new right in databases is only given to database manufacturers who are EU nationals or residents, although it may be extended to nationals of non-EU countries who give equivalent protection to databases of EU origin. Currently, this provision would largely exclude non-original databases manufactured by Australian nationals.

### **Exhaustion of Intellectual Property Rights (IPR)**

In order not to impede the free movement of goods, the European Court of Justice has, over a number of years, evolved a doctrine of 'exhaustion' of intellectual property rights. According to this doctrine the owner of intellectual property has the exclusive right to put their product on the EU market for the first time (or determine who else may do so), so as to allow them to obtain payment for the product. However, with that single payment the owner's right is exhausted. Probably the most important result of this doctrine is that the owner of an IP right cannot prevent a product already lawfully sold (with the owner's consent) in one Member State of the EU from being imported into another Member State of the EU. To do so would be an unlawful exercise of the IP right. This doctrine is not applied in the case of rental of sound recordings, computer programs or films.

### **Privacy and Personal Data Protection**

The EU has recently introduced a new Directive on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of such Data. The aim of the Directive is to ensure EU-wide protection of, most notably, the right to privacy. The protection of personal information held by others is regarded as particularly important as the European Union experiences an enormous increase in the cross-border processing and flow of personal data. Different regulations on the proper protection of personal information in the EU countries has resulted in difficulties and led to this harmonised set of rules on the protection of personal data. Unlike in Australia, the new Directive provides protection for personal data in both the private and public sectors.

The transfer of personal data to Australia has been raised as a business issue because of some European night-time data processing in Australia, marketing of Australian business in Europe and information required (for

example, on employees) for the running of a subsidiary business in Europe by an Australian parent.

The EU Directive defines personal data as being:

'any information relating to an identified or identifiable natural person who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity.'

The Directive applies to any processing of personal data whether in manual files, computers or otherwise. The rules apply however, only to manual files which are part of a filing system ('any structured set of personal data which is accessible according to specific criteria'). The rules also apply to sound and image data, if the data relates to a natural person who can be identified. If data is kept for historical research only, certain provisions in the Directive do not have to be complied with.

### **Data Flows to Australia**

Under the Directive data may only be transferred to Australia (or any third country) if Australia ensures 'an adequate level of protection' of personal data. Whether this requirement is satisfied would depend on the nature of the data and the purpose and duration of the proposed processing operation, the country of final destination of the data, any laws in force in Australia and the professional rules and security measures which are complied with in Australia (or other third country). The EU countries and the European Commission will notify each other of the countries considered not to have a sufficient level of protection. Following an EU decision to prohibit data flows, each EU country is required to take measures to prevent transfer of data of the relevant type to the third countries concerned. In some restricted circumstances the data flow to such a country may still occur when, for example, the transfer is necessary for the transfer of money or the data subject has given their unambiguous consent to the transfer.

Also, if a data controller gives sufficient guarantees in respect of the protection of the privacy and fundamental rights and freedom of individuals, an EU country may authorise a transfer of personal data to a country which does not ensure a sufficient level of protection (the so-called 'contractual solution').

### **Data Access Rules**

Under the new Directive access to data by the data subject is extensive. All data which is processed, and not only the data which is held, is covered by the Directive.

The data subject has the right:

- to information relating to the purposes of processing the data and the categories of data concerned
- to the names of recipients or categories of recipients to whom the data is disclosed
- to have all available information as to the source of the data
- to be informed of the logic involved in any automatic processing of the personal data, and
- to require that third parties to whom the data has been disclosed are notified of any rectification, erasure or blocking of the data which arises because of the incomplete or inaccurate nature of the data, unless this proves impossible or involves a disproportionate effort..

### **Security of Information Transfer and Encryption**

According to a European Commission Green Paper, the EU needs to protect encrypted television and other services from unlawful use or copying so as to allow an information society to develop. It is envisaged that encrypted services, such as digital television and video-on-demand, would be accessed on payment of a fee. However, there is a growing market in so-called 'smart-cards' and unofficial decoders which allow viewing of services without payment. Different laws to prevent piracy in different EU countries is preventing the operation

of a single European market, particularly in encrypted TV services, so it is expected that proposals will soon be put forward to prohibit:

- the decoding of encrypted services without permission, and
- the manufacture, sale, import, use, installation and advertising of unauthorised decoders.

New rules are also expected to provide for penalties for breach, and payment for damages suffered by those whose rights have been infringed. The European Commission has already put forward at WIPO meetings EU agreed proposals on the protection of encrypted services..

## **Enforcement of Legal Rights**

### **Defamation**

In a recent case the European Court, when interpreting the Brussels Convention on Jurisdiction and Enforcement of Judgments, held that the victim of a libel by a newspaper article distributed in several EU states may bring an action for damages against the publisher either:

- before the courts of the EU state where the publisher of the defamatory publication is established (which has jurisdiction to award damages for all the harm caused by the defamation), or
- before the courts of each EU contracting state in which the publication was distributed and where the victim claims to have suffered injury to his reputation (which courts have jurisdiction to rule solely in respect of the harm caused in the state seized). The European Court also held that the criteria for assessing whether the event in question is harmful and the evidence required of the existence and extent of the harm alleged by the victim of the defamation are not governed by the Brussels Convention but by the substantive law determined by the national conflict of laws rules of the court seized of the matter. This decision might lead to forum shopping in EU cross-border defamation cases.

### **Injunctions and Damages**

Generally EU legal advisers take the view that, under the Brussels Convention on Jurisdiction and Enforcement, it is normally best to sue an infringer of a legal obligation in the infringer's place of establishment in order to get an injunction and damages covering the whole of its infringing activities in the EU. In some circumstances however, there may be procedural advantages in applying for interim injunctions in countries where prompt relief is available, or in choosing to litigate a test case in a country which decides the issues of validity and infringement together, or which has (or does not have) provisions for discovery, inspection and cross-examination of witnesses. In a case involving transfer of information electronically (for example, via the Internet) it may be best to initially take action for injunctive relief in the country where the network provider is situated.

### **Counterfeit and Pirated Goods**

To enhance the rules governing the prevention, seizure and destruction of goods which infringe IP rights, (for example, unauthorised copies of copyright goods and false trade mark use) the EU Member States, during the second half of 1995 introduced new rules for Customs authorities. The holder of an IP right, or an authorised user, can now directly request Customs authorities to intercept consignments of suspected counterfeit goods. Such requests can now be made in respect of:

- goods infringing copyright or design rights
- goods bearing unauthorised trade marks as well as the trade mark or Logo itself, and the packaging
- moulds and matrices used to manufacture counterfeit goods
- goods in transit and exports.

These new rules do not apply to goods of a non-commercial nature contained in personal luggage.

## **Consumer Protection**

The EU rules on consumer protection are becoming more relevant as more consumers use the global electronic infrastructure, which currently is essentially the Internet. For example, the EU Unfair Contract Terms Directive, implemented in most EU countries during 1995, provides that a contractor cannot by simple reference to a notice (including one on an Internet Web site) exclude liability for personal injury or death. Indeed such a notice excluding any other liability is valid only if reasonable.

In cross-border credit transactions the EU is including in its proposals that consumers may be given information by electronic means. Other provisions make an assumption that information in electronic form is or can be equivalent to information provided in writing. These provisions ought to make the conduct of electronic commerce easier.

The Distance Sales Directive, expected to be adopted very soon, applies to contracts concluded by means of communication at a distance this would include electronic mail and teleshopping, as well as sales via an Internet Web page. The Directive imposes obligations on a supplier to provide certain information before a contract is made and to provide written confirmation of the contract. There is a seven day cooling-off period in which the customer can repudiate the contract.

## **Comparative Advertising**

The EU Council has agreed on proposed changes to the rules on comparative advertising so that advertisers can compare their products with those of their competitors, so long as they do not mislead the public nor denigrate other producers. In many EU countries the combined effect of trade mark law and unfair competition law has effectively prohibited comparative advertising. The differences in advertising rules was considered to be an impediment to sales and competition within the EU single market.

## **Competition Rules in the Information Society**

The European Court has recently limited the extent to which copyright owners can exercise their exclusive rights. A copyright owner cannot exercise exclusive rights in order to reserve for itself a monopoly in a secondary market. The most prominent case of this was an attempt by Irish TV broadcasters to prevent publication of their listings in a new comprehensive weekly television program guide. The European Court upheld a European Commission decision forcing the TV stations to provide their listings in a non-discriminatory manner so that they did not amount to an abuse of their monopoly position.

The European Commission has been quite active in enforcing the EU competition rules in the information services sector. The Commission has the power to approve agreements having benefits which outweigh distortions of competition in the EU. It can also fine undertakings which restrict competition in trade between the EU countries and often orders companies to cease anti-competitive activities. The European Commission can also prevent mergers and acquisitions which would create a dominant position on the EU market.

Recent prominent examples of exercise of the competition rules to enhance the free movement of information in the EU include:

- the declaration by the European Court that resale price obligations placed on book sellers in the UK and Ireland by publishers are unlawful because they restrict competition (the 'Net Book Agreement'). The European Commission is also examining a similar agreement between German and Austrian publishers.
- the exemption by the European Commission of certain types of patent and know-how licensing agreements from the competition rules, but only so long as such agreements comply with strict provisions set out in the so-called 'block exemption' Regulation on technology transfer.

- the approval of Viacom's and Bear Stearns joint venture in German language cable and television distribution.
- the investigation of Microsoft's pricing practices for software to be supplied with PCs made in different parts of Europe. There was also a suggestion that the Commission may investigate Microsoft's new global on-line service which seems to be largely designed to compete with the Internet.
- the investigation of an on-line services alliance between America On-line/Bertelsmann and Deutsche Telekom which already has a dominant position in the German on-line services market. America On-line is the US market leader and Bertelsmann has a dominant position in the German and European publishing market.
- the European Commission's approval of the acquisition of LPI Ltd., a company which develops on-line services for travel agents, by a joint venture between Thomas Group Travel, Leisureplan and Philips Media.
- the approval by the Commission of the merger by Seagate Technologies and Connor Peripherals of their manufacturing operations of hard disk drives and other information storage devices. The Commission decided that the two parties market share was low and that competition in the sector was strong.
- the Commission's rejection of a proposed joint venture between three Dutch television channels since a dominant position would be created. The Commission has said it was prepared to consider other proposals which have less of an impact on the market.
- the investigation into the joint venture between Burda, Matra-Hachette, Pearson and the USA based Meigher Communications and Interchange On-line Network to form Europe On-line. The Commission is concerned that Europe On-line should not be anti-competitive or restrict technological developments in the on-line services market before the market develops.
- the examination of a proposed alliance between BSkyB (of the Murdoch group), Bertelsmann of Germany and France's Canal + (of the Havas group) to establish a series of digital TV channels throughout Europe.

It appears that one of the main concerns of the European Commission for on-line services is whether dominant infrastructure and network providers should be permitted either to obtain material from content providers on an exclusive basis, or to contract with service providers on an exclusive basis. The fear is that exclusive arrangements would enable dominant operators to stifle competition.

## **Liberalisation of Communication Services**

### **Broadcasting**

The regulation of broadcasting is having a significant impact on the Information Society in Europe. Most, if not all, EU countries include in their definition of broadcasting any transmission of programs for reception in two or more locations, whether for simultaneous reception or by request of users of the broadcast service. A program is considered to be anything which is wholly or mainly of moving representational images, (so it does not include a program mainly of text). This wide definition includes video-on-demand, home shopping and even videophones although it seems that most EU countries make an exception for videophones.

It is likely that on-demand services with educational, entertainment and information content with frequently updated programs, will be widely available in Europe in the not too distant future. As broadcasting rules of each EU country are different, the European Commission has made proposals on which rules apply to general broadcasting and on-demand services and the restrictions which can be placed on providers of such services.

It will be noted that the current Broadcasting Directive already requires that each broadcaster shall be subject to the legislation of a single EU Member State which is responsible for ensuring the broadcaster's compliance. Each EU Member State must ensure freedom of reception and retransmission on their territory of broadcasts under the jurisdiction of another EU Member State.

In new proposals accepted by the EU Council, broadcasters offering home shopping and other interactive or on-demand services will be bound by the law of the EU country where the broadcaster is located, even if its

broadcasts are received elsewhere. Home shopping and advertising time will be subject to controls on the length and frequency of such services/features. Home shopping programs will be considered as advertising so that they are subject to the time limits on advertising during any one hour period of broadcasting. Channels devoted exclusively to home shopping will, however, have different rules applicable and in certain circumstances shopping slots of up to three hours per day will be allowed to specific broadcasters. The proposed Directive also has provisions on protection of minors and, more controversially, minimum European program content requirements.

At least in the UK it has been recognised that the regulatory regime for telecommunications and broadcasting is becoming ill-equipped to address mass market on-line services. Late in 1995, OFTEL (the UK's telecommunications regulator) published a consultative document entitled 'Beyond the Telephone, the Television and the PC' (Available on the Internet at <http://www.open.gov.uk/oftel/multi.htm>). This document considered many of the regulatory issues in the UK for what it called 'broadband switched mass market services'. Most of these issues apply equally throughout the European Union.

## **Liberalisation of EU Telecommunications**

### **The European Market**

The market for telecommunications in the EU is changing dramatically, largely in response to changes in the regulatory regimes in the EU designed to liberalise the telecommunications infrastructure and provision of services throughout Europe. Considerable growth has been achieved in mobile telephony, as well as business communications through email and the Internet. Major regional and global alliances have been established not only by traditional suppliers of telecommunications services but also by utilities and cable companies. Examples include British Rail Communications in the UK, the Flemish cable companies in Belgium and cable and steel companies (Veba Thyssen) in Germany. At the same time former monopoly suppliers like Deutsche Telekom and British Telecom are facing competition in many sectors and have or are being privatised or, in the case of France, Ireland and Italy are now corporatised.

### **The Regulatory Framework**

The EU's Regulatory Framework designed to liberalise the telecommunications market is based on three principles:

- liberalisation of areas under monopoly control
- open access to networks and services
- case by case application of the EU's competition rules.

A related issue which has also been dealt with by the European Commission is the protection of personal data, the uncontrolled transfer of which threatened to disrupt the interconnection of telecommunications networks in the EU. This issue of personal data protection has already been discussed (see pages 45).

### **Liberalisation in Stages**

Liberalisation of telecommunications has occurred in four stages. The first stage, in 1988, broke the telecom monopolies hold over the supply of terminal equipment such as phones, fax machines, office switchboards etc. In 1990, stage two liberalised the supply of value-added services, data communications (including on-line services), and voice and data services for corporate networks and closed groups of users. Stage three, in 1994, opened the market to competition in the provision of satellite services and equipment. The final area to be liberalised from monopoly supply by national telecommunications carriers is voice telephony. It has been agreed that on 1 January 1998 there will be full liberalisation (that is, opening to competition) of all voice telephony services for the public and of network infrastructure in the EU, subject to possible derogations of up to five years for Greece, Ireland, Portugal and Spain and two years for Luxembourg. The liberalisation of voice telephony

services could have a real impact because of the ability of data service providers to transmit voice by data packets for the cost of a local telephone call, as well as provide on-line services. Equally, cable TV operators will be able to use their networks to do the same.

The liberalisation of telecommunications in the EU has led to enhanced use of cable and mobile networks. Under the EU's liberalised regime cable TV networks may provide capacity for the purposes of liberalised telecommunications services. This is potentially very important for interactive on-line services. Mobile network operators can now use any type of already existing infrastructure (for example, own microwave links, cable TV networks of third parties, etc). Indeed the introduction of competition in mobile communications has been very successful and represents the most rapidly growing and competitive sector in European telecommunications. One outcome of liberalisation is development of the EU's system of GSM (Global System Mobile) which has been adopted in Australia.

It might also be noted that at the same time as these liberalisation measures were introduced, the EU Member States were required to separate their telecommunications regulatory activity from the operational activities of the public telecommunications operators/companies. Many EU Member States now have an independent regulatory authority similar to Austel..

### **Opening Access to Networks and Services**

A common regulatory environment in Europe and minimum standards for particular services and technologies is regarded as essential to achieving the 'Information Society'.

The ability of users of infrastructure both to access adequate transmission capacity and to access services at an affordable price on fair terms; and also for service providers to interconnect with a competitor's network, has been recognised as fundamental to enable EU businesses or service providers to provide and/or use liberalised telecommunication services. To achieve these ends the so-called 'Open Network Provision (ONP)' rules were put in place together with specific EU Directives on leased (private) lines and voice telephony services which applied ONP rules to these services.

There is currently a proposal for an EU Directive applying open network provision principles to interconnection of networks. The idea is to provide a regulatory framework for ensuring fair and non-discriminatory interconnection for all operators and service providers in the EU. There are four main ways in which this is expected to be achieved:

- commercial negotiation will be the main means of achieving fair terms of interconnection but with effective dispute resolution procedures at the EU Member State level and conciliation procedures at the European level
- an obligation to grant or a right to obtain interconnection
- transparency of interconnection terms and prices and relevant underlying cost calculations
- additional obligations on organisations providing public telecommunications networks and services, and which have significant market power.

The European Commission has also moved to define the principal elements of universal service in the EU. It is this universal service which will be the minimum requirement for holders of a comprehensive service providers licence. Although not yet finalised, it is expected that some licence holders will pay other (dominant) service providers to provide the universal service obligations under a licence. Universal service is most commonly defined as being the delivery at an affordable price to every customer reasonably requesting it:

- of access to a network providing a defined voice telephony service, and
- the capability of using a fax, and
- most importantly, from the point of view of the information society, of connecting a computer modem to access on-line information services for low speed data services.

### **Convergence of Mobile and Fixed Network Systems**

- 5.10.4. Submitted by Lancione and subsequently admitted by the Trustee on the 12th June 2007 in circumstances where the Trustee was aware of a counterclaim against and set off against Lancione as the Property of Estate SA 1590 of 2004
- 5.10.5. Submitted by Georgiadis lawyers and subsequently admitted by the Trustee on the 12th June 2007 in circumstances where the Trustee was aware of a counterclaim and set off against Georgiadis Lawyers as the Property of Estate SA 1590 of 2004
- 5.11. Despite my ongoing requests to the Trustee ad his personnel no copies of any Proof of Debt has ever been provided to me by the Trustee and the Trustee has resisted the return of my files to me despite my discharge from Bankruptcy.
- 5.12. No Proof of Debt has been adjudicated on by the Trustee in Bankruptcy in respect to the administration of the Bankrupt Estate.
- 5.13. From the date of his appointment the Trustee was represented in;
- 5.13.1. The administration of Estate SA 1590 of 2014 by Skip Lipman and Emma Trebilcock of the Firm Lipman Karas until the date of finalisation of that Estate on the 11th May 2011 nearly 7 years after his appointment.
- 5.13.2. The administration of Bernsteen Pty Ltd (In Liquidation) ("**Bernsteen**") by Ray Mansuetto of the firm Minter Ellison which firm relevantly prepared the NAB security documentation for the Applicant at the time of the First And Second Contracts of Finance at the direction of the Chairman of Minter Ellison, Mr Greg May.
- 5.14. From the date of his appointment the Trustee did not commence proceedings against NAB in his administration of Bernsteen OR my estate because NAB was a source of work for the Trustee as an insolvency practioner.
- 5.15. From the date of his appointment the Trustee did not commence proceedings against Minter Ellison in his administration of my estate because Minter Ellison was acting for the Trustee on a speculative/Profit sharing arrangement in his administration of Bernsteen.

5.16. From the date of his appointment the Trustee did not commence proceedings against Lancione in his administration of my estate because Lancione worked for the Trustee on a speculative/Profit sharing arrangement in his administration of other insolvent Estates.

5.17. It is not known to me exactly how much Fees were earned by the Trustee in his administration of my Estate as there are a number of inconsistencies revealed in the annual estate returns that are the subject of litigation in VID 304 of 2014.

5.18. The Trustee has not advised me of any aspect of his administration of my Bankrupt estate save the correspondence received on the 12th June 2007.

5.19. On the 23rd October 2007 my Trustee lodged a Notice of Objection to my automatic Discharge from Bankruptcy on the expiry of the minimum 3 years statutory term.

5.20. On the 13th November 2007 I lodged an application for review of the Notice of Objection to my Discharge from Bankruptcy.

5.21. As a consequence of the actions of the Respondents in refusing to consent to set aside the Default Judgment I was not able to show evidence of the setting aside of the Default Judgment and the Trespass by the Trustee on my Bankrupt Estate.

5.22. The relevant components of the Notice of Objection that were not set aside by the Delegate of the Inspector General related to Bills of Exchange which efficacy was brought into question by the actions of the Respondents in not acknowledging payment prior to the making of the sequestration order in ADG 69 of 2004.

5.23. From the date of appointment of my Trustee to the date of finalisation of my Bankrupt Estate, my Trustee trespassed on the estates that I am or was a Trustee of and that I am or was either a general or primary beneficiary.

5.24. **Particulars**

5.24.1. The conduct and decisions of the Trustee in his administration of my bankrupt estate has at all times been;

5.24.1.1. Harsh and oppressive and Unconscionable within the meaning of Unwritten Law, the Common Law, and

5.24.1.2. in breach of the relevant provisions of the Bankruptcy Act 1966 (Cth) and the Bankruptcy Regulations 1996 (Cth), and

5.24.2. The decisions, conduct and associated actions of the Trustee and his servants was fraud, deception and serious error which;

5.24.2.1. is/was and are/were in breach of the duties and obligations of the Trustee as an officer of the Court and a representative of the Crown to act as model litigant

5.24.2.2. has caused Loss and Damage to the Applicant in his aforementioned capacities

5.24.2.3. is/was and are/were in breach of s3BA of the Crimes Act 1914 (Cth),and

5.24.2.4. is/was and are/were in breach of s134 of the Criminal Code 1995 (Cth),and

5.24.2.5. is/was and are/were in breach of the Rules of Professional Conduct and Practice 2003, South Australia Australian Law Society in respect to the legal representatives of the Trustee, and

5.24.2.6. is/was and are/were in breach of s139, s140(4), s142, s238, s251, s242,s243, s256, s270 of the Criminal Law Consolidation Act 1935 (SA)

## 6. The Sequestration Order made in Estate SA 2112 of 2004

6.1. On the 10th September 2004 International Vintners Australia Pty Ltd (“IVA”) lodged a creditor’s petition against Averil Gay Garrett nee Hodge (“my ex-wife”) in the Federal Magistrates court Adelaide Registry which matter was given action ADG 187 of 2014.

6.2. The action was commenced in respect to costs orders given in favour of IVA against the Trustees of AGFT, namely myself and my wife, in respect to an application to set aside

a Statutory Letter of Demand for repayment of a Loan Account owed by IVA to AGFT in excess of \$900,000

- 6.3. My Ex-wife had a right of set off against IVA in the amount of the account.
- 6.4. On the 16th November 2004, the Deputy Commissioner of Taxation joined proceeding ADG 187 of 2004 as a supporting creditor to IVA in the amount of the First Default Judgment Debt.
- 6.5. On the 22nd December 2004 my wife executed a Debtor's Petition on the advice of Lancione and Stephen James Duncan, who was then appointed as "**my ex-wife's Trustee**" of her Bankrupt Estate SA2112 of 2004, solely as a consequence of the actions of the Deputy Commissioner of Taxation..
- 6.6. From the date of his appointment my ex-wife's Trustee was represented in the administration of Estate SA 1590 of 2014 by James Cudmore and David Elix of the Firm Cudmore Cusoff Knox until the date of finalisation of that Estate on the 7th February 2013 nearly 9 years after his appointment.
- 6.7. At no time has my-ex-wife's Trustee ever admitted a Proof of Debt in Estate SA 2112 of 2014 ("**my ex-wife's Estate**") or provided my wife with any documentation at all in respect to her Bankrupt Estate including any evidence of management of the Bankrupt Estate or evidence of Proofs of Debt.
- 6.9. From the date of his appointment the Trustee did not investigate or admit the debt that was the subject of the joinder of the Deputy Commissioner of Taxation to ADG 187 of 2004
- 6.8. From the date of his appointment my ex-wife's trustee did not commence proceedings against NAB in his administration of my ex-wife's Estate because NAB was a source of work for my ex-wife's Trustee as an insolvency practitioner.
- 6.9. From the date of his appointment my Ex-wife's Trustee did not commence proceedings against Minter Ellison in his administration of my Ex-Wife's Estate because Minter Ellison has acted for my ex-wife's Trustee on a speculative/Profit sharing arrangement in his administration of other insolvent Estates.

6.10. From the date of his appointment my Ex-Wife's Trustee did not commence proceedings against Lancione in his administration of my Ex-Wife's Estate because Lancione worked for my Ex-Wife's Trustee on a speculative/Profit sharing arrangement in his administration of other insolvent Estates and introduced my ex-wife to my ex-wife's Trustee.

6.11. Between the date of his appointment and the date of finalisation been paid at least \$450,000 in fees to my ex-wife's Trustee.

6.12. It is not known to me exactly how much Fees were earned by my ex-wife's Trustee in his administration of my ex-wife's Estate as there are a number of inconsistencies revealed in the annual estate returns that are the subject of VID 425 of 2014.

6.13. From the date of appointment of my ex-wife's Trustee to the date of finalisation of the Bankrupt Estate of my ex-wife, my ex-wife's Trustee trespassed on the estates that I am or was a Trustee of and that I am or was either a general or primary beneficiary.

6.14. **Particulars**

6.14.1. The conduct and decisions of my ex-wife's Trustee in his administration of her bankrupt estate has at all times been;

6.14.1.1. Harsh and oppressive and Unconscionable within the meaning of Unwritten Law, the Common Law, and

6.14.1.2. in breach of the relevant provisions of the Bankruptcy Act 1966 (Cth) and the Bankruptcy Regulations 1996 (Cth), and

6.14.2. The decisions, conduct and associated actions of my ex-wife's Trustee and his servants was fraud, deception and serious error which;

6.14.2.1. is/was and are/were in breach of the duties and obligations of my ex-wife's Trustee as an officer of the Court and a representative of the Crown to act as model litigant

- 6.14.2.2. has caused Loss and Damage to the Applicant in his  
aforementioned capacities
- 6.14.2.3. is/was and are/were in breach of s3BA of the Crimes Act 1914  
(Cth),and
- 6.14.2.4. is/was and are/were in breach of s134 of the Criminal Code  
1995 (Cth),and
- 6.14.2.5. is/was and are/were in breach of the Rules of Professional  
Conduct and Practice 2003, South Australia Australian Law  
Society in respect to the legal representatives of the Trustee,  
and
- 6.14.2.6. is/was and are/were in breach of s139, s140(4), s142, s238,  
s251, s242,s243, s256, s270 of the Criminal Law  
Consolidation Act 1935 (SA)

7. **Conduct of the Trustees & Improper Purpose**

- 7.1. Between the date of their respective appointments and today's date the Trustee and my Ex-Wife's Trustee (**hereinafter "The Trustees"**) made claims over assets that they knew they had no legal claim to as they knew or ought to have known, as experienced Accountants that they were appointed improperly in respect to a Debt that did not exist.
- 7.2. The Trustees were assisted in those claims by entering into Success Fee/Speculative/Profit Sharing arrangements with their respective lawyers of the kind found by the Honourable Kourakis CJ to exist in his interim judgment given in SCI-2006-165; *Viscariello v Peter Macks* of the 16th August 2012
- 7.3. On the 8th December 2014 Final Judgment was delivered in SCI-2002-189; *Viscariello v Peter Macks* in which regard the Honourable Chief Justice found for the Plaintiff that the Trustee had abused process, falsified documents, breached his duties as an officer of the Court and should be removed as Liquidator of Bernstein.
- 7.4. The Trustees are professional certified practising accountants of many years' experience, who have at all times been aware of;

- 7.4.1. The conflict of interest of the Trustee in acting in Estate SA 1590 of 2014 as a consequence of the Costs orders made against him in favour of FBG, and
- 7.4.2. The fundamental and fatal flaws in their respective appointments as Trustees in respect to the First Default Judgment being given in respect to a debt,
  - 7.4.2.1. that did not in fact exist in accordance with their intimate professional knowledge of the operation of the GST Act, and
  - 7.4.2.2. that had been paid in any event.
- 7.4.3. The breaches of the First and Second Contracts of Finance by NAB, and
- 7.4.4. The adverse Judgment given against Westpac in SCI-2004-165; *Andrew Garrett Wine Resorts Pty Ltd v Westpac* by the Honourable Justice White.
- 7.4.5. The Negligence of Lancione
- 7.4.6. The Negligence of Minter Ellison Lawyers
- 7.4.7. The Negligence of Georgiadis Lawyers
- 7.5. Between the dates of their respective appointments the Trustees and their respective lawyers have knowingly sworn and filed affidavit material that they knew not to be true in order to mislead the court in VIC SC-2005-7330 and SADS 29 of 2005 and SAD 5 of 2006 and knowingly trespassed on at least the following estates;
  - 7.5.1. Andrew Garrett
  - 7.5.2. Averil Garrett
  - 7.5.3. Nicholas Garrett
  - 7.5.4. Tom Garrett
  - 7.5.5. The Trustee of AGFT
  - 7.5.6. The Trustee of AGFT 2

7.5.7. The Trustee of AGFT 3

7.5.8. The Trustee of AGFT 4

7.5.9. The Trustee of SPUT

7.5.10. The Trustee of OVANZ

7.5.11. The Trustee of OVPET

7.5.12. The Trustee of OVPET 2

7.5.13. The Trustee of HGPT 4

7.6. The Respondents have at all relevant times been aware of the trespass of the Trustees on the aforementioned Estates and have knowingly and capriciously assisted and facilitated that trespass because;

7.6.1. The Trustees are a source of revenue for the Respondent, and

7.6.2. The Respondents relied upon the fraud, deception and serious error of the Trustees to conceal the improper bankruptcy notice, improper appointment and abuse of process by the Respondents in the oppression of interests related to me.

#### 7.7. **Particulars**

7.7.1. The conduct and decisions of the Respondents in refusing to agree to consent to set aside the First Default Judgment, in Appointing the Trustee, in joining ADG 187 of 2004, and knowingly facilitating the trespass of the Trustees on the aforementioned Bankrupt Estates as set out at paragraphs 7.1 – 7.6 is/was and are/were conduct and decisions that are reviewable under s5 & s6 of the ADJR, the Common Law, s75(v) of the Constitution and the provisions of s39B of the Judiciary Act;

7.7.2. Repeats paras 4.5.2 to 4.5.6

~~7.7.3. The conduct and decisions of the Respondents is/was and are/were Harsh and oppressive and Unconscionable within the meaning of Unwritten Law, the Common Law and is/was and are/were breaches of;~~

~~7.7.3.1. the Public Services Code of Conduct and Public Service Values at s10 and 13 of the PSA, and~~

~~7.7.3.2. the Tax Payers Charter as a Code of Conduct issued by the Respondent under the provisions of the TAA and the PSA~~

## 8. The Treasury Wine Estates Vintners Limited (“TWEV”) Deed of Settlement

8.1. On the 1st July 2000, *A New Tax System (the Goods and Services Tax) Act 1999* (Cth) (“**the GST Act**”) and *A New Tax System (the Australian Business Number) Act 1999* (Cth) (“**the ABN Act**”) came into effect.

8.2. Following extended negotiations between March 2000 and May 2000 a heads of agreement was executed between me (personally, in my capacity as Trustee of GFT and Director of Companies) and Mildara Blass Limited, now known as Treasury Wine Estates Vintners Limited.

8.3. On the 26th July 2000 I, personally, and in my capacity as Trustee of GFT and sole director of entities related to me, executed a Deed of Settlement with TWEV and entities related to TWEV in order to resolve a long running dispute in the Supreme Court of South Australia; *Andrew Garrett v Mildara Blass Limited* given action no SCI-1996-2244.

8.3.1. Clause 9 of the TWEV Deed of Settlement sets out payments due to me in my capacity as Trustee of GFT at clause 9.1 and to me in my personal capacity at clause 9.2, and

- 8.3.2. The Payments were agreed to be made as payments in the settlement of a dispute and were not payments that constituted a Taxable Supply for the purposes of the GST Act, and
- 8.3.3. TWEV did not pay a ~~premium of~~ an additional amount of 10% on the payment made under clause 9.1(a), and
- 8.3.4. TWEV paid \$82,500 per quarter to the Trustee of the GFT under clause 9.1(b) from the 31st March 2000 until the 31st December 2008, and
- 8.3.5. When making the payments per quarter TWEV provided a recipient generated invoice for reasons that are not known to me but I conclude was an error of the internal accountants of TWEV at a time when the GST act had just come into effect, and
- 8.3.6. The Payments made under the TWEV Settlement Deed were not a Taxable supply as the Garrett Family License had been terminated with all claims resolved, and
- 8.3.7. At that time I did not know or understand the effect of the recipient generated invoices would have on my staff who were misled by TWEV into believing that the payments were made needed to declare a GST liabilities each quarter which were entered on the RBA of AGFT.
- 8.3.8. From the date of settlement TWEV did not pay the amount due under clause 9.2 to me which matter is the subject of dispute between me that is on foot in the Federal Court of Australia, Melbourne Registry given action number VID 248 of 2014.
- 8.3.9. The conduct and decisions of the Respondents has frustrated the pursuit of the Applicant's rights under the TWEV Deed of Settlement by;
  - 8.3.9.1. The Sequestration order made in ADG 69 of 2014 against the Applicant in circumstances where;
    - 8.3.9.1.1. The First Default Judgment was given in respect to a debt that did not exist.

- 8.3.9.1.2. The Respondent had been paid the amount of the claim claimed by the Respondent in ~~under~~ the Creditors Petition on the 22nd September 2014 that was the subject of the Bankruptcy Notice issued in May 2014, and
- 8.3.9.1.3. Has not refunded that payment, and
- 8.3.9.1.4. Has not accounted for that payment on the RBA of AGFT.
- 8.3.9.2. The application for joinder made on the 16th November 2004 in ADG 187 of 2004 and the sequestration order given in that proceeding in circumstances where;
  - 8.3.9.2.1. The First Default Judgment was given in respect to a debt that did not exist.
  - 8.3.9.2.2. The Respondent had been paid the amount of the claim claimed by the Respondent in ~~under~~ the Creditors Petition on the 22nd September 2014 that was the subject of the Bankruptcy Notice issued in May 2014, and
  - 8.3.9.2.3. Has not refunded that payment, and
  - 8.3.9.2.4. Has not accounted for that payment on the RBA of AGFT.
- 8.3.9.3. Resisting the application to set aside the First Default Judgment commenced by the Applicant on the 4th December 2006 in DCCIV-2003-1666, and
- 8.3.9.4. Cancelling the Amending Activity Statements of AGFT on the 18th February 2009 that were properly processed on the 6th and 7th October 2008 in circumstances where the Respondents knew that Respondents could NOT LEGALLY reverse the GST Corrections, and

8.3.9.5. Refusing to consent to set aside the First Default Judgment between 4th December 2006 and today's date, and

#### 8.4. Particulars

**8.4.1. The Conduct and Decisions of the Respondents have at all times been harsh, oppressive and unconscionable within the meaning of the Unwritten Law in circumstances where the Respondents;**

8.4.1.1. Knowingly and capriciously assisting the Trustees to trespass on the Estates listed above in order to;

8.4.1.2. render me impecunious in order to prevent me from ventilating my claims against the Respondents, and

8.4.1.3. assist the Trustees in the generation of Fees because the Trustees are a source of Revenue for the Respondents and of strategic importance in the oppression of taxation claims generally as a management practice of the Respondents, and

8.4.1.4. Knowingly and capriciously frustrating the development of OenoViva Business Systems in order to render me impecunious in order to prevent me from ventilating my claims against the Respondent

8.4.1.5. Repeats paras 4.5.2 to 4.5.6

#### 9. **National Australia Bank Limited("NAB")**

9.1.1. In early 2000 I was approached by NAB to consolidate all of my banking business with NAB in order to "make my life easier".

9.1.2. On May the 21st 2002 I, personally and in my capacity as Trustee of AGFT, and entities related to me accepted the First Contract of Finance from NAB to advance a sum of \$10,500,000 in order to develop the interests of entities related to me in the Australian and Global Wine Industries.

- 9.1.3. Later in October 2002 the First Contract of Finance was varied by agreement to include the purchase of a vineyard in Tasmania known as "Old Stornoway" and now known as Joseph Kromy Vineyards.
  - 9.1.4. For reasons then not known to me NAB started to withdraw facilities 6 months after moving my business from Bank SA Limited, NM Rothschild (Australia) Limited and Rabobank (Australia) Limited.
  - 9.1.5. Subsequently a review of various court files and the NAB discovery given on the 5th October 2004 I discovered that the reasons for the NAB withdrawing its finance facilities were that the security documentation prepared by Minter Ellison Lawyers acting for me were fatally flawed.
  - 9.1.6. I have prepared a summary of those issues and have filed them in VID 304 of 2014; Andrew Garrett v Peter Ivan Macks as Trustee of my Bankrupt Estate (SA 1590 of 2004) and VID 425 of 2014; Andrew Garrett v Stephen James Duncan as Trustee of my ex-wife's Bankrupt Estate (SA 2112 of 2004).
  - 9.1.7. On the 13th March 2004 my accountant prepared an Interim Balance Sheet and Profit and Loss for AGFT in preparation for the refinancing of the NAB alleged debt.
  - 9.1.8. Between July 2003 and today's date the NAB and its servants made claim in SASC-127 of 2004 and SASC 1767 of 2003 as to the amount owed under its securities that was inconsistent with the moneys advanced and the moneys collected by NAB under its securities and was not money owed by any entity related to the Applicant.
- 9.2. **The Conduct and Decisions of the Respondents has at all times been harsh, oppressive and unconscionable within the meaning of the Unwritten Law in circumstances where the Respondents;**
- 9.2.1. Knowingly and capriciously assisting the Trustees to trespass on the Estates listed above in order to;
    - 9.2.1.1. render me impecunious in order to prevent me from ventilating my claims against the Respondents, and

9.2.1.2. because the Trustees are a source of Revenue for the Respondents

9.2.2. Knowingly and capriciously sought to oppress my interests, in all of my capacities, in the agitation of the claim against NAB

9.2.3. Knowingly and capriciously resisting the development of OenoViva Business Systems in order to render me impecunious in order to prevent me from ventilating my claims against the Respondent

### 9.3. **Particulars**

9.3.1. The conduct and decisions of the Respondents in refusing to agree to consent to set aside the First Default Judgment and facilitate the trespass on estates associated with me is/was and are/were conduct and decisions that are reviewable under s5 & s6 of the ADJR, the Common Law and the provisions of s39B of the Judiciary Act

9.3.2. Repeats paras 4.5.2 to 4.5.6

~~9.3.3. The conduct and decisions of the Respondents is/was and are/were Harsh and oppressive and Unconscionable within the meaning of Unwritten Law, the Common Law and is/was and are/were breaches of;~~

~~9.3.3.1. the Public Services Code of Conduct and Public Service Values at s10 and 13 of the PSA, and~~

~~9.3.3.2. the Tax Payers Charter as a Code of Conduct issued by the Respondent under the provisions of the TAA and the PSA~~

~~9.3.4. In breach of the duties and obligations of the Respondents as representatives of the Crown to act as model litigants~~

## 10. **The First SAD 29 of 2005 Settlement Agreement**

10.1. On the 1st September 2014 the Trustee swore and filed an affidavit in VID 304 of 2014 that relevantly set out the aforementioned SAD 29

Settlement Agreement dated the 2nd November 2005 as exhibit PIM 2 and that I have not seen before.

10.2. That settlement agreement reveals that the Trustees have released the claims of both Bankrupt Estates for breach of contract against both;

10.2.1.1. Shu Mu Tseng, and

10.2.1.2. National Australia Bank

**10.3. The Conduct and Decisions of the Respondents has at all times been harsh, oppressive and unconscionable within the meaning of the Unwritten Law in circumstances where the Respondents;**

10.3.1. Knowingly and capriciously assisting the Trustees to trespass on the Estates listed above in order to;

10.3.1.1. render me impecunious in order to prevent me from ventilating my claims against the Respondents, NAB and Shu Mu Tseng, and

10.3.1.2. because the Trustees are a source of Revenue for the Respondents

10.3.2. Knowingly and capriciously resisting the development of OenoViva Business Systems in order to render me impecunious in order to prevent me from ventilating my claims against the Respondent.

10.4. **Particulars**

10.4.1.1. Repeats paras 4.5.2 to 4.5.6

~~10.4.2. The conduct and decisions of the Respondents in refusing to agree to consent to set aside the First Default Judgment is/was and are/were conduct and decisions that are reviewable under s5 & s6 of the ADJR, the Common Law and the provisions of s39B of the Judiciary Act~~

~~10.4.3. The conduct and decisions of the Respondents is/was and are/were Harsh and oppressive and Unconscionable within the meaning of Unwritten Law, the Common Law and is/was and are/were breaches of;~~

~~10.4.3.1. the Public Services Code of Conduct and Public Service Values at s10 and 13 of the PSA, and~~

~~10.4.3.2. the Tax Payers Charter as a Code of Conduct issued by the Respondent under the provisions of the TAA and the PSA~~

~~10.4.4. The conduct and decisions of the Respondents is/was and are/were breaches of the duties of the respondents to properly administer the provisions of the TAA and the GST Act.~~

~~10.4.5. In breach of the duties and obligations of the Respondents as representatives of the Crown to act as model litigants~~

#### 11. **The SAD 5 of 2006/SAD 29 of 2005 Settlement Agreement**

11.1. On the 3rd July 2008 the Honourable Lander J dismissed my application to be joined to SAD 5 of 2006 as Trustee of GFT and made findings that GFT and AGFT were one and the same Trust on the basis of representations made by counsel for the Trustees in SAD 5 of 2006.

11.2. On the 8th September 2008 the Honourable Justice Lander dismissed my appeal against the aforementioned Judgment in SAD 101 of 2008.

11.3. The Honourable Judge was conflicted in making a decision on an application for leave to appeal from his own judgment.

11.4. On the 6th and 7th October 2008 the relevant corrections were made to the RBA of AGFT in respect to the First Default Judgment bringing into question the proper appointment of the Trustees to the respective Estates.

11.5. On the basis that the Debt relating to the appointment of the Trustees did not exist then orders ought to be made setting aside the appointment

of the two Trustees and annulling the Bankruptcies of me and my ex-wife in VID 730 and VID 732 of 2014.

- 11.6. On the 10th March 2009 in my capacity as Trustee and authorised officer of AGFT, AGFT 3 and in my own capacity I executed the SAD 5 of 2006/SAD 29 of 2005 Settlement Agreement with the Trustees in order for the Trustee to lodge a withdrawal of his Notice of Objection to my discharge from Bankruptcy lodged by him on the 2007.
- 11.7. On the 17th April 2009 the Trustee withdrew his notice of objection to discharge solely as a consequence of the SAD 5 of 2006/SAD29 of 2005 settlement agreement which moneys were applied to pay fees to the Trustees and the Lawyers of the Trustees and not applied to any creditors.
- 11.8. At all relevant times there were no Bona Fide Creditors whose alleged debts had been adjudicated on by either Trustee in respect to either estate.
- 11.9. I was suborned into executing the SAD 5 of 2006/SAD 5 of 2005 Settlement agreement in circumstances where the Respondents and the Trustees knew that the Trustees were improperly appointed and that the Bankruptcies of me and my ex-wife should have been annulled and that the Trustees had no standing to make any applications on behalf of my own or my ex-wife's estates.
- 11.10. On the aforementioned basis the Respondents knew that all judgements and orders made by the Honourable Lander J in SAD 5 of 2006 and SAD 29 of 2005 along with all settlement agreements ought be set aside on the basis that:
  - 11.10.1. The Bankruptcies of me and my ex-wife ought be annulled, and
  - 11.10.2. The Trustees lacked standing to make any applications on behalf of the relevant estates, and

11.10.3. There would be no contradictor in any proceeding where the Trustees appeared, argued against me or any other person on behalf of the relevant estates.

11.11. On the 1st September 2014 the Trustee swore and filed an affidavit in VID 304 of 2014 that relevantly set out the aforementioned SAD 5 of 2006/SAD 29 of 2005 Settlement Agreement as exhibit PIM 3.

11.12. I executed that agreement in circumstances where

11.12.1. The Trustee had approached me in December 2008 via my elder brother, Michael Garrett ( a senior partner at BDO accountants and Advisors) and advised me that he would keep me Bankrupt until “Hell Freezes” over, and

11.12.2. On the 18th February 2009 the Respondents had cancelled the GST Corrections entered on the RBA for AGFT on the 6th and 7th October 2008 in circumstances where the Respondents knew that they COULD NOT LEGALLY reverse the GST Corrections which action was done for the sole purposes of

11.12.2.1. misleading the Court in DCCIV-2003-1666 in the hearing of the application to set aside the First Default Judgment, and

11.12.2.2. Saving embarrassment in the face of enquiry from the Commonwealth Ombudsman that was initiated by me in November 2008.

11.12.2.3. The Hearing of the aforementioned application filed on the 4th December 2006 was heard on the 19th February 2009 (the day after the cancellation of the GST Corrections) following the actions of the Respondents in

11.12.2.3.1. cancelling the amending activity statements on the 18th February 2009 in order to mislead the court, and

11.12.2.3.2. Mislead the court in respect to my NOT having standing as a Joint Trustee of the AGFT to make the application in circumstances where the Respondents now seek to rely on that Standing as a Joint Trustee of AGFT in SCI-2013-02968 in respect to the same appointment dated 19th January 2006, and

11.12.2.3.3. Seeking to save embarrassment in the face of enquiry from the Commonwealth Ombudsman that was initiated by me in November 2008.

11.12.2.4. The Respondents and the Trustees delayed me from developing the interests of AGFT 4 in developing the Urban Winery Business then known as Two Tribes Wine Company and now known as OenoViva Business Systems and OenoViva Hand Crafting by the refusal of the Respondents to set aside the First Default Judgment.

**11.13. The Conduct and Decisions of the Respondents has at all times in the refusal to set aside the First Default Judgment been harsh, oppressive and unconscionable within the meaning of the Unwritten Law in circumstances where the Respondents;**

11.13.1. Knowingly and capriciously assisting the Trustees to trespass on the Estates listed above in order to;

11.13.1.1. render me impecunious in order to prevent me from ventilating my claims against the Respondents, NAB and Shu Mu Tseng, and

11.13.1.2. because the Trustees are a source of Revenue for the Respondents

11.13.2. Knowingly and capriciously resisting the development of OenoViva Business Systems in order to render me impecunious in order to prevent me from ventilating my claims against the Respondent

11.14. **Particulars**

11.14.1. The conduct and decisions of the Respondents referred to at paragraph 11.1 to 11.13 is/was and are/were conduct and decisions that are reviewable under s5 & s6 of the ADJR, the Common Law and the provisions of s39B of the Judiciary Act

11.14.2. Repeats paras 4.5.2 to 4.5.6

~~11.14.3. The conduct and decisions of the Respondents in refusing to agree to consent to set aside the First Default Judgment is/was and are/were conduct and decisions that are reviewable under s5 & s6 of the ADJR, the Common Law and the provisions of s39B of the Judiciary Act~~

~~11.14.4. The conduct and decisions of the Respondents is/was and are/were Harsh and oppressive and Unconscionable within the meaning of Unwritten Law, the Common Law and is/was and are/were breaches of;~~

~~11.14.4.1. the Public Services Code of Conduct and Public Service Values at s10 and 13 of the PSA, and~~

~~11.14.4.2. the Tax Payers Charter as a Code of Conduct issued by the Respondent under the provisions of the TAA and the PSA~~

~~11.14.5. The conduct and decisions of the Respondents is/was and are/were breaches of the duties of the respondents to properly administer the provisions of the TAA and the GST Act.~~

~~11.14.6. In breach of the duties and obligations of the Respondents as representatives of the Crown to act as model litigants~~

## 12. The Second Judgment Debt against AGFT in respect to a Debt that did not exist

12.1. On the 6th August 2014 the Respondents were successful in obtaining the summary judgment of the Honourable Mukhtar AJ in SCICIV-2013-029568 in the Supreme Court of Victoria in respect to an alleged PAYG instalment liability.

12.2. Subsequent research by me into my records revealed that the debt alleged by the Respondents did not in fact exist and that;

12.2.1. That the alleged Income Tax PAYG liability that was the subject of the proceedings was calculated against an alleged Income Tax Liability on the 7th June 2012 for the purposes of entry into the Legal Action account of AGFT, and

12.2.2. On the 12th June 2013 the Income Tax liability that was admitted by AGFT for the Income Tax year ending 30 June 2011 was cancelled by the Respondents so that the alleged liability upon which the PAYG instalment was calculated against was in fact ZERO, and

12.2.3. ~~That~~ the Proceedings were personally served on me on the 11th July 2013 at my home, and

12.2.4. That the Respondents knew, as the Registrar of the Australian Business Register ("**the ABR**"), that I had resigned as a Trustee of AGFT on the 8th June 2013, and

12.2.5. That the Respondents did not amend the ABR despite having notice to do so for the sole purposes of litigation in SCICIV-2013-02968 and misleading the Honourable Mukhtar AsJ as to the true state of affairs, and

12.2.6. On the 5th August 2013 the Deputy Commissioner of Taxation sent a letter to the Trustees of AGFT that they did not need to pay PAYG instalments, and

12.2.7. On the 4th of October 2013 cancelled the PAYG Instalment liability from the RBA of the Legal Action Account of AGFT that was the subject of SCICIV-2013-02968.

12.2.8. Relevantly the Respondent and his servants alleged in the application to set aside the default judgment referred to in paragraph 4 above that I was NOT a properly appointed trustee of AGFT in contradiction to the acknowledgement of the Respondent made to the Honourable Mukhtar AsJ as to my proper appointment as a Trustee of AGFT

### 12.3. Perjury

~~42.3.1. Between the 28th September 2013 and today's date the Respondents have Alyx Sudall for the Deputy Commissioner of Taxation swore a 5 affidavits and filed them in SCICIV-2013-02968 for the sole Improper purpose of misleading the Honourable Mukhtar AJ into making the relevant Summary Judgment that is the subject of the Application for an Extension of time to file and serve a Notice of Appeal in respect to that Judgment that is listed for hearing on the 7th October 2014. on the 25th May 2015.~~

12.3.2. In swearing the affidavits referred to above Miss Sudall ~~the Respondents~~ committed Perjury which the Respondent is personally vicariously liable for.

**12.4. The Conduct and Decisions of the Respondents has at all times in the management of SCI -20143-02968 been harsh, oppressive and unconscionable within the meaning of the Unwritten Law in circumstances where the Respondents;**

~~12.4.1. Knowingly and capriciously assisting the Trustees to trespass on the Estates listed above in order to;~~

~~12.4.1.1. render me impecunious in order to prevent me from ventilating my claims against the Respondents, NAB and Shu Mu Tseng, and~~

~~12.4.1.2. because the Trustees are a source of Revenue for the Respondents~~

12.4.2. Knowingly and capriciously ~~resisting~~ frustrated the development of OenoViva Business Systems in order to render me impecunious in order to prevent me from ventilating my claims against the Respondents

**12.5. Particulars**

12.5.1. The conduct and decisions of the Respondents ~~in refusing to agree to consent to set aside the First Default Judgment~~ referred to at paragraphs 12.1 - 12.4 is/was and are/were conduct and decisions that are reviewable under s5 & s6 of the ADJR, the Common Law and the provisions of s39B of the Judiciary Act

12.5.2. Repeats paras 4.5.2 to 4.5.6

~~12.5.3. The conduct and decisions of the Respondents is/was and are/were Harsh and oppressive and Unconscionable within the meaning of Unwritten Law, the Common Law and is/was and are/were breaches of;~~

~~12.5.3.1. the Public Services Code of Conduct and Public Service Values at s10 and 13 of the PSA, and~~

~~12.5.3.2. the Tax Payers Charter as a Code of Conduct issued by the Respondent under the provisions of the TAA and the PSA~~

~~12.5.4. The conduct and decisions of the Respondents is/was and are/were breaches of the duties of the respondents to properly administer the provisions of the TAA, the ABN Act and the ITAA and the GST Act.~~

~~12.5.5. In breach of the duties and obligations of the Respondents as representatives of the Crown to act as model litigants~~

### 13. **Manipulations of the ABR by the Respondents and Abuse of Process**

13.1. SCI-2013-02968 was commenced by the Respondents against me in my alleged capacities as;

13.1.1. Trustee of AGFT, and

13.1.2. Trustee of OVPET 2.

13.2. The Honourable Mukhtar AJ did not make the order for summary judgment sought by the Respondents against me in my alleged capacity as Trustee of OVPET 2, and has instead ordered that the matter is listed for trial with Directions on the 14th October 2014 and was subsequently listed for the 25th May 2015 before the Honourable Zammit AsJ.

13.3. The evidence filed and served by me shows that it is common conduct of the Respondents where Trusts are involved in the exercise of the Respondents powers under the TAA and the ABN Act to manipulate the ABR in order to create Prima Facie

Evidence and allege that a person is a Trustee of a Trust in circumstances where the Respondents are aware of evidence that does not support the case of the Respondent exists.

13.4. The Respondents manipulate the ABR for the sole purpose of making a person the target of litigation in enforcement proceedings.

13.5. Evidence sworn into the aforementioned proceeding shows that the Respondents, falsely and capriciously;

13.6. **OVPET**

13.6.1. Failed to enter my Name into the ABR as a Trustee of OVPET with effect from the 15th March 2014 for the improper purpose of preventing me from agitating my standing in AAT-2012-5901 and AAT-2014-1300 as the sole remaining Trustee in circumstances where the Respondents were in possession of the Deed of my Appointment on that date which evidenced that I was a Trustee of OVPET, and

13.6.2. On the 12th December 2013 cancelled the Auskeys used by me and my staff for the sole purpose of preventing me from making the proper corrections to the ABR of OVPET,

13.6.3. Made submissions to the Tribunal in respect to the aforementioned proceedings against my standing in circumstances where the Respondents knew that the evidence was the reverse of their submissions, and

13.6.4. Misled the Tribunal when I am an unrepresented party and the Respondents have an obligation to assist the Tribunal,

13.6.5. With the Result that the Tribunal was misled and the decision of the Senior member is now the subject of an application to the Federal Court given action number VID 557 of 2014.

13.7. **OVPET 2**

13.7.1. Entered my Name into the ABR as a Trustee of OVPET 2 for the improper purpose of taking enforcement proceedings against me in circumstances where

the Respondents were in possession of the Deed of Settlement dated 23rd November 2012 which evidenced that I was not a Trustee of OVPET 2, and

13.7.2. Have failed to remove the reference on the ABR to me as a Trustee of OVPET 2 for the improper purpose of taking enforcement proceedings against me despite having received at least three notices issued in accordance with the ABN act to make that removal, and

13.7.3. On the 12th December 2013 cancelled the Auskeys used by me and my staff for the sole purpose of preventing me from making the proper corrections to the ABR of OVPET 2,

13.8. **The Trustee of AGFT**

13.8.1. Have failed to remove the reference on the ABR for AGFT to me as a Trustee of AGFT for the improper purpose of taking enforcement proceedings against me despite having received at least three notices issued in accordance with the ABN act to make that removal, and

13.8.2. On the 12th December 2013 cancelled the Auskeys used by me and my staff for the sole purpose of preventing me from making the proper corrections to the ABR of AGFT, and

13.8.3. Issued Garnishee Notices on my personal bank accounts in circumstances where the Respondents knew that the issuing of those notices was an abuse of Process for an improper purpose being to destabilise me as the controlling mind of the Estates listed above.

13.9. **The Trustee of the Shed 5 (South Wharf) Trust**

13.9.1. Entered the name of Stan Sarris into the ABR as a Trustee of the Shed 5 (South Wharf) Trust for the purposes of taking enforcement proceedings against him in circumstances where the Respondents were in possession of the Deed of Settlement dated 14th May 2012 which evidenced that he was not a Trustee of the Shed 5 (South Wharf) Trust, and

13.9.2. Issued Garnishee Notices of the Bank Accounts of Stan Sarris in circumstances where the Respondents knew that the issuing of those notices was an abuse of

Process for an improper purpose being to destabilise the purchaser of the Urban Winery License for OenoViva Business Systems to be located at Sheds 3,4 & 5, 35 Dukes Wharf, South Wharf.

13.10. **The Trustee of the OenoViva (Victoria) Trust**

13.10.1. Entered the name of Stan Sarris into the ABR as a Trustee of the OenoViva (Victoria) Trust for the improper purpose of taking enforcement proceedings against him in circumstances where the Respondents were in possession of the Deed of Settlement dated 28th March 203 which evidenced that he was not a Trustee of the Shed 5 (South Wharf) Trust, and

13.10.2. A Completion of Audit of the Trustee of the OenoViva (Victoria) Trust dated 13th September 2013 authored by the Eighth Respondent sets out;

4. According to ATO systems, Mr Stanley Sarris was trustee between 28 February 2013 to 12 July 2013.
5. According to a Trust deed you provided on the 28 March 2013 your current corporate trustee is The Hunger Food & Wine Company Pty Ltd.
6. According to ATO systems, Mr Stanley Sarris is the director of your current corporate trustee that being The Hunger Food & Wine Company Pty Ltd.

13.10.3. Issued Garnishee Notices of the Bank Accounts of Stan Sarris in circumstances where the Respondents knew that the issuing of those notices was an abuse of Process for an improper purpose being to destabilise the purchaser of the Victorian Master Sub Regional License for OenoViva Business Systems

13.11. **The Trustee of the Fairweather Trust**

13.11.1. Entered the name of John Sitkiewicz into the ABR as a Trustee of the Fairweather Trust for the improper purpose of taking enforcement proceedings against me in circumstances where the Respondents were in possession of the Deed of Settlement of the Fairweather Trust dated 24th June 2008 and Deed of Retirement and Appointment of New Trustee dated 10th January 2005 which evidenced that John Sitkiewicz was not a Trustee of the Fairweather Trust, and

13.11.2. Issued Garnishee Notices of the Bank Accounts of John Sitkiewicz in circumstances where the Respondents knew that the issuing of those notices was an abuse of Process for an improper purpose being to destabilise the sole director of Blue Diamond Pty Ltd in its capacity as Trustee of the Fairweather Trust as the purchaser of the Queensland Master Sub Regional License for OenoViva Business Systems

13.12. **The Conduct and Decisions of the Respondents in the management of the ABR in respect to entities related to me has at all times been harsh, oppressive and unconscionable within the meaning of the Unwritten Law in circumstances where the Respondents;**

13.12.1. Knowingly and capriciously assisting the Trustees to trespass on the Estates listed above in order to;

13.12.1.1. render me impecunious in order to prevent me from ventilating my claims against the Respondents, NAB and Shu Mu Tseng, and

13.12.1.2. because the Trustees are a source of Revenue for the Respondents

13.12.2. Knowingly and capriciously resisting the development of OenoViva Business Systems in order to render me impecunious in order to prevent me from ventilating my claims against the Respondents

13.13. **Particulars**

13.13.1. The conduct and decisions of the Respondents in manipulating the Australian Business Register and making is/was and are/were conduct and decisions that are reviewable under s5 & s6 of the ADJR, the Common Law, section 75(v) of the Constitution and the provisions of s39B of the Judiciary Act

13.13.2. Repeats paras 4.5.2 to 4.5.6 and adds that such conduct is also a breach of s24(2) of the ABN Act

14. **OenoViva Business Systems & OenoViva Hand Crafting**

- 14.1. I have been involved in multiple aspects of the wine industry in Australia and Internationally from the age of 16 when I commenced working on the bottling line of Ryecroft wines in McLaren Vale in 1973.
- 14.2. I am now 58 years of age and have been committed to the Wine Industry in all of its aspects for now 41 years.
- 14.3. Between then and now I have been responsible for the development of at least 21 wine brands and building of around 3,000 acres of vineyards while working in the traditional channel to market and sell wines made by me or my related entities.
- 14.4. When I launched my own brand in 1981 there were 294 wineries in the territory of Australia & New Zealand, today there are over 3,000 which proliferation of supply has created a downwards pressure on prices to the producer.
- 14.5. During the last 40 years the available shelf space and pattern of purchasing of wholesale wine has changed with the consolidation of ownership of the retail channel to market now resting mainly in the hands of the multiples, including Coles and Woolworths.
- 14.6. Concurrently, those Multiples are seeking to increase the percentage of their “Own Brands” sold in those channels to enhance margins thus further restricting the available shelf space available to traditional suppliers.
- 14.7. By way of example Woolworths Liquor is Australia’s largest liquor business in a market with annual revenues of \$21,000,000,000 with Woolworth’s share of the Market being 35% (AUD\$7,500,000,00 of all retail sales of liquor in Australia (wine, beer, spirits and other) or 45% of all wine sold; of which 35% of sales are own Woolworth’s own brands.
- 14.8. As a consequence of the proliferation of brands, increase in supply of Own Brands and the change in control of the Channel to market the downward pressure on retail prices flows back to the producer consequently there is limited profitability across all sectors of the wine industry (which often generally translates to a loss)

- 14.9. The industry is one that seeks owners of wine related business to invest “patient capital”.
- 14.10. Between 2008 and today’s date my sole aim has been to develop “the Know-How” and “Intellectual Property” ((together the “IP”) of OenoViva Business Systems (“OBS”).
- 14.11. OBS is the IP behind my vision of a new complete retail channel to market for the distribution of wine through a franchise system that has evolved from my 41 years’ experience in the Australian and global wine industry.
- 14.12. Prior to the 7th February 2014, ACN 133 861 579 Pty Ltd (in Liquidation) (Controller Appointed) was known as OenoViva (Australia & New Zealand) Pty Ltd (“the Company”).
- 14.13. From the date of its incorporation, the company has also been involved with me in the development of OBS and at various times has acted as a trustee of:
- 14.13.1. AGFT
- 14.13.2. AGFT 3
- 14.13.3. AGFT 4
- 14.13.4. The OenoViva (Australia & New Zealand ) Trust (“OVANZ”)
- 14.13.5. The OenoViva (Australia & New Zealand) Plant & Equipment Trust (“OVPET”)
- 14.13.6. The OenoViva (Australia & New Zealand) Plant & Equipment Trust No 2. (“OVPET 2”)
- 14.14. On the 22<sup>nd</sup> January 2014, a liquidator was appointed to the company pursuant to an application made in the Federal Court of Australia; South Australia Registry and given action No SAD 368 of 2013 that was commenced by the Respondents for an improper purpose.

14.15. From the date of its incorporation Sanctuary has been involved with me in the development of the interests of Trusts related to me as a corporate Trustee and also in the importation and sale of Solar Panels for a brief period in 2011.

14.16. Also on the 22<sup>nd</sup> January 2014, a liquidator was appointed to Sanctuary pursuant to an application made in the Federal Court of Australia; South Australia Registry and given action No SAD 370 of 2013 that was commenced by the Respondents for an improper purpose.

15. **Perjury**

15.1. A servant of the Respondent swore an affidavit in support of each of SAD 368 of 2013 and SAD 370 of 2013 setting out that the Company and Sanctuary had been served by normal post to the Registered Office of the Company.

15.2. No such service was ever received by the Company OR Sanctuary at the registered office of those entities.

15.3. The servant of the Respondent did not post the letter set out in the affidavit sworn and filed in SAD 368 of 2013 and SAD 370 of 2013 on behalf of the Deputy Commissioner of Taxation for the Improper Purpose of ensuring the appointment of Liquidators was not contested by Sanctuary or the Company in order to frustrate.

15.4. The affidavit material attesting to the posting of the aforementioned letters was perjury of the relevant ATO officer swearing the affidavit for which the Commissioner is vicariously liable.

15.5. The Judgments in SAD 368 and SAD 370 of 2013 appointing a Liquidator was given ex parte as a consequence of the Registered Office and the Sole Director not being aware of either of the aforementioned proceedings.

15.6. Subsequently on the 23rd January 2014 I was appointed as managing controller to the company and on the 9th May 2014 as managing controller to Sanctuary.

15.7. The Decisions and Conduct of the Respondents over the last 10 years is driven by the Respondents:

15.7.1. Desire to frustrate and prevent the development of OenoViva Business Systems

- 15.7.2. view that OenoViva Business Systems is a collateral attack on the GST System by me
- 15.7.3. unwillingness to consider OenoViva Business Systems as a proper, well researched and well developed plan to establish an alternate retail channel to market for the distribution of Wine and associated products on a Global Scale,
- 15.7.4. desire to be wilfully blind to the steps in establishing a business extending over 7 years, and
- 15.7.5. “cover up” and avoid “embarrassment” in respect to the Respondents conduct related to my Bankruptcy in 2004, in respect to a debt that did not in fact exist, when a judgment was given in default in DCCIV-20013-1666 and the subsequent refusal of the Plaintiff to consent to orders setting aside the Default Judgment.
- 15.8. The Respondent has misused and continues to misuse his statutory powers to create debts in my hands and in the hands of entities related to me in respect to alleged administration of the GST ACT, the ABN Act, the ITAA, the TAA manipulate the Australian Business Register for an “Improper Purpose” as an “Abuse of Process” and which is a situation of “Double Jeopardy”
- 15.9. **Particulars**
  - 15.9.1. The conduct and decisions of the Respondents in failing to post the letters containing the originating process of SAD 368 of 2013 and SAD 370 of 2013 and swearing affidavit material and acting as described in para 15.1 – 15.9 is/was and are/were conduct and decisions that are reviewable under s5 & s6 of the ADJR, the Common Law and the provisions of s39B of the Judiciary Act
  - 15.9.2. Repeats paras 4.5.2 to 4.5.6
- 16. **Unaccounted for payments made to the ATO by entities related to the Applicant**

- 16.1. As the authorised officer of AGFT 3 I instructed the group accountant to lodge an amending activity statement for the March Quarter 2009 which relevantly recognised a GST liability of \$112,500 to the ATO, under protest.
- 16.2. That liability matched the drawing of a Bank Cheque in favour of the ATO in the amount of \$112,500 by the South Australia Registry of the Federal Court drawn on the Litigant's Fund held in favour of the Litigant's in SAD 5 of 2006 on the 3rd April 2009.
- 16.3. I have reviewed the RBA of AGFT 3 and observe that the amount of \$112,500 is not accounted for by the respondents.
- 16.4. Relevantly, the affidavit of the Trustee filed in VID 304 of 2014 dated 1st September 2014 sets out at exhibit PIM 17 of that affidavit a document described by the Trustee to be a copy of a the Lipman Karas Trust account which suggests that the lawyers for the Trustee drew a number of cheques totalling \$45,000 made payable to the ATO in the amount of \$7,500 each on the following dates;
  - 16.4.1. 9th June 2009
  - 16.4.2. 17th July 2009
  - 16.4.3. 5th November 2009
  - 16.4.4. 10th February 2009
  - 16.4.5. 8th May 2009
  - 16.4.6. 19th July 2009
- 16.5. A review of the MYOB accounts exhibited by the Trustee at exhibit PIM 5 reveals that those payments were not accounted for in my Estate.
- 16.6. Payments made to the ATO by entities related to me have not been credited to any RBA of any entity related to me in the total of \$239,360.55 as follows;

16.6.1. \$45,000 in cheques issued to the ATO from the Trust account of Lipman Karas referred to at para 16.4, and

16.6.2. \$112,500 bank cheque issued by the SA Registry of the Federal Court Payable to the ATO, and

16.6.3. \$81,860.55 on the 22nd September 2004

**16.7. The Conduct and Decisions of the Respondents in the management of receipts paid by entities related to me has at all times been harsh, oppressive and unconscionable within the meaning of the Unwritten Law in circumstances where the Respondents;**

16.7.1. Knowingly and capriciously assisting the Trustees to trespass on the Estates listed above in order to;

16.7.1.1. render me impecunious in order to prevent me from ventilating my claims against the Respondents, NAB and Shu Mu Tseng, and

16.7.1.2. because the Trustees are a source of Revenue for the Respondents

16.7.2. Knowingly and capriciously resisting the development of OenoViva Business Systems in order to render me impecunious in order to prevent me from ventilating my claims against the Respondents,

16.7.3. Knowingly and capriciously overstated tax liabilities of entities related to me in order to render me impecunious in order to prevent me from ventilating my claims against the Respondents.

**16.8. Particulars**

16.8.1. The conduct and decisions of the Respondents in failing to properly account for payments made to the Respondent by me or entities related to me as described at paragraphs 16.1 – 16.7 is/was and are/were conduct and decisions that are reviewable under s5 & s6

of the ADJR, the Common Law and the provisions of s39B of the Judiciary Act

16.8.2. Repeats paras 4.5.2 to 4.5.6

~~16.8.3. The conduct and decisions of the Respondents is/was and are/were Harsh and oppressive and Unconscionable within the meaning of Unwritten Law, the Common Law and is/was and are/were breaches of;~~

~~16.8.3.1. the Public Services Code of Conduct and Public Service Values at s10 and 13 of the PSA, and~~

~~16.8.3.2. the Tax Payers Charter as a Code of Conduct issued by the Respondent under the provisions of the TAA and the PSA~~

~~16.8.4. The conduct and decisions of the Respondents is/was and are/were breaches of the duties of the respondents to properly administer the provisions of the TAA and the GST Act.~~

~~16.8.5. In breach of the duties and obligations of the Respondents as representatives of the Crown to act as model litigants~~

17. Freedom of Information

17.1. On the 11th May 2012 I issued an invitation to the ATO to attend a whole of ATO briefing on the 21st May 2012 at the OenoViva Dining Wine Room in respect to OenoViva Business Systems which IP was developed by me in concert with professional taxation advice from Deloitte Private (South Australia) over the preceding 4 years.

17.2. On the 18th May 2012 the ATO declined my invitation to attend the whole of ATO briefing planned by me and my staffs.

- 17.3. On the 26th June 2012 the Commissioner exercised his substantial Powers to gather information under the provisions of the TAA and placed in excess of 120 officers in the field at 5 different locations in South Australia and Victoria including my home where 20 officers attended and searched the home, took copies of all relevant documents as well as copies of Portable Hard Discs, Computers, Telephones and other electronic devices that were on the premises.
- 17.4. On the 28th September 2012 I was provided with the First Tranche of a release of information under the provisions of the Freedom of Information Act 1981 (Cth) (“FOI Act”) in respect to my request for documents relating to my Bankruptcy and the Tax Affairs of AGFT.
- 17.5. The First Tranche withheld relevant information that should have been provided at that time and which was subsequently provided on the 17th June and the 11th July 2014
- 17.6. On the 12th October 2012 the Second Tranche of FOI was provided in respect to the Taxation affairs of the OenoViva Plant and Equipment Trust No 2.
- 17.7. Subsequently, on the 20th October 2012 I lodged an application for compensation with the Respondents in respect to the conduct and decisions of the Respondents over the period from the 11th February 2004 until that date.
- 17.8. On the 24th October 2012 the Respondent wrote to me requesting that I lodge outstanding income tax returns.
- 17.9. On the 8th January 2013 I was provided with an FOI release that revealed the existence of a strategic task force known as “Operation Winebar”.
- 17.10. On the 21st January 2013 I wrote to the Respondents and advised that I had been unable to obtain taxation advice due to my impecuniosity and explained the circumstances of failing to lodge income tax returns from 2008 until that date.
- 17.11. Subsequently on the 2nd February 2013 I lodged non-lodgement advices for each of the relevant income tax periods as my earnings were below the Taxable thresh hold for the reasons set out in my communication dated 23rd January 2013.

17.12. Following my complaints to the ATO regarding the conduct of the Respondents the Third Respondent communicated with me by letter on the 24th May 2013 having discussed my tax affairs with the Second Respondent.

17.13. Subsequently on the 29th July 2013 I held a telephone conference with the Third Respondent to discuss the conduct of the Respondents at that time in which regard I raised issues of malfeasance in public office/conscious maladministration amongst other things

17.14. On the 1st August 2013 I received a Compensation Decision from the Fourteenth Respondent that rejected my claim for compensation.

17.15. At all relevant times the Tenth Respondent has been the team leader of an Audit Team (**“the Audit Team”**) based in the Gold Coast offices of the Respondents including;

- 17.15.1. The Eighth Respondent
- 17.15.2. The Ninth Respondent
- 17.15.3. The Tenth Respondent
- 17.15.4. The Eleventh Respondent

17.16. Between the 2nd May 2012 and today’s date the Audit Team has made at least 300 taxation decisions and other decisions that I am aware of that have been without exception negative.

**17.17. The Conduct and Decisions of the Respondents in the making of those taxation and other decisions in respect to entities related to me has at all times been harsh, oppressive and unconscionable within the meaning of the Unwritten Law in circumstances where the Respondents;**

17.17.1. Knowingly and capriciously assisting the Trustees to trespass on the Estates listed above in order to;

17.17.1.1. render me impecunious in order to prevent me from ventilating my claims against the Respondents, NAB and Shu Mu Tseng, and

17.17.1.2. because the Trustees are a source of Revenue for the Respondents

- 17.17.2. Knowingly and capriciously resisting the development of OenoViva Business Systems in order to render me impecunious in order to prevent me from ventilating my claims against the Respondents,
- 17.17.3. Knowingly and capriciously overstated tax liabilities of entities related to me in order to render me impecunious in order to prevent me from ventilating my claims against the Respondents.
- 17.17.4. Applied penalties and made Notices of assessment that the Respondents know are not correct.
- 17.18. Between the date of my first Application under the provisions of the FOI Act and todays date I have made over 85 applications for information related to me and entities related to me.
- 17.19. Allegedly, on 5th the September 2014 the Respondents made application to the Office of the Australian Information Commissioner (“OAIC”) for a declaration under s89K of the FOI Act.
- 17.20. On the 16th December 2014 the OAIC wrote to me and advised me of the application made on the 5th September 2014. That communique also advised of an update by the Respondents to the application under s59K of the FOI Act lodged on the 15th December 2014 with the OAIC and sought my response.
- 17.21. Since making the application for the s89K declaration the Respondents have sought to delay and frustrate applications made subsequent to that date in particular with respect to the Tax Affairs of the Trustee of the Andrew Garrett Family Trust No 3
- 17.22. **Particulars**
- 17.22.1. The conduct and decisions of the Respondents in manipulating the provision of FOI, undertaking multiple audits, completing audits and applying penalties audits in respect to me and entities related to me as described at paragraphs 17.1 – 17.21 is/was and are/were conduct and decisions that are reviewable under s5 & s6 of the ADJR, the Common Law and the provisions of s39B of the Judiciary Act, and

17.22.2. Repeats paras 4.5.2 to 4.5.6

~~17.22.3. The conduct and decisions of the Respondents is/was and are/were Harsh and oppressive and Unconscionable within the meaning of Unwritten Law, the Common Law and is/was and are/were breaches of;~~

~~17.22.3.1. the Public Services Code of Conduct and Public Service Values at s10 and 13 of the PSA, and~~

~~17.22.3.2. the Tax Payers Charter as a Code of Conduct issued by the Respondent under the provisions of the TAA and the PSA~~

~~17.22.4. The conduct and decisions of the Respondents is/was and are/were breaches of the duties of the respondents to properly administer the provisions of the TAA and the ITAA.~~

~~17.22.5. In breach of the duties and obligations of the Respondents as representatives of the Crown to act as model litigants.~~

## 18. Income Tax Liability & SCI -2014-03380

18.1. On the 5th December 2013 the Respondents entered a liability for income tax on the Running Balance Account for my personal Income Tax.

18.2. Subsequently, on the 6th December 2013 the Respondents issued a Completion of Audit Notice authored by the Ninth Respondent.

18.3. On the 12th and 13th December 2013 the Respondents issued a number of notices of Assessment, Assessment of penalties as described in the originating process and levied general interest charge.

18.4. **The Conduct and Decisions of the Respondents in the making of the Completion of Audit Decision and issuing the relevant Notices of Assessment and Notices of Penalty Assessments in respect to my income tax account was**

**harsh, oppressive and unconscionable within the meaning of the Unwritten Law  
in circumstances where the Respondents;**

18.4.1. Knowingly and capriciously assisting the Trustees to trespass on the Estates listed above in order to;

18.4.1.1. render me impecunious in order to prevent me from ventilating my claims against the Respondents, NAB and Shu Mu Tseng, and

18.4.1.2. because the Trustees are a source of Revenue for the Respondents, and

18.4.1.3. Frustrate the redevelopment of my income

18.4.2. Knowingly and capriciously resisting the development of OenoViva Business Systems in order to render me impecunious in order to prevent me from ventilating my claims against the Respondents,

18.4.3. Knowingly and capriciously overstated tax liabilities of entities related to me in order to render me impecunious in order to prevent me from ventilating my claims against the Respondents and other parties.

18.4.4. Applied penalties and made Notices of assessment that are an abuse of process.

~~18.4.5. Failed to properly account for moneys paid to the ATO.~~

18.5. **Particulars**

18.5.1. The conduct and decisions of the Respondents in acting as described at paragraphs 18.1 – 18.4 is/was and are/were conduct and decisions that are reviewable under s5 & s6 of the ADJR, the Common Law and the provisions of s39B of the Judiciary Act

18.5.2. Repeats paras 4.5.2 to 4.5.6

~~18.5.3. The conduct and decisions of the Respondents is/was and are/were Harsh and oppressive and Unconscionable within the meaning of~~

~~Unwritten Law, the Common Law and is/was and are/were breaches of;~~

~~18.5.3.1. the Public Services Code of Conduct and Public Service Values at s10 and 13 of the PSA, and~~

~~18.5.3.2. the Tax Payers Charter as a Code of Conduct issued by the Respondent under the provisions of the TAA and the PSA~~

~~18.5.4. The conduct and decisions of the Respondents is/was and are/were breaches of the duties of the respondents to properly administer the provisions of the TAA and the GST Act.~~

~~18.5.5. In breach of the duties and obligations of the Respondents as representatives of the Crown to act as model litigants.~~

## 19. Operation Winebar

### 19.1. Deloitte Private (South Australia) (“Deloitte”)

19.1.1. Prior to June 2011 Deloitte was known as MHM Accountants and Advisors (“MHM”).

19.1.2. Sometime after June 2011 MHM was acquired by Deloitte.

19.1.3. Between 2008 and today’s date I have been working with Graeme Hodge of Deloitte in the development of the Business Plans and Financial Models of OBS

19.1.4. At all times in the development of OBS I have been properly advised from a tax and accounting perspective by a top tier accounting firm.

19.1.5. Sometime in February/March 2012 Deloitte advised that the sale of Rights had become “Ordinary Income” rather than “Statutory Income” for the purposes of calculating the Threshold for conversion