could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before. As one cannot comprehensively list all possible forms of abuse, so one cannot formulate any hard and fast rule to determine whether, on given facts, abuse is to be found or not ... Properly applied, and whatever the legitimacy of its descent, the rule has in my view a valuable part to play in protecting the interests of justice."

46.6. Distinguished from malicious prosecution

46.7. A cause of action for abuse of process is similar to the action for malicious prosecution in that both actions are based on and involve the improper use of the courts and legal systems. The primary difference between the two legal actions is that malicious prosecution concerns the malicious or wrongful commencement of an action, while, on the other hand, abuse of process concerns the improper use of the legal process after process has already been issued and a suit has commenced. In abuse of process, the legal process is misused for some purpose which is considered improper under the law. Thus technically, the service of process itself—in the form of a summons—could be considered abuse of process under the right circumstances, e.g. fraudulent or malicious manipulation of the process itself,[5] but in malicious prosecution, the wrongful act is the actual filing of the suit itself for improper and malicious reasons.[6] As noted above, the three requirements of malice, lack of probable cause in the issuance of the process, and a termination of the prior proceeding favourable to the plaintiff, are essential elements for malicious prosecution. Most jurisdictions do not require any of these three elements in order to make out a prima facie case for abuse of process.

46.8. Illustration

46.9. A cause of action for abuse of process may lie in situations where a criminal proceeding is brought against a defendant for improper motives. For

example, in Lader v. Benkowitz,[7] a pleading was held to state a good cause of action for abuse of process when it alleged that defendant hotel owner had threatened to have the plaintiff arrested on a warrant issued at the behest of the defendant on a charge of disorderly conduct. The allegedly improper motive was the hotel owner's underlying purpose of compelling plaintiff to pay a bill owed for plaintiff's alleged rental of a room in defendant's hotel. It was claimed that through the unlawful use of the warrant and threat of arrest, the defendant was able to obtain the sum of money allegedly owed by plaintiff. In denying defendant's motion to dismiss, the court admonished that it was sufficient to show that regularly issued process had been used to accomplish an improper purpose in order to set forth a cause of action for abuse of process. The fact that the plaintiff had yielded to defendant's threat to have her arrested under the warrant did not diminish the cause of action, because it was clear that the plaintiff actually had been arrested for the purpose of compelling her to pay the cost of the room.

47. Improper exercise of power

47.1. A court will interfere with an administrative decision or question if it can be shown to amount to an improper exercise of power. There is a large amount of *case law* on the various grounds for such an attack.

47.2. Following is a summary of these grounds;

47.3. **Relevant and irrelevant considerations**

47.3.1. If it can be shown that a government body has failed to take into account relevant factors or has taken into account factors not relevant to the matter, the court can intervene. In order to decide what is relevant, the reasons given for the decision or action must be assessed against the governing Act. In other words, the Act will often determine the relevant and irrelevant factors.

47.3.2. A relevant consideration is one that the court would say *must* be taken into account. An irrelevant consideration is one that *must not* be taken into account (see *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* [1986] HCA 40 and *Minister for Immigration and Multicultural Affairs v Yusuf* [2001] HCA 30).

47.4. **Illegal or Improper purpose**

47.4.1. A decision or action, though on its face proper under the law, may be designed to achieve a purpose that is beyond the responsibilities of the government body. For example, an Act may permit a local council to close off a street for road repairs. On the face of it, the council may decide to do this, but it might be that the real object of the closure was to create a permanent traffic-free area in the city. This ground will only succeed if it is proved that the government body would not have acted as it did but for the improper purpose. However, it is usually difficult to prove that a decision-maker acted out of an improper purpose.

47.5. **Unreasonableness**

47.5.1. Another ground of *judicial review* is that an action or decision was so unreasonable that no reasonable body would have reached it. This is often called "manifest unreasonableness", or "*Wednesbury* unreasonableness" (after an old English case: *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223). This is a difficult ground; it is not enough to convince the judge that they would have made the decision differently, it must be shown that the decision was an absurd or irrational one. A decision-maker may have acted unreasonably because highly significant factors were not given proper weight or because their opinion could not have been reasonably formed on the information available (*Re Minister for Immigration and Multicultural Affairs; Ex parte Eshetu* [1999] HCA 21). This ground of review has given rise to a number of recent cases, but the general principle remains that usually this ground is a last resort. If it is clear that the decision-maker erred, it would usually be evident as another ground of review, for example, as an error of law or failure to take account of a relevant consideration.

47.6. **Bad faith**

47.6.1. Another ground of attack on administrative actions that appear on their face to be proper is that of "bad faith". Here, it is necessary to show the decision was affected by corruption, bribery, dishonesty or similar malpractice. The great difficulty, of course, is to obtain *evidence* to prove what is considered by the courts to be a very grave allegation against the conduct of government.

47.6.2. The Australian Government Solicitors Office has summarised circumstances where Legal Privilege of the Plaintiff may be breached on the basis that the proceedings have an Illegal or Improper Purpose or breach of Common law rights

47.7. **Illegal or improper purpose**

47.7.1. Commonwealth Evidence Act Section 125 of the Evidence Act 1995 (Cth) provides that a confidential communication will not be privileged if made or prepared in furtherance of a fraud, offence, an act attracting penalty, or a deliberate abuse of a power conferred by an Australian law (as defined).

47.7.2. For the purposes of the illegal or improper purpose principle, the relevant distinction is between a communication made for the purpose of being guided or helped in achieving an illegal or improper purpose, which is a non-privileged communication, as compared with a communication made No privilege arises in respect of a communication made for a purpose that is contrary to the public interest .

47.8. **Common law**

47.8.1. At common law, no privilege arises in respect of a communication made for a purpose that is contrary to the public interest; that is, where the communication is made in furtherance of an illegal or improper purpose, whether or not the legal adviser knows of that purpose (Baker at 409–410; *R v Bell; Ex parte Lees* (1980) 146 CLR 141 at 147, 156, 159, 161; Kearney at 514–515; Propend at 514).27

47.8.2. Evidence led in support of a privilege claim should address the substance of the claim for privilege by 'identifying the circumstances in which the relevant communication took place and the topics to which the instructions or advice were directed'.13

48. Legal briefing 87 | 15 July 2008

48.1. For the purpose of seeking advice in relation to past conduct, which may be privileged *(P & V Industries Pty Ltd v Porto* [2007] VSC 113 at [27]).

48.2. However, a communication in relation to past conduct will not be privileged if the communication is for the purpose of covering up a crime or fraud, or for the purpose of defeating or delaying recovery by the victims of a crime or fraud (*Finers v Miro* [1991] 1 WLR 35 at 40; *Derby & Co Ltd v Weldon* [1990] 1 WLR 1156 at 1174).

48.3. The illegal or improper purpose principle covers all forms of fraud and dishonesty, including fraudulent breach of trust, fraudulent conspiracy, trickery and 'sham' contrivances28 as well as cases of fraud by third parties (*Clements, Dunne & Bell Pty Ltd v Commissioner of Australian Federal Police* (2001) 188 ALR 515 (Clements) at [220]).

48.4. The privilege is not displaced by the mere allegation of an illegal or improper purpose (Propend at 559, 579, 587). However, those seeking to exclude the privilege do not have to prove that the communication was in furtherance of an illegal or improper purpose. Rather, the party seeking to resist the assertion of privilege must adduce prima facie admissible evidence that the allegation has some foundation in fact (Propend at 553, 559, 579, 587; *AWB v Cole* (No. 5) at 89; In the matter of *ACN 005408 Pty Ltd (formerly TEAC Australia Pty Ltd*) [2008] FCA 964 at [2]).

48.5. Examples of communications made in the pursuit of improper purposes include:

48.5.1. documents brought into existence in furtherance of a prima facie wrongful claim for tax deductions (Clements)

48.5.2. evasion by a government of the law, by knowingly making regulations not contemplated by an Act as part of a scheme to defeat a land claim (i.e. a deliberate abuse of statutory power) (*Kearney; c.f. Health Insurance Commission v Freeman* (1998) 88 FCR 544, where the improper or illegal purpose principle was held not to apply to an inadvertent abuse of statutory power, such as one caused by a genuine but mistaken view of the scope of the relevant power)

— documents deliberately and dishonestly structured so as to misrepresent the true nature and purpose of certain payments and to work a trickery on the United Nations (AWB v Cole (No. 5)).

49 Likelihood of success

- *Burns v Grigg* [1967] VR 871 at 872: When the application is for an extension of time to file an appeal, it is necessary to consider the prospects of the applicant succeeding in the appeal.

50 Injustice caused by a strict compliance with the law

- *Avery v No 2 Public Service Appeal Board* [1973] 2 NZLR 86 at 92: If the failure to appeal in time is due to a mistake of a legal adviser this may be sufficient to justify the Court in to grant an extension of time. It is up to the person seeking the extension to satisfy the Court that in all the circumstances the justice of the case requires an extension. The Court has a wide discretion and should have regard to the whole history of the matter, the conduct of the parties, the nature of the litigation, the need of the applicant, and the effect that granting an extension would have on other persons involved.

a. Postponement of limitation period in cases of fraud or mistake

Where:

- the cause of action is based on fraud, or
- the cause of action was concealed by fraud of the defendant or their agent, or
- the action is for relief from the consequences of mistake,

then the limitation period runs from the date the plaintiff discovered the fraud or mistake or could have discovered it with reasonable diligence (section 38 LAA).

51 In Walton v Gardiner[69] at para 22 -25;

22. "None of the members of the Court of Appeal accepted the Department's narrow view of the extent of the jurisdiction of the Supreme Court to order a stay of proceedings on abuse of process grounds. Gleeson CJ ((19) (1991) 25 NSWLR, at p 200.) and Kirby P ((20) ibid, at pp 204-205.) considered that the Court of Appeal has power to make an order staying proceedings if it is satisfied that the continuation of the proceedings would be "so unfairly and unjustifiably oppressive" as to constitute an abuse of process. Mahoney JA adopted a similar approach, while formulating the appropriate test in slightly different

words. His Honour considered ((21) ibid, at pp 218, 220-221.) that the question for the Court of Appeal was whether, in all the circumstances, the continuation of the proceedings before the Tribunal would involve unacceptable injustice or unfairness. In our view, the approach adopted by the members of the Court of Appeal was correct."

23. "The inherent jurisdiction of a superior court to stay its proceedings on grounds of abuse of process extends to all those categories of cases in which the processes and procedures of the court, which exist to administer justice with fairness and impartiality, may be converted into instruments of injustice or unfairness. Thus, it has long been established that, regardless of the propriety of the purpose of the person responsible for their institution and maintenance, proceedings will constitute an abuse of process if they can be clearly seen to be foredoomed to fail ((22) See, e.g., Metropolitan Bank v. Pooley (1885) 10 App Cas 210, at pp 220-221; General Steel Industries Inc. v. Commissioner for Railways (N.S.W.) [1964] HCA 69; [1964] HCA 69; (1964) 112 CLR 125, at pp 128-130.). Again, proceedings within the jurisdiction of a court will be unjustifiably oppressive and vexatious of an objecting defendant, and will constitute an abuse of process, if that court is, in all the circumstances of the particular

[69] *Walton v Gardiner* [1993] HCA 77; (1993) 177 CLR 378; (1993) 112 ALR 289; (1993) 67 ALJR 485 (29 April 1993)

case, a clearly inappropriate forum to entertain them ((23) See, generally, Voth v. Manildra Flour Mills Pty. Ltd. [1990] HCA 55; (1990) 171 CLR 538.). Yet again, proceedings before a court should be stayed as an abuse of process if, notwithstanding that the circumstances do not give rise to an estoppel, their continuance would be unjustifiably vexatious and oppressive for the reason that it is sought to litigate anew a case which has already been disposed of by earlier proceedings ((24) See, e.g., Reichel v. Magrath (1889) 14 App Cas 665, at p 668; Connelly v. D.PP. (1964) AC 1254, at pp 1361-1362.). The jurisdiction of a superior court in such a case was correctly described by Lord Diplock in Hunter v. Chief Constable of the West Midlands Police ((25) [1981] UKHL 13; (1982) AC 529, at p 536.) as "the inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people".

24. *"In Jago v. District Court of New South Wales ((26) [1989] HCA 46; (1989) 168 CLR 23.) , at least three of the five members of the Court clearly rejected "the narrower view" that a court's power to protect itself from an abuse of process in criminal proceedings "is limited to traditional notions of abuse of process" ((27) ibid, per Mason CJ at p 28.). Mason CJ considered that a court, "whose function is to dispense justice with impartiality and fairness both to the parties and to the community which it serves", possesses the necessary power to prevent its processes being employed in a manner which gives rise to unfairness ((28) ibid, at p 28.). His Honour quoted, with approval, the following remarks of Richardson J of the New Zealand Court of Appeal in Moevao v. Department of Labour ((29) (1980) 1 NZLR 464, at p 481.):*

> *"public interest in the due administration of justice necessarily extends to ensuring that the Court's processes are used fairly by State and citizen alike. And the due administration of justice is a continuous process, not confined to the determination of the particular case. It follows that in exercising its inherent jurisdiction the Court is protecting its ability to function as a Court of law in the future as in the case before it. This leads on to the second aspect of the public interest which is in the maintenance of public confidence in the administration of justice. It is contrary to the public interest to allow that confidence to be eroded by a concern that the Court's processes may lend themselves to oppression and injustice."*

Deane J expressed a similar view in his judgment in Jago ((30) (1989) 168 CLR, at p 58.):

> *"The power of a court to stay proceedings in a case of unreasonable delay is not confined to the case where the effect of the delay is that any subsequent trial must necessarily be an unfair one. Circumstances can arise in which such delay produces a situation in which any continuation of the proceedings would, of itself, be so unfairly and unjustifiably oppressive that it would constitute an abuse of the court's process. Multiple prosecutions arising out of the one set of events but separated by many years or a renewed charge brought years after the dismissal of earlier proceedings for want of prosecution could, in a case where the relevant material had been available to the prosecution from the outset and depending on the particular facts, provide examples. Where such circumstances exist, the power of a court to prevent abuse of its process extends to the making of an order that proceedings be permanently stayed."*

In her judgment in Jago ((31) ibid, at p 74.), Gaudron J stressed that the power of a court;

> *"to control its own process and proceedings is such that its exercise is not restricted to defined and closed categories, but may be exercised as and when the administration of justice demands."*

Her Honour added the comment ((32) ibid) "that, at least in civil proceedings, the power to grant a permanent stay should be seen as a power which is exercisable if the administration of justice so demands, and not one the exercise of which depends on any nice distinction between notions of unfairness or injustice, on the one hand, and abuse of process, on the other hand". Subsequently in her judgment ((33) ibid, at p 77.), her Honour made clear that, subject to some refinements which she identified, that comment was also appropriate to be adopted in relation to criminal proceedings.

25. It should be mentioned that there was considerable discussion in the course of argument about the effect of some comments in the judgment of the majority of the

Court in Williams v. Spautz ((34) [1992] HCA 34; (1992) 174 CLR 509, at pp 519-520.). When those comments are properly understood in context, however, there is nothing in them which supports the proposition that a permanent stay of proceedings can only be ordered on the ground of either improper purpose or no possibility of a fair hearing. Indeed, careful examination of them discloses that they lend some support to a denial of that proposition ((35) ibid, at p 520, see, in particular, the approving reference to the judgment of Richardson J in Moevao v. Department of Labour (1980) 1 NZLR 464, at p 482.).

52 Double Jeopardy

Also in Walton v Gardiner the principles of Double Jeopardy are espoused by that learned court in which regard I respectfully submit that the story of the Hurricane applies and that the Plaintiff seeks to try me on more than one occasion for something that does not exist;

29. Each of the members of the Court of Appeal acknowledged ((38) (1991) 25 NSWLR, per Gleeson CJ at p 200; per Kirby P at p 207; per Mahoney JA at p 217.) that the case did not fall within the strict rule against double jeopardy in that the complaints (or issues) were not precisely the same as those which had been involved in Herron v. McGregor, and in that there had been no full hearing on the merits of the earlier proceedings. Nonetheless, their Honours all recognized the significance of the fact that the 1986 order permanently staying the earlier proceedings in the Tribunal had been made. Gleeson CJ commented ((39) ibid, at p 201.) that he saw "considerable force" in the submission that:

> *"the features of unfairness and oppression which are involved in cases which fall within the specific rules which have been developed as instances of the principle against double jeopardy, and against which the principle is aimed, are present here also in abundant extent. In 1986, this Court stayed the proceedings on the earlier charges on the ground that their institution and continuation was harsh and oppressive. Then the claimants were involved in a Royal Commission. Ultimately, some five years after the original charges were stayed, they find themselves charged again by the department (whose delay prior to 1986 has been characterised by this Court as 'appalling and without justification')... (T)hey are thereby subjected to the kind of vexation and oppression by the State which has so often been declared to be repugnant to the law".*

Kirby P expressed the view ((40) ibid, at p 207.) that Black J's explanation, in Green v. United States ((41) [1957] USSC 148; (1957) 355 US 184, at pp 187-188: "the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty".), of "the rationale which lies beyond the resistance of courts to various species of double jeopardy" was equally applicable to "the grossly delayed and now repeated attempts to bring" the respondents before the Tribunal to answer charges in relation to the events at the Hospital prior to 1979. Mahoney JA said ((42) (1991) 25 NSWLR, at p 217.)

> *"that the fact of the decision in Herron v. McGregor heightens the sense of injustice which may be felt in respect of the present proceeding before the tribunal".*

He added ((43) ibid) that the fact of that earlier decision was "a factor properly to be taken into account". Once it is recognized that the question whether the current proceedings should be permanently stayed falls to be resolved by reference to a weighing process in which account has to be taken of considerations of fairness to the respondents, it is apparent that the members of the Court of Appeal were fully justified in paying regard to the notions of fairness to an accused person which underlie the common law principle against double jeopardy.

Notwithstanding the Department's argument to the contrary, the substance of the complaints against the respondents in the current proceedings corresponded, to a very large extent, with the substance of the complaints against them in the proceedings which had been permanently stayed by, or as a consequence of, the orders made in Herron v. McGregor in 1986. The earlier jeopardy of loss of the right to practise and of pecuniary penalty to which the respondents had been subjected in the proceedings based on particular allegations involving the use of deep sleep therapy and associated electro-convulsive therapy on particular patients at Chelmsford prior to 1979, were renewed in the proceedings based on more generalized and wider, but essentially similar, complaints. It is true that the absence of an earlier hearing on the merits and the variations between

personal complainants and the details of the complaints mean that, even if a strict rule against double jeopardy is applicable to proceedings in the Tribunal, the current proceedings would not fall within it. The sense of injustice which inspires the doctrine against double jeopardy was, however, plainly present in large measure. It was, as Mahoney JA pointed out ((44) ibid) "an important factor to be weighed in the balance".

53. **Injunction**

54. The test applicable for the grant of an interlocutory injunction is set out in the organising principles identified in the reasons of Gummow and Hayne JJ in O'Neill 227 CLR at 81-82 [65],[70] namely:

54.1. *'The relevant principles in Australia are those explained in Beecham Group Ltd v Bristol Laboratories Pty Ltd ((1968) 118 CLR 618). This Court (Kitto, Taylor, Menzies and Owen JJ) said that on such applications the court addresses itself to two main inquiries and continued ((1968) 118 CLR 618 at 622-623):*

> *"The first is whether the plaintiff has made out a prima facie case, in the sense that if the evidence remains as it is there is a probability that at the trial of the action the plaintiff will be held entitled to relief ... The second inquiry is ... whether the inconvenience or injury which the plaintiff would be likely to suffer if an injunction were refused outweighs or is outweighed by the injury which the defendant would suffer if an injunction were granted."*

54.2. *By using the phrase "prima facie case", their Honours did not mean that the plaintiff must show that it is more probable than not that at trial the plaintiff will succeed; it is sufficient that the plaintiff show a sufficient likelihood of success to justify in the circumstances the preservation of the status quo pending the trial. That this was the sense in which the Court was referring to the notion of a prima facie case is apparent from an observation to that effect made by Kitto J in the course of argument ((1968) 118 CLR 618 at 620). With reference to the first inquiry, the Court continued, in a statement of central importance for this appeal ((1968) 118 CLR 618 at 622):*

> *"How strong the probability needs to be depends, no doubt, upon the nature of the rights [the plaintiff] asserts and the practical consequences likely to flow from the order he seeks."'*

55. **Misleading conduct and Bad Faith**

[70] *Australian Broadcasting Corporation v O'Neill* (2006) 227 CLR 57

55.1. I invite the court to also conclude that another proper principle to be applied in a case like this was identified by Hodgson JA in Britania 67 NSWLR at 15 [8], [71]namely, that the Australian Consumer Law:

"... discloses a legislative intention that persons should have a remedy to protect them from damage from the misleading conduct of a corporation, or to recover from the corporation compensation for such damage, and it would not be in accordance with that intention that a corporation should be permitted to obtain a judgment against a defendant on a cause of action one essential element of which has been created by that corporation's misleading conduct against that defendant. Subject to discretionary questions, it would in my opinion be appropriate for a court to give effect to that legislative intention by granting an injunction under [the powers now reflected in ss 232 and 234 of the Law]." (emphasis added)

Conclusions

1. I seek this learned Court to make orders extending time to file and serve the Applicant's Genuine Steps Statement dated 1st February 2015 from the first return date in this proceeding to the Second February 2015, and

2. The applications of the Respondents dated 12th November 2014 and 11th December 2014 are dismissed and

3. Orders for discovery of on the basis of penetration of Legal Privilege.

4. Such other Orders as this Honourable Court Deems Fit

Dated 5th November 2014

.....
Andrew Garrett
Defendant

[71] *Bitannia Pty Limited v Parkline Constructions Pty Limited* (2006) 67 NSWLR 9

NATIONAL AUSTRALIA BANK (NAB)

Annexure 1

1. Refer Statement dated 24/03/ 2010 for more detail of this matter.

2. Initial involvement with NAB

In November 2000, I engaged with NAB as a Banker for a vineyard development known as Braidwood Vineyard at Mt Jagged, SA.

Later, in 2001, I arranged a competitive tender for the banking business of the Braidwood and Sunburst entities between NAB, St George Bank/ Bank SA, **(Bank SA)** NM Rothschild & Sons (Australia) Limited **(NMR) ,** Westpac**(Westpac)** and Rabo Bank**(Rabo)** though the auspices of Andrew Sandow Office Management.

In January 2002 NAB provided an indicative letter offering 65% LVR on which basis I decided to pursue their offer.

Subsequently an internal bank document describing the banking proposal was circulated in the Bank citing the value of the deal at $14 million and entitled Top 10 sales funnel deal- Information sheet.

In the ensuing negotiation process NAB made representations that I should consolidate my banking business with them as it would make my life simpler. Subsequently on the 16th May a credit submission was authorised by NAB.

3. The NAB financing

A formal letter of Offer in the amount of $10,350,000 was finally accepted by me in May 2002 which proceeded to settlement in stages.

4. Stage 1 was:

a. An advance of $1,500,000 made to The Trustees of the Andrew Garrett Family Trust **(AGFT)** and was ***intended to be secured*** by a Mortgage over the property known as "Springwood Park" **(SP).** ***For the reasons that follow this was not possible.***

That property (SP) was owned by Averil Garrett **(AGG)** as to 3 undivided 26th parts in respect of the section of land occupied by our principal place of residence, and the remaining 23 parts by Andrew Garrett Wine Resorts P/L in its capacity as Trustee of the Springwood Park Unit Trust **(SPUT).**

100% of the units issued in SPUT were owned by Andrew and Averil Garrett in their capacities as Trustees of the AGFT.

b. A further $4,120,000 in respect of Stage 1 Finance was also advanced by NAB pursuant to a 1st Bill facility Letter of Offer in favour of Sunburst Properties **(Sunburst)** dated 28th June 2002.

This amount was secured by mortgages over the Vinescape/Whisson assets (amongst other securities including debentures and guarantees) that were purchased with the advance from the vendors, along with a deposit to be paid in respect of the Gelnhurst assets;

i. KPMG (Adelaide) as receivers and managers of Vinescape and Alexandrina Water as vendors of the Vinescape Assets being ;
   - 75 acres of Vineyards planted on 1200 acres of land
   - 7.5 kilometre pipeline
   - Homestead buildings and shedding.
   - Filtration Manifolds
   - Easements, Leases, licenses to occupy
   - Coleambally farm 652, NSW
   - Irrigation license 2512
   - Irrigation License 2702

- Irrigation license 2632
- 601 shares in the Coleambally Irrigation Co-operative

ii. Mark Whisson and Philip Marshall as Vendors of the Whisson Assets;

- La BBQ vineyard 160 acres of vineyard
- Mt Carey Vineyard
- $750,000 plant & equipment
- 20% interest in Colton Vineyard
- Trig Point Viticulture Management Customers
- Personnel & Intellectual Property
- Head Office Furniture and effects $100,000

c. Continuation of $1,750,000 Facility made available to Sunburst Holdings Pty. Ltd **(Holdings)** in January, 2002.

5. Stage 2 was to be an advance of $3.6 million (with $350,000 deposit already paid) for acquisition of assets known as the Glenhurst assets, pursuant to a contract of purchase executed on 15 February 2002.

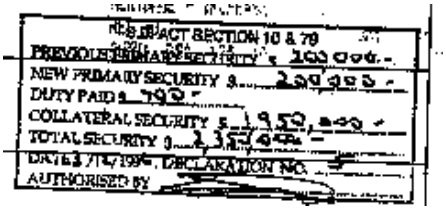
6. Variation of Stage 2 In September 2002 NAB convinced me to withdraw from the Glenhurst acquisition and instead acquire the property known as Old Stornoway from their agent Colin Nichol of McGrath Nichol. NAB agreed to advance 100% of the funds for the purchase, leasehold equipment and operating capital.

Securitisation of Stage 1

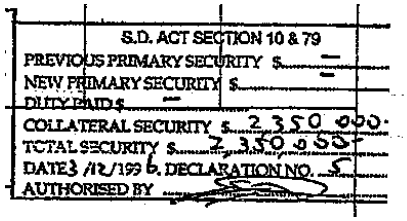
6. The advance of $1.5 million under Stage 1 was to enable the payout of existing loans, and for other purposes, specifically:
   a. $344,000 was to be used to pay out that amount owed to St George Bank/BankSA by the AGFT, that was then secured by a first Registered Mortgage No 8213956 over SP. **(BankSA Mortgage)**
   b. $600,000 was to be paid to NM Rothschild & Sons (Australia) Limited in consideration of the execution of Deed of Priority to allow NAB priority in respect of the second registered Mortgage No 8909699 **(NMR Mortgage)**
   c. $536,000 for other purposes including the deposit on the Vinescape assets.

The 1st NAB Mortgage

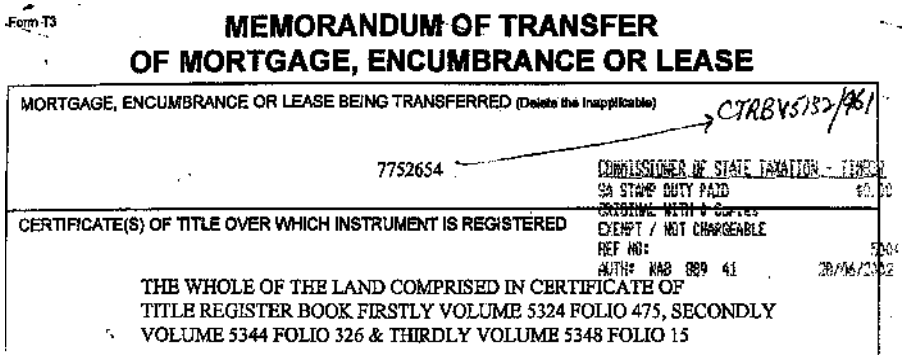
7. NAB Mortgage No 9374752 **(1st NAB Mortgage)** over SP was given as security in respect of a Bill Facility Letter of Offer dated 11th June 2002 in favour of AGFT **(the 1st AGFT Bill facility).** Upon registration, this mortgage became the second registered mortgage following the discharge of the BankSA Mortgage which occurred concurrently.
   a. On settlement of the 1st AGFT Bill Facility the NMR Mortgage advanced to become the 1st Registered Mortgage over SP as the Bank SA mortgage was unconditionally discharged.
   b. During the first week of June 2002 it was represented to me by officers of NAB that it would be cost effective and for the benefit of AGFT if BankSA were to transfer/assign the Prime Stamped BankSA mortgage to NAB as the Stamp Duty already paid on that mortgage could be used as a credit against the Stamp Duty Assessment for the 1st NAB Mortgage resulting in a saving of money to AGFT.
   c. From discovery provided to me on the 29th September 2004 (5 days after my sequestration) and communications evidenced in that discovery between NAB officers and bank SA officers it is apparent that there was significant confusion in NAB as to the level of stamp duty paid on the BankSA Mortgage and indeed which mortgage should actually be assigned to NAB by BankSA.
   d. At this time the NAB officers realised that "The Prime Stamped BankSA mortgage" that was subject of their communications with bank SA was in fact Mortgage No 7752654 **(the Arranmore Mortgage)** and that this mortgage was never registered over SP.
   e. The Arranmore mortgage was the only remaining BankSA Prime Stamped security and was stamped as follows;



f. The BankSA mortgage was only ever stamped as a collateral security as follows;


S.D. ACT SECTION 10 & 79
PREVIOUS PRIMARY SECURITY $ —
NEW PRIMARY SECURITY $ —
DUTY PAID $ —
COLLATERAL SECURITY $ 2 350 000·
TOTAL SECURITY $ 2 350 000·
DATED 18/12/1996 DECLARATION NO. 5
AUTHORISED BY

g. A memorandum of transfer of Mortgage executed by the registered proprietors of the property known as Springwood Park dated 24th June 2002 prepared by NAB officers describes the Arranmore mortgage as being an instrument registered over SP***(which was not the case)*** and relevantly sets out;


Form T3

MEMORANDUM OF TRANSFER OF MORTGAGE, ENCUMBRANCE OR LEASE

MORTGAGE, ENCUMBRANCE OR LEASE BEING TRANSFERRED (Delete the inapplicable) CTRBV5132/961

7752654

COMMISSIONER OF STATE TAXATION - TASMANIA
SA STAMP DUTY PAID $0.00
ORIGINAL WITH 0 COPIES
EXEMPT / NOT CHARGEABLE
REF NO:
AUTH: NAB 889 41 28/06/2002

CERTIFICATE(S) OF TITLE OVER WHICH INSTRUMENT IS REGISTERED

THE WHOLE OF THE LAND COMPRISED IN CERTIFICATE OF TITLE REGISTER BOOK FIRSTLY VOLUME 5324 FOLIO 475, SECONDLY VOLUME 5344 FOLIO 326 & THIRDLY VOLUME 5348 FOLIO 15

h. NAB officers were aware at the date of registration of the memorandum of transfer of the Arranmore mortgage on the 28th June 2002 that this mortgage was not registered over SP .....being the Land set out in the description of the certificates of title over which the instrument was purported to be registered, subsequently NAB officers sought to conceal their error in an act of Fraud.

i. It appears from the hand amendments on the face of the document being ***the arrow and the CT reference "CTRBV5132/961"*** that the solicitors for the bank (Johnson Winter & Slattery) in the preparation of their advice (prior to July 2003) also realised that the land had been incorrectly described and that the NAB securities were fatally flawed. Alternatively it is possible that these notes were affixed at some earlier time by NAB officers and that this could have predated December 31st 2002.

j. A few days earlier a Deed of assignment of Debt and Security dated 21st June 2002 prepared by NAB officers was also executed in respect of the Arranmore Mortgage between BankSA and NAB which correctly describes the land over which the Arranmore Mortgage was registered as follows;

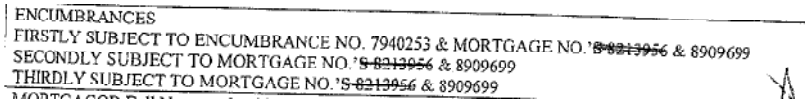
Assigned Security means the following :

- real property mortgage no. 7752654 granted to the Assignor by the Chargor over Certificate of Title Volume 5132 Folio 961.

k. The deceit of the NAB officers continued during the finalisation of the security documents required under the 1st AGFT Bill Facility from the date of execution by the registered proprietors, the date of lodgement with the LTO and from the date of the return from registration of the first raft of security documents from the LTO; NAB officers knowingly sought to register and conceal the fatal flaws in the documents from both the LTO and the Registered Proprietors being the Mortgagees.

l. Prior to the lodging for registration of the 1st NAB Mortgage with the LTO on the 28th June 2002 (***subsequent to the execution of that Mortgage by the Registered Proprietors on the 21st June 2002)*** it appears that officers of the NAB endeavoured to conceal flaws in the mortgage and made hand amendments to the face of the Mortgage without the knowledge or consent of the Registered Proprietors of SP or the Trustees of AGFT

m. The 1st, 2nd & 3rd amendments made were the deletion of the numbers "8213956" referring to the BankSA Mortgage (the 1st Registered Mortgage) on page 1 of 4 in the paragraph entitled encumbrances


ENCUMBRANCES
FIRSTLY SUBJECT TO ENCUMBRANCE NO. 7940253 & MORTGAGE NO. ~~8213956~~ & 8909699
SECONDLY SUBJECT TO MORTGAGE NO. ~~8213956~~ & 8909699
THIRDLY SUBJECT TO MORTGAGE NO. ~~8213956~~ & 8909699

n. The 4th & 5th amendments were made at paragraph 2(b) also on page 1 of 4

(b) Notwithstanding any other provisions of this Mortgage it shall be security only for the payment to the Mortgagee of the moneys which are purported to be secured by

Memorandum of ~~DISCHARGED~~ MORTGAGE NO. 7752654 DATED 30/06/1994 GIVEN BY ANDREW MORTON GARRETT & AVERIL GAY GARRETT FOR, WHICH THIS DOCUMENT IS GIVEN IN SUBSTITUTION → CTRBV 5132/961

i.

o. Those amendments appear to attempt to remedy a statement that Mortgage 7752654 was in fact discharged as well as state that the 1st NAB Mortgage was given in substitution for Mortgage 7752654 **(The Arranmore Mortgage).**

p. I can only imagine that whoever made the amendment was seeking to create the impression to whomever viewed the document that the Arranmore Mortgage was not discharged and still held an interest in Land; this is very clearly **NOT** the case.

q. It appears that at some later time NAB staff or in the alternative JWS made a further 6th hand amendment to the face of the document encircling the words *"No 7752654 dated 30/06/1994"* and noting that this mortgage applied to Certificate of Title Register Book Volume 5132/961 again referring to the Arranmore Mortgage. This amendment probably would have been made during the stage when JWS (NAB Lawyers) provided its initial advice to NAB prior to appointment of Receivers and managers to the Sunburst /Braidwood Group of companies.

r. This notation does not appear on the LTO Copy of the Mortgage and therefore must have been affixed after registration with the LTO.

s. Within the circle (that appears to be affixed by JWS) a heavy black line appears that has no apparent purpose and that should not have been on the document at the time of lodgement with the LTO.....this line suggests a subsequent unknown amendment.

t. Of great concern is that the 1st NAB mortgage has 6 amendments that were clearly initialled by only one of the parties to the document.

u. That party was not either of the registered proprietors/mortgagors; the initial could only have been an officer of the NAB or in the alternative an officer of the LTO

v. This document was apparently allowed to be processed through the LTO by the LTO and registered without acknowledgment of hand amendments by all parties to the document .....specifically the Registered Proprietors.

w. Of greatest relevance is the amendment to the operative clause which I am assured by Dean Watson of the LTO during a discussion on the 16th April 2010 would never have been amended by the LTO, consequently the only party who would have made the amendment was the NAB.

x. In a normal circumstance the procedure of the LTO would be to send the document back for correction before registration with acknowledgment of amendments by all parties to the Deed.

y. A requisition notice for correction was raised by the examiner Bernard Sayer on the 16th July 2002 but only in so far as correction to the capacity of the first Mortgagor. This amendment to capacity of the First Mortgagor was made by the conveyancor, SJ Fisher acting on behalf of NAB.

z. It is apparently acknowledged by NAB at this amendment that this mortgage was given only in respect of moneys purported to be secured by the Arranmore Mortgage.....however; The Arranmore Mortgage was fully discharged and secured no money.

aa. The Arranmore mortgage was fully discharged 6 years earlier on the 23rd July 1996 when SP was originally purchased by the registered proprietors and the property known as Arranmore was sold by Andrew & Averil Garrett. The face of the registered discharge of the Arranmore Mortgage shows that a total of 4 Bank SA mortgages were discharged concurrently as follows;

MORTGAGE BEING DISCHARGED	Number:	7035163 7035164 761978 7752654	
LAND DESCRIPTION: The whole of the land comprised in Certificate of Title SOUTH AUSTRALIA		REGISTER BOOK VOLUME: 5132	FOLIO: 961

bb. It is extremely relevant that a hand written discharge of the Arranmore Mortgage was prepared and stamped by NAB officers on the 28th June 2002

MORTGAGE BEING DISCHARGED
7752654

COMMISSIONER OF STATE TAXATION - [illegible]
SA STAMP DUTY PAID $10.00
ORIGINAL WITH 0 Copies
DISCHARGE OF MORTGAGE
THE WHOLE OF THE LAND COMPRISED IN CERTIFICATE OF TITLE
AUTH: NAB 889 47 28/06/2002

CERTIFICATE/S OF TITLE AFFECTED
THE WHOLE OF THE LAND COMPRISED IN CERTIFICATE OF TITLE REGISTER BOOK VOLUME 5132 FOLIO 961

State if WHOLE or PART of land in mortgage is being discharged	State if WHOLE or PART of money secured is being discharged
WHOLE/~~PART~~	WHOLE/~~PART/NIL~~

CONSIDERATION (Words and figures)
SECURITY IN SUBSTITUTION

cc. It is impossible to discern how NAB could seek to discharge a mortgage that was already discharged; In fact this document could have only been prepared for internal NAB purposes and is consistent with the amendment set out in paragraph n & o above. Furthermore the handwriting is also consistent and appears to be the writing belonging to the person who prepared the document being the NAB Attorney; Sally Jane Potter.

NATIONAL AUSTRALIA BANK LIMITED
ABN 12 004 044 937 By its Attorney
SALLY JANE POTTER
22 KING WILLIAM ST ADELAIDE
MANAGER

P/A No. 7075481

dd. This discharge was amended with a hand note by Ms Potter "Do Not Register" as follows;

DISCHARGE OF MORTGAGE

FORM APPROVED BY THE REGISTRAR-GENERAL

BELOW THIS LINE FOR AGENT USE ONLY

CERTIFIED CORRECT FOR THE PURPOSES OF THE REAL PROPERTY ACT 1886

DO NOT REGISTER

Solicitor/Registered Conveyancer

AGENT CODE

Lodged by:

Correction to: NATIONAL AUSTRALIA BANK LIMITED **NATB**

ee. It would appear from this note that Ms Potter realised on the 28th June 2002 that NAB had taken a transfer of a discharged mortgage and it was not possible to lodge with LTO a discharge document in respect of security that was already discharged. Consequently the NAB Officer realised that the Arranmore mortgage and its assignment did not convey an interest in SP in any way which was in fact the reverse of what was described at paragraph g above.

ff. All NAB officers involved in this process must have realised at this time that as a function of limiting the 1st NAB Mortgage to the amount of money purported to be secured by the Arranmore Mortgage (which was fully discharged) that the 1st NAB Mortgage secured no money as that mortgage secured no money and had not in fact secured any money for 6 years.

gg. It appears that what NAB officers had intended was that the BankSA Mortgage should have been assigned by BankSA to NAB and not the Arranmore Mortgage. This is reflected by the Deed of Priority that was prepared between NAB and NMR which set out the NAB security as follows;

Item 1 (Date)	Dated this 21st day of June 2002
Item 2 (Secured Lender)	**N M ROTHSCHILD & SONS (AUSTRALIA) LIMITED** ABN 32 008 458 366 of Level 21, 120 Collins Street, Melbourne VICTORIA 3000
Item 3 (Mortgagor)	Firstly: **ANDREW GARRETT WINE RESORTS PTY LTD** A.C.N. 064 792 221 in its own right and as trustee for **THE SPRINGWOOD PARK UNIT TRUST** of BDO Chartered Accountants 248 Flinders St ADELAIDE SA 5000 and **AVERIL GAY GARRETT** of PO Box 203 GLEN OSMOND SA 5064
Item 4 (Bank's Security)	Memorandum of Mortgage Registered No. 8213956 dated 29 November 1996 from ANDREW GARRETT WINE RESORTS PTY LTD and AVERIL GAY GARRETT over the whole of the land comprised in Certificate of Title Register Book Volume 5324 Folio 475 and Volume 5344 Folio 326 and Volume 5348 Folio 15.
Item 5 (First Priority Amount)	One Million Five Hundred Thousand Dollars ($1,500,000-00)
Item 6 (Secured Lender's Security)	Memorandum of Mortgage Registered No. 8909699 dated 9May 2000 from ANDREW GARRETT WINE RESORTS PTY LTD and AVERIL GAY GARRETT over the whole of the land comprised in Certificate of Title Register Book Volume 5324 Folio 475 and Volume 5344 Folio 326 and Volume 5348 Folio 15.

hh. Had the NAB officers in fact amended the 1st NAB Mortgage to refer to the BankSA mortgage rather than the Arranmore Mortgage then the limit of security offered by the 1st NAB mortgage would have been the money owed to BankSA at the time of the taking of the mortgage being $344,000 but instead the amount secured by the 1st NAB Mortgage was NO MONEY whatsoever.

ii. It follows that the 1st NAB Mortgage (No 9374752) was ineffective to provide any security in respect of the $1,500,000 advance made under the 1st AGFT Bill Facility Letter of Offer as the mortgage was specifically limited by agreement between Mortgagee and Mortgagor.

jj. NAB officers realised as early as 28th June 2002 that the 1st NAB mortgage in fact secured NO MONEY whatsoever.

kk. Additionally the Deed of Priority executed between NMR and NAB was ineffective to rank the 1st NAB Mortgage in front of the NMR Mortgage in any way.

ll. The only mortgage that was entitled to such ranking was the BankSA mortgage as expressed in the Deed of Priority ,

mm. As set out above this mortgage was never assigned or transferred to NAB by BankSA and was fully and unconditionally discharged on the 28th June 2002;

DISCHARGE OF MORTGAGE

MORTGAGE BEING DISCHARGED	8213956
CERTIFICATE(S) OF TITLE AFFECTED	The whole of the land comprised in Certificates of Title Register Book Volume 5324 Folio 475, Volume 5344 Folio 326 and Volume 5348 Folio 15

NMR Mortgage

8. On the 24th December 2002 International Vintners Australia **(IVA)** sold a property in the Yarra Valley. The proceeds of this sale were used to for the sole purpose of reducing indebtedness of IVA to NMR by $940,000.
A condition of the debt reduction was the discharge of the Garrett related securities including the Guarantees and the NMR mortgage **(the NMR securities)** to enable AGFT to procure additional funding to invest in IVA.

Concurrent with the discharge of the NMR securities a Deed of Amendment and Release was executed which set out the following detail;

This Deed of Release and Amendment

is made on 2002 by:

1. **International Vintners Pty Ltd**
ABN 18 060 306 765
of 11 Birralee Road, Regency Park, South Australia 5010
(Vintners)

2. **N M Rothschild & Sons (Australia) Limited**
ABN 32 008 458 366
of Level 15, 1 O'Connell Street, Sydney, New South Wales, 2000
(Rothschild)

3. **Each party listed in the Schedule**
(Other Guarantors)

Recitals

A. Andrew Garrett Wine Resorts Pty Ltd ACN 064 792 221 on its own account and as trustee of the Springwood Park Unit Trust (AGWR), Andrew Morton Garrett in his personal capacity and as trustee of The Andrew Garrett Family Trust (AMG) and Averil Gay Garrett as trustee of The Andrew Garrett Family Trust (AGG) are Guarantors under a Loan Facility Agreement dated 28 September 2001 between Vintners, Rothschild, AGWR, AMG, AGG and the Other Guarantors (as amended by the Amending Agreement dated 18 January 2002 between Vintners, Rothschild, AGWR, AMG, AGG and the Other Guarantors) (Agreement).

B. This deed releases AGWR, AMG and AGG from their obligations, rights and liabilities as Guarantors under the Agreement.

C. The parties to this deed wish to amend the Agreement in the manner set out below.

The Deed of Amendment and release confirmed that the NMR Mortgage was a security in support of a Guarantee of a third party debt (IVA) given by AGFT et al and set out the request an acknowledgment;

2 Request and acknowledgment

Vintners and the Other Guarantors:

(a) request Rothschild to release AGWR, AMG and AGG from all liability as Guarantors under the Agreement;

(b) request Rothschild to discharge mortgage number 8909699 over Springwood Park;

NAB was not a party to the Deed nor did it have an equitable interest in the discharge of NMR securities as it did not provide any money.

As a consequence of execution of the Deed a copy of a memorandum of discharge of the NMR mortgage was provided to Edward Shipley of IVA.

Concurrently, the original Duplicate certificates of Title of SP should have been provided to the Registered Proprietors by NMR

However, on the date of lodgement of the discharge of the BankSA Mortgage the duplicate certificates of title were also lodged by BankSA

TITLES, CROWN LEASES, DECLARATIONS ETC. LODGED WITH
INSTRUMENT (TO BE FILLED IN BY PERSON LODGING)

1. C/T 5324/475
2. C/T 5344/326
3. C/T 5348/15
4. R/M 8213956

The discharge document prepared by Bank SA was silent as the delivery of the duplicate CTs in the delivery panel subsequent to the preparation by BankSA it appears that an NAB officer had filled in the rear panel in a manner reflecting that NAB was to receive delivery of the duplicate CTs on discharge presumably as a consequence of the purported assignment of the BankSA mortgage which in fact did not occur .

DELIVERY INSTRUCTIONS (Agent to complete)
PLEASE DELIVER THE FOLLOWING ITEM(S) TO THE UNDERMENTIONED AGENT(S)

ITEM(S)	AGENT CODE
3 x C1	NATB 58

It appears that NAB had held the duplicate CTs from the date of discharge of the BankSA mortgage without the knowledge or consent of the registered proprietors or of the then 1st Registered Mortgagee being NMR.

In a normal circumstance the original Duplicate Certificates of Titles of SP should have been in the hands of NMR(pursuant to the NMR Mortgage being registered 1st on the titles) upon the discharge of the Bank SA Mortgage **and not** in the hands of NAB as appears to be the case from the date of the discharge of the BankSA Mortgage registered on the 24th July 2002.

Subrogation of the NMR Mortgage and Equitable Mortgage established.

Upon the receipt of the discharge of the NMR mortgage, it was not possible nor was it my intention to discharge the NMR Mortgage as the original Duplicate Mortgage and the duplicate CTs were not provided to me (in any of my capacities) at this time.

I had not decided to register the NMR mortgage discharge in any of my capacities; personally, as joint trustee of AGFT or sole director of Andrew Garrett Wine Resorts **(AGWR)** in its capacity as Trustee of the Springwood Park Unit Trust **(SPUT)** as the purpose of the discharge of the NMR mortgage was to provide additional funding to IVA.

On 24th December 2004 the NMR Mortgage was subrogated to AGFT and continued to be beneficially held by AGFT from then on. As a consequence the Duplicate Certificates of Title of SP should have been delivered to the possession of AGFT by NMR resulting in the establishment of an equitable mortgage. NAB held no rights to possession of the Duplicate CT's of Springwood Park in spite of the 1st NAB Mortgage(2nd Registered Mortgage) being registered on the property as the mortgage secured no money.

The NMR mortgage (subrogated to AGFT) continued to be registered on the title until the order of the court to discharge the 1st Registered Mortgage. At the time of making of the order the Honourable Gray J fell into error in failing to provide proper support to an unrepresented party. The learned Judge failed to question the motives of NAB in executing a second mortgage 1 month prior to the appointment of Receivers and managers to the Sunburst Braidwood Group of companies.

On the 4th of November 2003 I wrote to NMR seeking the provision of the original duplicate NMR Mortgage. I was advised by NMR that NMR had never held the duplicate CTs

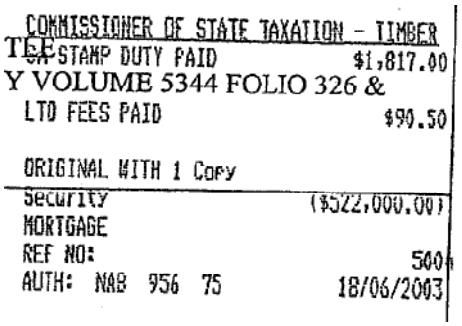
The original Duplicate NMR Mortgage was provided to me on the 11th November 2003 under cover of letter from Freehills Melbourne Office.

In accordance with the principals of subrogation the equitable interests of the NMR Mortgage were transferred to the parties providing the surety on behalf of IVA namely the AGFT and The Mortgagor.

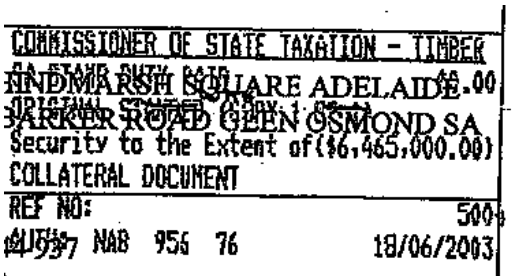
The 2nd NAB Mortgage

9. A second mortgage was taken by NAB on the 29th May 2003 and subsequently presented to the LTO for registration on the 20th June 2003 and registered on the 5th of July 2003. On registration this mortgage was given Mortgage No 96717285 (the 2nd NAB Mortgage) which became the third registered Mortgage on the title.

This mortgage was not provided as security to any advance as no advance was made and no Bill Facility Letter of Offer was executed. Of interest the stamping of the face of the document suggests that the Mortgage is security for $522,000...which was never advanced;


COMMISSIONER OF STATE TAXATION - TIMBER
TE
STAMP DUTY PAID $1,817.00
Y VOLUME 5344 FOLIO 326 &
LTO FEES PAID $90.50
ORIGINAL WITH 1 Copy
Security ($522,000.00)
MORTGAGE
REF NO: 500
AUTH: NAB 956 75 18/06/2003

The face of the 2nd NAB Mortgage expressed on its face that the maximum amount of Debt by the Garrett related entities owed to the NAB as at the date of the fixing of The Stamp Duty assessment being the 18th June 2003 was $6,455,000 as a collateral security.


COMMISSIONER OF STATE TAXATION - TIMBER
ADELAIDE
Security to the Extent of($6,465,000.00)
COLLATERAL DOCUMENT
REF NO: 500
NAB 956 76 18/06/2003

At that time I was in the depth of depression and really had no comprehension of what was occurring as I had successfully navigated 30 years in my industry and consider the group to be under geared. On the same day NAB had sent me a letter advising that it was not going to proceed with the Old Stornoway settlement.

The 2nd NAB mortgage was one of a number of documents executed at that time by me and my wife.

On the date of execution of the 2nd NAB Mortgage, Simon Illsley for the Bank advised me that all he was seeking to do was to execute new guarantees to allow for payments due under leases of two tractors used to operate Bulka Station Vineyards.

At that time Illsley reminded me that I was entitled to take legal advice, I asked him whether there was any change in respect t of the surety provided to the Bank to which he answered that there was no change and that any money currently owed to than bank was covered by existing mortgages and guarantees.

I asked him if he felt it was necessary that I take that advice as I trusted him, he advised that it would not be necessary as it was pointless.

I had the clear impression that NAB was seeking to position to take action under its security documentation and that there was nothing I could do about the matter.

Honest Mistake

In a normal circumstance a party to a contract is entitled to rectification of honest mistakes, the relevant mistakes can be rectified to reflect what was intended.

However, NAB chose not to discuss the mistakes at all with the Registered Proprietors OR the Guarantors to the NAB facilities and instead embarked on a path of engineering a collapse of the Garrett Group.

It is apparent from the circling of relevant mortgage numbers by hand on the face of the Deed of Priority is evidence that JWS realised the degree of the NAB errors at the time of giving of their advice prior to the appointment of Receivers and managers to the Sunburst Braidwood Group on July 17th 2003.

It is also clear that NAB officers knew about the issues in respect of the Deed of Priority and the 1st NAB Mortgage at least as soon as the 21st June 2002 (execution of Deed of Priority) and most likely at some time prior to this date.

NAB officers did not approach any of NMR, AGFT or the Registered Proprietors of SP at any time to seek rectification of the security documents.

Instead in an effort to hide their own incompetence and somehow shore up the NAB securitisation of SP the Bank Officers embarked on a process of seeking enhancement of Guarantees.

Freehills & NMR

The Deed of Priority was prepared in 2002 was prepared by Freehills Melbourne office;

Freehills Melbourne & NAB were aware that the NMR mortgage had been provided as surety for the debt only of a third party being International Vintners Australia Pty Ltd (IVA); also known as Andrew Garrett Vineyard Estates.

Freehills & NAB were aware that NMR did not make any advance to either the registered proprietors of SP or the Trustees of the AGFT for any purpose and that NMR only made advances from time to time to IVA to which debt AGFT was a guarantor.

There was no reason why NMR could not consent to execution of a Deed of Assignment of the NMR mortgage

On the 10th March 2004 I wrote to NMR seeking the execution of a Deed of Assignment of the NMR Mortgage.

The Deed of Priority allowed for the assignment of the NMR Mortgage stating;

8. ASSIGNMENT

8.1 Consent to Assignment

The Mortgagees agree not (other than as part of a Securitisation program or the dealing occurs in connection with the enforcement of a Security) to Encumber or Dispose of their respective Securities or any interest therein or permit or suffer the same to be Encumbered or Disposed of without the prior written consent of the other Mortgagee which consent will not be unreasonably withheld.

Following a discussion with Peter Cuy of the Sydney Office of NMR on the 14th March 2004 I confirmed with Jennifer Whincup of the Melbourne Office of Freehills that NMR was prepared to execute a Deed of Assignment of Debt and security.

After much discussion between NMR and me, NMR refused to execute the Deed of Assignment of the NMR Mortgage.

It was apparent that NMR, Freehills, JWS and NAB were colluding to prevent proper management of the Garrett equitable interests.

Second advance

10. A further advance of $4,120,000 in respect of Stage 1 Finance had been advanced by NAB pursuant to the 1st Bill facility Letter of Offer dated 28th June 2003. This amount was secured by mortgages over the Vinescape/Whisson assets that were purchased with this advance (Refer statement paras 35.2.1 and 35.2.2)

During settlement of the NAB advances the Garrett related entities were represented by Minter Ellison which firm breached the duty of care and were negligent in acting for The Garrett Interests.

ANDREW GARRETT©® TM

Annexure 2

TM©®

Mr Peter Macks & Mr Simon Miller,
PPB,
Level 10,
228 Flinders St,
Adelaide, SA, 5000.
Email; pmacks@ppbsa.com.au; smiller@ppbsa.com.au
Cc; Lipman Karas; lloechel@lipmankaras.com

Tuesday, 30 December 2008

Dear Mr Macks, Mr Miller,

Further to my letter dated 11th September 2008 and related communication dated 16th September which led to your decisions set out in your e-mail to me dated 17th September 2008 and subsequent to the commencement of WAD 260 of 2008 in the Federal Court Western Australia District Registry.

I have been advised by the Australian Taxation Office that it is awaiting a communication from you with respect to your position with regard to DCCIV-1666-2003 and the subsequent setting aside of the Default Judgment given in that matter on the 11th February 2004.

I understand from the ATO that you have failed to respond to its enquiry of you. I ask that you provide a copy of any correspondence between you and the ATO related to Bankrupt Estate SA 1590 of 2004 forthwith.

I have previously indicated in the aforementioned communiqués (and you will have discovered in your investigations) that the Default Judgment was given in respect of a debt that could not and in fact did **not** exist. There is not (and never was) any GST assessable on the payments made under the Deed of Settlement dated 26 July 2000, The Heads of Agreement executed on the 13th June 2000 OR the Garrett Family License executed on or about the 24th March 1994.

In my capacity as sole Trustee of the Andrew Garrett Family Trust I have received Tax Credits to the Running account in the amount of $98,246 that pre date the default judgment, a further $10,830 in credits is also being processed relating to remission of General Interest Charges and Penalties.

As at todays date the Running Account Balance of the Andrew Garrett Family Trust stands at $16,225.57 in credit (subject to additional credits/remissions to be made) with an effective date of 31st December 2003. In other words as at the date of the Sequestration Order being the 24th September 2004 the ATO in fact owed the Andrew Garrett Family Trust money rather than the other way around.

I refer to the exhibit BD36 of your affidavit dated 11th March 2008 filed in SAD 5 of 2006 upon which you rely to claim a right of indemnity over the assets of the Andrew Garrett Family Trust as property of the Bankrupt Estate you represent.

You and Mr Miller are accountants and insolvency practioners of many years of experience; you must have known in the swearing of that affidavit material that the ATO debt did not exist and consequently your action was purgery.

The same is the case in respect of the detail relating to National Australia Bank where you set out in your affidavit of 11th March 2008;

> 39. In January 2006, my solicitors were advised by Timothy French on behalf of the NAB that the total indebtness inclusive of interest and cost owed to the NAB was $15,280,202.25. Now shown to me in the annexed book of documents and marked "**BD28**" is a copy of a table provided by Timothy French as an annexure to his affidavit in SAD 29 of 2005, which provides a summary of Sunburst, Sunburst Properties and Andrew Garrett and Averil Garrett's total liability to the NAB as at 30 January 2006 before the monies received from the sale of Springwood Park were applied to the liabilities.
>
> 40. On 24 May 2007, NAB submitted a proof in the administration for the amount of $11,188,467.00. Now shown to me in the annexed book of documents and marked "**BD29**" is a copy of a table provided.
>
> 41. This proof was admitted by me on 24 May 2007 and a letter was sent to creditors and to Andrew Garrett. Now shown to me in the annexed book of documents and marked "**BD30**" are true copies my letter to creditors dated 7 June 2007 and my letter to Andrew Garrett dated 12 June 2007.

My position with respect to the other debts admitted by you on the 24th May 2007 remains unchanged from my prior communications.

1

Unit 1/131 Royal Street, East Perth, Western Australia, 6006
FACSIMILE 08 8121 5136 MOBILE 0424 324 135
Email agarrett@holy-grail.com.au

ANDREW GARRETT©® TM

TM©®

You have not admitted any proofs of debt incurred by me in a personal capacity as none existed at the date of your appointment and was set out in my Statement of Affairs dated 16th November 2004.

I note that the firm Lipman Karas settled and witnessed the aforementioned affidavit; all of you, Mr Miller and the firm Lipman Karas have deposed evidence that is purgery and is designed to mislead the court in SAD 5 of 2006 and SAD 29 of 2005.

I also note that the revised claim filed by you on the 2nd of October 2008 now retreats from that detail set out by you in your affidavit dated 11th March 2008.

> 30. The following debts have been the subject of proofs of debt lodged in the administration of the bankrupt estate of Andrew Garrett:
>
> 30.1 Deputy Commissioner of Taxation of the Commonwealth of Australia- $82,020.43;
>
> 30.2 Dimitrios Georgiadis trading as Georgiadis Lawyers $107,114.14;
>
> 30.3 Lancione Partners - $49,278.31;
>
> 30.4 Primus Automotive Financial Services Ltd - $158,537.79;
>
> 30.5 Westpac Banking Corporation Ltd - $177,499.26;
>
> 30.6 National Australia Bank Ltd - $9,087,000.00.
>
> 31. Macks admitted the proofs of debt in respect of the aforesaid debts and liabilities of the AGFT pursuant to s102 of the Bankruptcy Act on the 24 May 2007.

You say that you have admitted a proof of debt in the amount of $9,087,000 on the 2nd of October 2008 and yet the letter sent by you to me dated 12th June 2007 and set out as exhibit BD 30 of your affidavit dated 11th March 2008 admits a proof of debt in the amount of $11,188, 467.00.

You have lied; Simon Miller and Lipman Karas are jointly culpable.

It is my view this conduct which has been repeated by you on many occasions in the aforementioned Federal Court actions has lead to an irretrievable tainting of those proceedings. You will recall that I have now flagged to His Honour that he should consider the option of dismissing himself from the action.

I once again request that given the information before you that you;

1. apply to the District Court to have the default judgment set aside and the proceedings dismissed
2. In the alternative provide your consent to allow me to appear in DCCIV-1666-2003 to set aside the Default Judgment.

It must have been abundantly clear to you from your investigations that damages actions exist as property of the Bankrupt Estate in respect of;

1. The ATO regarding improper sequestration
2. The NAB regarding breach of contract and Fraud
3. Lancione Partners regarding negligence
4. Georgiadis Lawyers regarding Negligence

I require you to confirm to me that you will immediately initiate proceedings to address these issues; this communiqué and any response made by you will be sworn into evidence in WAD 260 of 2008. Should you decide not to commence those proceedings then I advise that this is a reviewable decision and will be added to the Statement of Claim in WAD 260 of 2008

Yours Sincerely
Andrew M Garrett©®,
In all my capacities

Unit 1/131 Royal Street, East Perth, Western Australia, 6006
FACSIMILE 08 8121 5136 MOBILE 0424 324 135
Email agarrett@holy-grail.com.au

Annexure 3

Attention: Brett Swanson
Australian Taxation Office
GST IA
PO Box 3524
ALBURY NSW 2640

OenoViva (Australia & New Zealand) Pty Ltd
ABN 59 486 167 468

79 - 81 Fitzroy Street
St Kilda VIC 3182
T: +613 596 6535
F: +613 8648 0656
W: www.oenoviva.com

ATO reference: **1012272551087**

Case officer name: Brett Swanson

Applicant name: THE TRUSTEE FOR OENOVIVA (AUSTRALIA & NEW ZEALAND) PLANT AND EQUIPMENT TRUST

Applicant identifier: 42462692177

Applicant address: 79-81 FITZROY STREET
ST KILDA VIC 3182

Due date for reply: 20 October 2012

Dear Brett

Further to our recent correspondence and in particular with reference to my email to you dated 9 October 2012. I note that I have not received an update from you in this regard as to timing of completion of Internal Review in which regard I remind the ATO of its obligations and refer to the Taxpayer Charter.

I have now received the second tranche of the Freedom of Information that is dated 12 October 2012.

No doubt you have access to all of the internal records of the ATO in this regard.

For the purpose of this communiqué and demanding completion of the Internal Review I confirm the following facts that have become apparent from the review of my own records and the FOI details provided to Date;

1. The amended BAS for the March Quarter of the Trust was prepared by the Tax agent for the Trust, Deloitte Private and lodged on 2 May 2012.
2. On 3 May 2012 at 11.05am Paul Harrison wrote to Paul Bowmer having researched RP data confirming that there was no interests in property held by Garrett interests or that the Amended BAS may relate to.
3. Mr Harrison sets out what appears to be his own guesswork as follows;

> The potentially good thing about this is that they appear to be claiming ITC's on the acquisition of a property which should make it easier to clearly identify fraud at audit.
>
> I have told Ryan that we will create an SE audit case and refer the work item directly to him. I will finalise it at triage and "NFA referred directly to Audit"
>
> Helen - Can you please create the audit product and send to Ryan.
>
> Ryan - As discussed you will now effectively undertake the PIRI action to get document and make a decision to stop the refund. If you don't do anything the refund will issue in 3 days.

4. On the basis of no documentation Mr Harrison has made a “Leap of Faith” that the Trust has committed a fraud by claiming ITC on a property acquisition which was not the case.

5. It is unclear to me why Mr Harrison would suggest this was a potentially good thing however this does reflect what appears to be an entrenched mindset and prejudice.
6. On the basis of this "Leap of Faith" he proceeded to confirm to Ryan Helton a PIRI action and prevent the refund from being issued within 3 days.
7. On 3 May 2012 at 11.58am Paul Bowmer, National Director, Serious Evasion, Indirect Tax approved a case creation in respect to the BAS of the Trust.
8. On 3 May 2012 at 12.17 Debra Signal wrote to Ryan Helton and Michael Neville advising the Refund must be recalled for no apparent reason.
9. On 3 May at 12.26 pm Chad James wrote to Mr Harrison an Emil the content of which has been redacted.
10. On 3 May 2012 at 2.57 pm Michael Neville wrote to Ryan Helton with some proposed questions and answers in respect to the Trust which reflects further guesswork which refers to Tax Payer Alert TA 2004-1 and sets out;

> Looks like Oenoviva have tried it on in purchasing back the rights from Asbroek

11. Mt Neville sets out;

> • Request tax invoice, all contracts/agreements, Trust deed, advise ITC will be denied if it cannot be supplied by 1.00pm Fri

12. The time frame for refusal appears to be a period of 20.03 hours suggest by Mr Neville.
13. On 3 May 2012 at 24.57pm Mr Helton wrote to Mr Coulter, Ms Signal and Mr Neville at 4.57pm in respect to the generation of a "Siebel Case" and FEW. Mr Helton appears to have his own shot of guess work and sets out in the Serious Evasion ITX;

Reason for audit / work item created	Andrew Garrett is a former bankrupt winemaker from South Australia with a vision of establishing a global network of urban wineries. it is suspected that the taxpayer may not be entitled to any claim made with respect to any purported supply by an Andrew Garrett related entity. Note that this entity is an Andrew Garrett related entity.

14. On 4 May 2012 at 7.34 am Ms Helen Konstantinidis confirmed the audit case was in the Siebel Tray of Mr Helton copying Ms Signal, Mr Coulter and Ms Jasmine Edwards.
15. On 4 May 2012 at 7.45 am Mr Coulter approved Taxpayer contact to Mr Helton
16. On 4 May 2012 at 8.31 am Mr Bowman reminded Ms Signal and Mr Helton to recall the Refund that was due for payment in 2 days
17. On 4 May 2012 at between 8.25 am and 8.35 am Mr Helton attempted to contact Nicholas Garrett 4 times by phone without success.
18. On 4 May 2012 at 9.20 am Mr Helton contacted Mr Geers at Deloitte Private, the Record of Conversation;

> Mr Geers first confirmed Nick Garrett's phone number as 0421 478 020. Mr Geers then confirmed that their firm lodged the March 2012 BAS claiming the $3.15 million refund. Mr Geers further stated that he verified with the supplier that they would be reporting the supply in the same period. Mr Geers advised that the trust had purchased 300 Oenoteca's from AES Engineering (ABN: 64 992 908 783) for approximately $100,000 for each Oenoteca. Mr Geers confirmed that he was in possession of the tax invoice and I requested that he send a copy of the tax invoice to me immediately via email to Ryan.Helton@ato.gov.au. I asked Mr Geers further information about the Oenoteca's but he advised that the best person to speak to was Nick Garrett. Mr Geers did state that he believed the Oenoteca's were still under construction. I asked Mr Geers if he was aware if any consideration had been provided and he advised that I would need to speak to Nick Garrett.
>
> I confirmed that Mr Geers would send a copy of the tax invoice to me and that I would call Nick Garrett shortly. Mr Geers stated that Nick Garrett was suppose to be coming into his office today and would ensure that he called me as well so I provided my phone number (07) 3213 5308.

19. On 4 May 2012 at 9.22 am Mr Tony Hodgson wrote to Trevor Coulter confirming Mr Helton was on love and setting out there was only 24 hours to prevent the refund from issuing.
20. On 4 May 2012 at 9.25 am Mr Coulter wrote to Mr Helton annexing a picture and setting out text that has been redacted.
21. On 4 May 2012 at 10.15 am Mr Nicholas Garrett returned the phone call of Mr Helton, The Record of Telephone Conversation sets out;

> I asked Mr Garrett if payment had been made for the invoice from AES Engineering. Mr Garrett advised that he would need to check this with Andrew Garrett. Mr Garrett did advise that he believed at least some payment was made in January 2012. I informed Mr Garrett that we require evidence of all payments made to the supplier, such as bank statements. I informed Mr Garrett that we require all information supporting the acquisition by 2:00pm today in order to verify that the trust is entitled to the ITC claimed. I informed Mr Garrett that I would send him a confirmation of audit letter detailing everything discussed. Mr Garrett requested that I send a copy to his email address nicholas.garrett@oenoviva-artisans.com.
>
> I offerred to call Andrew Garrett myself however Mr Garrett confirmed that he would speak to him first and provide him my number if he needed to speak to me.

22. On 4 May 2012 at 11.45 am Mr Helton spoke with Gerald Asbroek of Asbroek Engineering Services, which record of telephone Conversation sets out;

> I informed Mr Asbroek that I was calling in relation to invoice 00000605. I asked Mr Asbroek what had been supplied to OANZPET. Mr Asbroek advised that as stated in the invoice 300 sets of Oenoteca's were being supplied. Mr Asbroek confirmed that three different styles of Oenoteca's make one set. I asked Mr Asbroek how many sets had been supplied to date. Mr Asbroek advised that one set has been supplied and installed in the Soulmama restaurant, and that they had commenced production of a further 50 sets. I asked Mr Asbroek if he had received any payment to date. Mr Asbroek advised that he expects to receive a payment today or early next week. I asked Mr Asbroek what the payment terms were. Mr Asbroek advised that the purchaser is required to pay 20% by a certain date, then 60% by a certain date, then the final 20% after the final installation. I asked Mr Asbroek about the certain dates and he advised he was unsure of them off the top of his head but they were contained in the budget. I asked Mr Asbroek was this the budget referred to in the invoice and Mr Asbroek advised yes that it was. I asked Mr Asbroek to forward me a copy of the budget and Mr Asbroek confirmed he would do this as well as call me back with the certain dates payment was required by as per details above.

23. Prior to speaking with Mr Asbroek Mr Helton spoke with Kerryn Obst at a time that is not marked on the record of conversation;

> I informed Kerryn that I was calling in relation to invoice 00000605. Kerryn advised that she was aware of the invoice. I informed Kerryn that I wanted to confirm the payment terms of the invoice. Kerryn advised that I would need to speak to Gerald Asbroek (director of trustee company). Kerryn advised that she would arrange for Mr Asbroek to return my call today.

24. On 4 May 2012 at 1.46 pm Mr Helton sent the Confirmation of Audit Letter to Mr Neville seeking approval to send in the absence of Mr Coulter and Ms Signal on leave.
25. The Audit letter that had not been sent at that time was subsequently received by Nicholas Garrett and forwarded to me and received by email system at 2.00 pm and not reviewed until later that day as set out in my letter to Mr Helton on 8 May 2012.
26. On 4 May 2012 at 1.47 pm Mr Neville approved the Letter to be sent.
27. Even assuming immediate receipt by the Trust this allowed for 10 minutes for the Trust to comply with the deadline of 2.00pm set out in the confirmation of Audit.
28. On 4 May 2012 at 2.47 pm Mr Neville advised that the BAS should be revised on the basis that no information had been received from the Taxpayer.
29. Mr Neville's Statement was not accurate, as information including the invoice had in fact been received by the ATO from its Tax Agent Mr Geers. At Deloitte Private.
30. Mr Neville confirms in his Letter as follows;

We can do the letter to inform the taxpayer on Tuesday. If any information is received prior to then we will have to re-evaluate.

31. On 8 May 2012 at 2.27 pm I sent a letter to Mr Helton setting out details as contained within that letter, providing information and seeking further details on the information required.
32. On 8 May 2012 at 9.45 am Mr Helton attempted to contact Mr Geers.
33. On 8 May 2012 at 11.30 am Mr Helton spoke with Mr Geers which record of conversation sets out;

> Mr Geers returned my call. I informed Mr Geers that I was calling him as the email I received from Mr Andrew Garrett on Friday (04/05/2012) didn't contain a contact number for him.
>
> I informed Mr Geers that we had disallowed their ITC claim as the requested information had not been provided. Mr Geers advised that he thought this was unfair and that he had never experienced a situation where the ATO requested information on the same day and that they are usually given a minimum of 48 hours to provide information. I informed Mr Geers that the trust only registered for GST on 30/03/2012 and reported one transaction for the March 2012 period, therefore the ATO expects that the requested information should have been readily available. Mr Geers advised he didn't want to argue the point and asked what their options were now. I informed Mr Geers that they can still provide the requested information to me, or lodge an objection. I confirmed that the details on how to lodge an objection would be contained in the audit finalisation letter.

34. On 9 May 2012 at 11.20 am Mr Helton emailed me annexing a cop of a Completion of Audit Letter dated 8 May 2012 and confirmed receipt of my emails dated 4 and 8 May 2012.
35. On 9 May 2012 at 11.48 am I emailed Mr Helton annexing a cop of a Completion of Audit Letter dated 8 May 2012 and copying Deloitte Private on that email and annex.
36. The Completion of Audit Letter dated 8 May 2012 sets out in the reasons annexed;

> **Findings**
>
> 9. No, you have not correctly claimed input tax credits (as defined in the GST Act) on your creditable acquisitions (as defined in the GST Act) in your lodged activity statements for the period 1 January 2012 to 31 March 2012.
> 10. Section 11-5 of the GST Act states that you make a creditable acquisition if:
>
> (a) you acquire anything solely or partly for a creditable purpose; and
> (b) the supply of the thing to you is a taxable supply; and
> (c) you provide, or are liable to provide, consideration for the supply; and
> (d) you are registered, or required to be registered.
>
> 11. Section 382-5 of Schedule 1 to the *Taxation Administration Act 1953* (TAA) requires that you keep records. If you give the Commissioner a return for GST that is attributable to a tax period under subsection 29-10(4) of the GST Act you must keep records that record and explain all transactions and other acts you engage in that are relevant to the acquisition or importation in question; and you must retain those records for at least 5 years after the return was given to the Commissioner.
> 12. We have determined that you are not entitled to claim a GST credit of $3,150,000 in relation to invoice number 00000605 supplied by AES Engineering as you have not produced information relevant to the transaction despite being requested to do so.
> 13. You claimed $3,150,000 GST on purchases at label 1B of your activity statement for the perioc 1 March 2012 to 31 March 2012.
> 14. As a result, in accordance with section 105-25 of Schedule 1 to the *Taxation Administration Ac 1953* (TAA), the Commissioner has assessed that you are not entitled to $3,150,000 of the credits claimed during the period 1 March 2012 to 31 March 2012. As a result of this assessment, label 1B will be reduced to nil.
>
> **Administrative penalty**
>
> 15. You made statements to the Commissioner by lodging your activity statements. Those statements were false or misleading as they incorrectly stated the net amount of GST. However, in your case we have decided to reserve the application of administrative penalties under section 284-75 of Schedule 1 to the TAA.

37. On 20 May 2012 I lodged a Notice of Objection and request for internal review.
38. On 24 May 2012 I lodged a FOI Request.

39. On 31 May 2012 at I wrote to Ms. Signal and Mr. Helton setting out a complaint in respect to the conduct of the ATO.
40. Between 8 May 2012 and 5 June 2012 I wrote a number of emails to Mr. Helton and Ms. Signal.
41. The Letter of Completion also sets out;

Application to the Federal Court

While you cannot object to a decision not to remit either an amount of general interest charge or a shortfall interest charge where the amount not remitted is less than 20% of the tax shortfall, you may seek a review of the remission decision by the Federal Court under the Administrative Decisions (Judicial Review) Act 1977.

Applications for a review of a written decision must be lodged with the Federal Court within 28 days of the date of this letter. If you do not lodge your review application within 28 days, you will need to apply to the Court for an extension of time to lodge the application. Fees for lodging an application with the Federal Court may apply.

42. On 1 June 2012 Debra Signal confirmed receipt of the FOI request.
43. On 5 June 2012 at 8.24 pm I issued a Notice under section 13 of the Administrative Decisions Judicial Review Act being within the time frame of 28 days set out in the completion of Audit Letter.
44. On 12 June 2012 at 12.41pm Ms. Signal advised by email:

Dear Mr. Garrett

Further to my email to you dated 7 June and your response below, I can further respond to your three separate issues currently with the ATO.

1. Section 13 Notice under the AD (JR) Act 1977.
Namely, Section 3(e) of Schedule 1 to the Administrative Decisions (Judicial Review) Act 1977 includes in its descriptions of classes of decisions to which this Act does not apply those decisions making, or forming part of the process of making, or leading up to the making of, assessments or calculations of tax, charge or duty, or decisions disallowing objections to assessments or calculations of tax, charge or duty, or decisions amending, or refusing to amend, assessments or calculations of tax, charge or duty, under any of the following Acts:

- A New Tax System (Goods and Services Tax) Act 1999
- A New Tax System (Luxury Car Tax) Act 1999
- A New Tax System (Wine Equalization Tax) Act 1999
- Income Tax Assessment Act 1936
- Income Tax Assessment Act 1997
- Taxation Administration Act 1953, but only so far as the decisions are made under Part 3-10 in Schedule 1 to that Act

However to assist you understand the reasons for the decision made and communicated to you on the 8 May 2012 we therefore refer you to the audit finalization letter dated 8 May 2012 which includes a section headed 'Reasons for Decision.'

2. As previously advised the Freedom of Information (FOI) application date 24 May 2012 is currently being actioned by the ATO.

3. Also as previously advised the objection dated 20 May is currently awaiting allocation.

45. The email of Ms. Signal dated 12 June 2012 is misleading in that it appeared to me, as a lay person, that it was in conflict with paragraph 40 above which sets out the time in which to bring an application before the court.
46. The advice from Ms. Signal sets out that any application I may bring under section 13 would have been misconceived however the advice was silent in respect to the applicable section of the AD (JR) act referred to at paragraph 40.
47. On 26 June 2012 you were appointed to the Internal review.
48. On 17 July 2012 you requested additional information in respect to that Internal Review which was provided.
49. I have written to you on a number of occasions and been frustrated by your failure to move the review forward on a timely basis.
50. On 9 October 2012 at 9.59 pm I again wrote to you and complained as to the length of time taken to complete the Internal Review to which I have not had a reply.
51. Equally there appears to have been a stalling process involved in the provision of a response to the FOI request dated 24 May 2012 in respect to the Plant and Equipment Trust.
52. Various extensions have been sought by the ATO in providing details under FOI and issues have been raised in respect to volume with assertions in respect to files containing in excess of 80,000 pages.

53. The FOI provided to me on 17 October 2012 that was dated 12 October 2012 contains a total of 78 pages with regard to the Plant & Equipment Trust which seems extraordinarily lacking in content given the conduct of the ATO on 25 June 2012 and the use of taxpayer resources to conduct a search and seizure at multiple locations in South Australia and Victoria consuming the time and effort of at least 100 personnel.
54. I have subsequently requested further detail in respect to the FOI act for the period post 24 May 2012.
55. The detail now provided leaves me at a loss as to how to comprehend how the ATO could make the findings set out at paragraphs 9 to 15 of the reasons annexed to the letter of completion of audit dated 8 May 2012 that appears to have been written and delivered in a few hours on limited information.

Please confirm to me by return email the relavant section of the Administrative Decsisions (Judicial Review) Act under which I make an application to court as set out in the letter dated 8 May 2012.

The conduct of the ATO has caused significant delay in my bringing an application befre the Federal Court and is now some 153 days since the lodging of the Notice of Objection.

The findings of the Court in Multiflex would ordinarily allow for the payment of the GST Credit within 14 days as set out at section 35.5 of the GST Act.

Please confirm to me by return email whether the ATO will make a decision rejecting the Completion of Audit dated 8 May 2012, reinstating the GST Credit within the BAS and paying the relevant refund to the account of the Trustee for the OenoViva (Australia & New Zealand) Plant & Equiment Trust that you have the details of in your system by close of business 5.00pm Friday 26 October 2012.

I confirm that the actions of the ATO have caused significant hardship, damage and loss.

In the absence of that decision as requested above please explain to me why I am not within my rights to seek the court to issue a writ of mandamus pursuant to section 35.5 of the act rlying on the findings of Multiflex and set aside the completion of audit letter dated 8 May 2012.

Best Regards

Andrew Garrett
Managing Director

No. VID 600 Of 2014

Federal Court of Australia

District Registry: Victoria

Division: Common Law

ANDREW MORTON GARRETT

Applicant

THE COMMISSIONER OF TAXATION and ORS

The Respondent

OUTLINE OF SUBMISSIONS OF ANDREW GARRETT PART 2
For Hearing 4th February 2015

---

1. Proper Parties to the Proceeding

1.1. The Respondent and the Second Commissioners of Taxation (not parties) are not subject to the provisions of *the Public Service Act* 1999 (Cth) **("the PSA")** by force of the provisions of *the Taxation Administration Act* 1953 (Cth) ("the TAA") at s5(3)

> ***5 Tenure of Commissioner and Second Commissioners***
>
> *(3) The Commissioner of Taxation and the Second Commissioners of Taxation are not subject to the Public Service Act 1999.*

1.2. The Jurisdiction of the Court to hear an application under s39B of *the Judiciary Act* 1903 (Cth), s75(v) of *the Constitution*, s5 & s6 of *the Administrative Decisions Judicial Review Act* 1987 (Cth) and the Common Law alleging breaches of the PSA, *The Trade Practices Act* 1974 (Cth) and *the Australian Competition and Consumer Act* 2010 (Cth) (amongst other Commonwealth Enactments set out in the Statement of Claim and the proposed Amended Statement of Claim) and other enactments has been set in the submissions of the Respondents.

1.3. The Jurisdiction of the Court to hear matters arising out of enactments of the State Legislatures arises from the courts accrued jurisdiction and *the Jurisdiction of Courts (Cross Vesting) Act* 1987 (Cth) at s4(2)

4 Additional jurisdiction of certain courts

(2) Where:

(a) the Supreme Court of a Territory has jurisdiction with respect to a civil matter, whether that jurisdiction was or is conferred before or after the commencement of this Act; and

(b) the Federal Court, the Family Court or the Supreme Court of a State or of another Territory would not, apart from this section, have jurisdiction with respect to that matter; jurisdiction is conferred on the court referred to in paragraph (b)with respect to that matter.

1.1.1.With respect to the Respondents and proposed Respondents who are Legal Practioners in the employ of the Respondent and are APS employees;

1.1.1.1. *The Professional Conduct and Practice Rules* 2005 (Vic), and

1.1.1.2. *The Legal Profession Act* 2004 (Vic), and

1.1.1.3. *Rules of Professional Conduct and Practice Rules* 2003 (SA), and

1.1.1.4. *The Legal Practioners Act* 1981 (SA) prior to amendments taking effect on the 1st July 2014 by Royal Assent

1.1.1.5. *The Criminal Law Consolidation* Act 1935 (SA)

1.1.1.6. *The Crimes Act* 1958 (Vic)

1.1.1.7. *the Australian Consumer Law and Fair Trading Act* 2010 (Vic)

1.1.1.8. Officers of the Court

1.1.2.With respect to Respondents and proposed Respondents who are NOT Legal Practioners in the employ of the Respondent and are APS Employees within the provisions of s4A of the PSA;

4A Statutory Agency etc. for purposes of Public Service Act

(1) The staff necessary to assist the Commissioner are to be persons engaged under the Public Service Act 1999.

(2) For the purposes of the Public Service Act 1999:

(a) the Commissioner and the APS employees assisting the Commissioner together constitute a Statutory Agency; and

(b) the Commissioner is the Head of that Statutory Agency

1.4. Each respondent is answerable for the claims made against the respective respondent individually whether the conduct and decisions complained of where a function of a group mind or not;

2. <u>Mandamus;</u>

2.4. It is incumbent on the Respondent to review the complaints brought under the provisions of the PSA and the TAA,

2.5. In this regard complaints have been made over an extended period of time to;

2.5.1. The Respondent, most recently Complaint No Ref; 1-12566018876 - Code of conduct lodged with the Commissioner on the 12th August 2014,

2.5.2. The Commonwealth Ombudsman; It is my submission that the details released to me under the FOI Applications have not been released to the Commonwealth Ombudsman by the Respondent and his personnel and were not considered at any time by the Commonwealth Ombudsman,

2.5.3. The Inspector General of Taxation (*subject to the completion of current legislative review of the role of the Inspector General and the Commonwealth Ombudsman in respect to Taxation Disputes*)

2.6. The Respondent and his personnel;

2.6.1. have not investigated the complaints made over the last 12 years and refuses to investigate the most recent complaint while the matter is before a Court in breach of the relevant statutory obligations.

2.6.2. Have not had regard to the materials available to the Respondent in the making of the Compensation Decision dated 1st August 2013 under the CDDA Scheme and the Legal Services Directions,,

2.6.3. Refused to reconsider the First Compensation Decision in the Second Compensation Decision in the light of the materials released under FOI and that have always been available to the Respondents in the making of the First and Second Compensation Decisions,

2.6.4. Refuses to fulfil the statutory obligations incumbent on the Respondents in respect to the Third Compensation Claim dated 7th August 2014.

2.7. It is my submission that the Respondents have conducted themselves outside the intention of the State and Commonwealth Legislatures expressed in the various acts wherein I seek to enliven the Court's Jurisdiction and exercise of discretion and specifically *the Income Tax Administration Act* 1935 (Cth) **("the ITAA"),** the *A New Tax System (Goods and Services Tax) Act* 1999 (Cth) **("the GST Act"),** the *A New Tax System (Australian Business Number) Act* 1999 (Cth) **("the ABN Act"),** The TAA and the PSA.

2.8. I submit that it is just for this honourable court to issue either constitutional prerogative writs of Mandamus commanding the Respondents to obey the Legislative intent and statutory provisions of the relevant enactments.

3. Certiorari

3.4. In addition to the Notices of Assessment and Completion of Audit Decision that are the subject of the Statement of Claim filed on the 13th October 2014 I seek to enliven the Court's Jurisdiction in respect to over 285 Taxation and other decisions as described in my submission lodged for filing on the 2nd February 2015 in order to prevent a multiplicity of proceedings occurring in either the Administrative Appeals Tribunal under Part IVC of the TAA and/or this learned court.

3.5. I have made application to file and serve an amended statement of claim substantially in the form set out at exhibit AMG 1 of my affidavit dated 27th January 2015 filed in this proceeding for this court to consider those Taxation and other Decisions.

3.6. VID 739 of 2014 has already been commenced in respect to decisions of the Respondents made on the 26th November 2014 and 5th December 2014 respectively and are on the docket of the Honourable Justice Davies.

4. Habeas Corpus

4.4. My submissions lodged for filing refer to assertions made by the Respondents that OenoViva Business Systems is variously;

4.4.1. *"Characterised by all of the Hallmarks of Fraud we have come to observe" Operation Winebar meeting dated 18th May 2012.*

4.4.2. *"A Sham";* Objection Decision made 23rd November 2012 subject of review of refusal to extend time in VID 557 of 2014

4.4.3. *"Not A Sham";* Compensation Decision made 1st August 2013

4.4.4. *"A Collateral Attack on the GST System";* Draft Tier 3 Closure Report dated 16th August 2014

4.5. In order for the Respondents to substantiate the various claims made by the Respondents over an extended period the relevant evidence must be produced to justify the conduct and representations made by the Respondents.

4.6. The appropriate orders for discovery must be made in respect to the Statement of Claim and/or the Proposed Amended Statement of Claim dated 26th January 2015 and/or the Court may exercise its discretion to order that the Respondents provide the evidence on which they rely in making those allegations to Officers of the Commonwealth in the carrying out of the relevant statutory duties by issuing either Constitutional or Prerogatives Writs of Habeas Corpus

5. ***The Criminal Code* 1995 (Cth) ("the Code")**

5.4. Relevantly the Code provides for strict penalties in respect to any person making false and misleading statements to officers of the Commonwealth in the carrying out of their statutory duties

5.5. The Respondent and his personnel have at various times relied in information provided to the Respondents by;

5.5.1. Marcus Denning,
5.5.2. Joanne Cleric
5.5.3. Victor Doree
5.5.4. Adam Price
5.5.5. Matthew Kenny
5.5.6. And other yet to be identified.

5.6. Relevantly the Respondents have acted in wilful blindness of evidence provided to them by me and entities related to me and consequently have made false misleading and deceptive

statements to officers of the Commonwealth in the carrying out of the Statutory Duties of the Respondent

11.6 References in Acts to offences

(1) A reference in a law of the Commonwealth to an offence against a law of the Commonwealth (including this Code) includes a reference to an offence against section 11.1 (attempt), 11.4 (incitement) or 11.5 (conspiracy) of this Code that relates to such an offence.

(2) A reference in a law of the Commonwealth (including this Code) to a particular offence includes a reference to an offence against section 11.1 (attempt), 11.4 (incitement) or 11.5 (conspiracy) of this Code that relates to that particular offence.

(3) Subsection (1) or (2) does not apply if a law of the Commonwealth is expressly or impliedly to the contrary effect.

(4) In particular, an express reference in a law of the Commonwealth to:

(a) an offence against, under or created by the Crimes Act 1914; or

(b) an offence against, under or created by a particular provision of the Crimes Act 1914; or

(c) an offence arising out of the first-mentioned law or another law of the Commonwealth; or

(d) an offence arising out of a particular provision; or

(e) an offence against, under or created by the Taxation Administration Act 1953;

does not mean that the first-mentioned law is impliedly to the contrary effect.

Note: Sections 11.2 (complicity and common purpose) and 11.3 (innocent agency) of this Code operate as extensions of principal offences and are therefore not referred to in this section.

Division 137—False or misleading information or documents

137.1 False or misleading information

(1) A person is guilty of an offence if:

(a) the person gives information to another person; and

(b) the person does so knowing that the information:

(i) is false or misleading; or
(ii) omits any matter or thing without which the information is misleading; and

(c) any of the following subparagraphs applies:

(i) the information is given to a Commonwealth entity;

(ii) the information is given to a person who is exercising powers or performing functions under, or in connection with, a law of the Commonwealth;

(iii) the information is given in compliance or purported compliance with a law of the Commonwealth.

Penalty: Imprisonment for 12 months.

(1A) Absolute liability applies to each of the subparagraph (1)(c)(i), (ii) and (iii) elements of the offence.

(2) Subsection (1) does not apply as a result of subparagraph (1)(b)(i) if the information is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3).

(3) Subsection (1) does not apply as a result of subparagraph (1)(b)(ii) if the information did not omit any matter or thing without which the information is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3).

(4) Subsection (1) does not apply as a result of subparagraph (1)(c)(i) if, before the information was given by a person to the Commonwealth entity, the Commonwealth entity did not take reasonable steps to inform the person of the existence of the offence against subsection (1).

Note: A defendant bears an evidential burden in relation to the matter in subsection (4). See subsection 13.3(3).

*(5) Subsection (1) does not apply as a result of subparagraph (1)(c)(ii) if, before the information was given by a person (the **first person**) to the person mentioned in that subparagraph (the **second person**), the second person did not take reasonable steps to inform the first person of the existence of the offence against subsection (1).*

Note: A defendant bears an evidential burden in relation to the matter in subsection (5). See subsection 13.3(3).

(6) For the purposes of subsections (4) and (5), it is sufficient if the following form of words is used:

"Giving false or misleading information is a serious offence".

137.2 False or misleading documents

(1) A person is guilty of an offence if:

(a) the person produces a document to another person; and

(b) the person does so knowing that the document is false or misleading; and

(c) the document is produced in compliance or purported compliance with a law of the Commonwealth.

Penalty: Imprisonment for 12 months.

(2) Subsection (1) does not apply if the document is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3).

(3)Subsection (1) does not apply to a person who produces a document if the document is accompanied by a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate:

(a) stating that the document is, to the knowledge of the first-mentioned person, false or misleading in a material particular; and

(b) setting out, or referring to, the material particular in which the document is, to the knowledge of the first-mentioned person, false or misleading.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3).

Part 7.5—Unwarranted demands

Division 138—Preliminary

138.1 Unwarranted demand with menaces

*(1) For the purposes of this Part, a person (the **first person**) makes an **unwarranted demand with menaces** of another person if, and only if:*

(a) the first person makes a demand with menaces of the other person; and

(b) the first person does not believe that he or she has reasonable grounds for making the demand; and

(c) the first person does not reasonably believe that the use of the menaces is a proper means of reinforcing the demand.

(2) This Part applies to a demand whether or not it is for property.

(3) This Part applies to a demand with menaces, whether or not the menaces relate to conduct to be engaged in by the person making the demand.

138.2 Menaces

*(1) For the purposes of this Part, **menaces** includes:*

(a) a threat (whether express or implied) of conduct that is detrimental or unpleasant to another person; or

(b) a general threat of detrimental or unpleasant conduct that is implied because of the status, office or position of the maker of the threat.

Threat against an individual

*(2)For the purposes of this Part, a threat against an individual is taken not to be **menaces** unless:*

(a) both:

(i) the threat would be likely to cause the individual to act unwillingly; and
(ii) the maker of the threat is aware of the vulnerability of the individual to the threat; or

(b) the threat would be likely to cause a person of normal stability and courage to act unwillingly.

Threat against a person who is not an individual

*(3) For the purposes of this Part, a threat against a person who is not an individual is taken not to be **menaces** unless:*

(a) the threat would ordinarily cause an unwilling response; or

(b) the threat would be likely to cause an unwilling response because of a particular vulnerability of which the maker of the threat is aware.

Division 139—Unwarranted demands

139.2 Unwarranted demands made by a Commonwealth public official

A Commonwealth public official is guilty of an offence if:

(a) the official makes an unwarranted demand with menaces of another person; and

(b) the demand or the menaces are directly or indirectly related to:

(i) the official's capacity as a Commonwealth public official; or

(ii) any influence the official has in the official's capacity as a Commonwealth public official; and

(c) the official does so with the intention of:

(i) obtaining a gain; or

(ii) causing a loss; or

(iii) influencing another Commonwealth public official in the exercise of the other official's duties as a Commonwealth public official.

Penalty: Imprisonment for 12 years.

6. Vicarious Liability

6.4. The Respondent is not liable for his own conduct under the provisions of the PSA in accordance with s5(3)

6.5. The Respondent is however vicariously liable both on the Civil and the Criminal Jurisdictions for the actions of the second to Fourteenth Respondents in respect to any breach of any statute by the Respondents whether under the PSA or otherwise

Dated February 3, 2015

……..
Andrew Garrett
Defendant

F: +61 (0) 8 8648 0656
E: andrew.garrett@oenoviva.com

From: Andrew Garrett [mailto:andrew.garrett@oenoviva.com]
Sent: 10 October 2016 11:18
To: senator.brandis@aph.gov.au; agd@agd.sa.gov.au; martin.pakula@parliament.vic.gov.au; 'vanessa.goodwin@parliament.tas.gov.au'; 'office@smith.minister.nsw.gov.au'; Don.Mackintosh@sa.gov.au; 'CORBELL@act.gov.au'; 'NTDCS.WebAdministrator@nt.gov.au'; martin.pakula@parliament.vic.gov.au; DECD:Minister (Minister.Close@sa.gov.au); DTF:Minister Koutsantonis' Office (MinisterKoutsantonis'Office@sa.gov.au); 'minister.mischin@dpc.wa.gov.au'; 'attorney@ministerial.qld.gov.au'; CourtsTribunalsandJustice@ag.gov.au; Andrew Phelan (aphelan@hcourt.gov.au)
Subject: Notice to Admit Facts dated 10th October 2016
Importance: High

Attorney Generals of the Commonwealth of Australia, the States and Territories of Australia, (hereinafter "you")
By email

Dear Mesdames et Messieurs,

Further to the Notices sent to you on the 1st and 15th July 2016 you have admitted the facts contained therein in accordance with the Law.

As a consequence of the liquidated damages arising and the law as it applies to liquidated damages The Trustee of the Andrew Garrett Family Trust No 4 ABN 42 388 204 496 has lodged the attached activity statement for the period YEYJ 2016 reflecting those admissions and finalised the relevant Income Tax Return declaring assessable income in the amount of $3,475,595,327,841 in accordance with normal accounting principles and the law as it applies in the Commonwealth of Australia.

You admit that as a consequence of the Revenues of the Commonwealth and s109 of *the Commonwealth of Australia Constitution* Act 1900 (UK) (amongst other things) being applied to fund the Revenues of the States and Territories that all officers of the Crown no matter the employer is an officer of the Commonwealth.

The Fiat Money created from the liquidated damages has been brought to account, subsequently I wrote to the relevant persons at the Australian Taxation Office on the 5th October 2016 as set out below and calculated the Post Judgment Interest applicable to the liquidated damages expressed in the aforementioned communiques in order to lodge the activity statement for the three months ending September 2016.

You admit your ongoing conduct and failure to comply with Rule of Law and Separation of Powers means that s8 of *the Registration of Deeds Act* 1935 (SA) continues to apply to economic activity arising from that conduct in respect to me and entities related to me.

You admit the Commonwealth, the States and the Territories are jointly liable for the payment of the amount of assessable income and the subsequent escalation in the amount payable as expressed in the attached activity statement for the period ending September 2016 and the calculations set out below being;

$3,475,595,327,841 for period ending YEJ 2016
$ 322,281,527,965 for period 01/07/2016 – 30/09/206
$3,797,876,855,806

I have made an offer to settle the amount of liquidated damages for the period ending YEJ 2016 and have not received a response from any person.

The Commissioner of Taxation has admitted in accordance with the law there is no tax of any kind payable by me or any entity related to me as a consequence of the right of set off against all three arms of State and Federal Government and the voiding of immunity from prosecution of the Crown arising from the unlawful and/or invalid actions of all three arms State and Federal Government.

I now withdraw my previous offer to settle and instead make this offer to settle the amount payable jointly by you of $3,797,876,855,806 on the same terms as my previous offer which offer is open for acceptance by the 30th October 2016.

Best Regards

Andrew Garrett
Winemaker / Consultant
The OenoViva (Australia & New Zealand) Trust **("OVANZ")**
The Andrew Garrett Family Trust No 4 **("AGFT 4")**
The OenoViva Artisans Trust **("OVA")**
www.oenoviva.com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E: andrew.garrett@oenoviva.com

From: Andrew Garrett [mailto:andrew.garrett@oenoviva.com]
Sent: 05 October 2016 14:44
To: 'Coulter, Trevor'; chris.jordan@ato.gov.au; Vincent.Tavolaro@ags.gov.au; Michael.Neville@ato.gov.au; Damien.Channell@ato.gov.au
Cc: Andrew Phelan (aphelan@hcourt.gov.au); John Mathieson (John.Mathieson@fedcourt.gov.au); senator.brandis@aph.gov.au; sfc@finance.gov.au; fraud@pmc.gov.au
Subject: RE: Internal Review/Objection [DLM=Sensitive] AGFT 4 ABN 42 388 204 496
Importance: High

Dear Trevor,

Thank you for your communique dated 23rd September 2016.

I confirm that my communique is as read being **"Notice of Objection" / "Application for Internal Review"** being one and the same thing as of a right at administrative law.

The application/Notice has been made in writing in accordance with the applicable law referred to in your communique on the 20th September 2016 and sets out the grounds of review, in the absence of providing an objection decision it is my understanding the next steps under Part IVC will apply or as otherwise referred to below.

It appears to me that you are saying in your email that I need to object separately to the Notice of Assessment and that the objection to assessment needs to be in the approved form.

As you know I have sought review of various decisions of the Commissioner of Taxation in VID 600 of 2014 and subsequently on appeal in VID 129 of 2015 which is the subject of a stay, relevantly I have filed and served the attached Notice of Constitutional Matter in tat proceeding and advised that I seek to have the proceeding removed to the High Court of Australia under s40 of *the Judiciary Act* 1903 (Cth).

All actions of the Commissioner of Taxation and his personnel subsequent to the commencement of VID 557, VID 600, VID 739 of 2014 and VID 49 of 2015 are actions reviewable under *the Common Law, the Rule of Law,* s39B of *the Judiciary Act, the Constitution of the United Kingdom*, *the Trans-Tasma Agreement, Australian Treaty Series No 23* and s75(v) of *the Commonwealth of Australia Constitution Act* 1900 (Cth) **("the Constitution").** (amongst other applicable law and treaties)

I could continue to commence actions ad infinitum in the AAT, The Federal Court of Australia High Court on each decision and/or Notice of Assessment made by you however given the subject materials of maladministration, Fraud of Government and immunity of the Crown are the same as those that have already been commenced any new actions could be interpreted to be an abuse of process albeit based on new actions of the ATO.

Each new decision and/or Notice of Assessment is simply new evidence of the underlying corrupt conduct already complained of by me and to which the Courts and Tribunals have thus far turned a blind eye ("done a nelson") as a consequence of those courts participation in that corrupt conduct.

As you know an activity statement for the quarter ending 30th September 2016 is due to be lodged by the Trustee of the Andrew Garrett Family Trust No 4; I ask you to consider that to be the Notice in writing required under the act, I confirm that the quantum of activity will be expressed in the paper form Document ID35 346 499 622. As you are aware the liquidated damages to the end of the 30th June 2016 have been expressed in the attached activity statement, the Commonwealth and others continue to be liable for Post Judgment interest accruing at the rate of 1% per month multiplied by s8 of the Registration of Deeds Act being 3% per month compounding per the following calculations;

YEJ Escalation	**Escalation Rate/6 months**		**$**	**3,475**
	1.00%	Post Judgment Interest July 2016	**$**	**34,75**
		Post Judgment Interest August 2016	**$**	**35,79**
		Post Judgment Interest September 2016	**$**	**36,87**
		Post Judgment Interest October 2016	**$**	**37,97**
		Post Judgment Interest November 2016	**$**	**39,11**
$	**674,447,255,173**	Post Judgment Interest December 2016	**$**	**40,29**

		Post Judgment Interest January 2017	$ 41,50
		Post Judgment Interest February 2017	$ 42,74
		Post Judgment Interest March 2017	$ 44,02
		Post Judgment Interest April 2017	$ 45,34
		Post Judgment Interest May 2017	$ 46,70
$1,479,772,549,100	$ 805,325,293,927	Post Judgment Interest June 2017	$ 48,11
		Post Judgment Interest July 2017	$ 49,55
		Post Judgment Interest August 2017	$ 51,04
		Post Judgment Interest September 2017	$ 52,57
		Post Judgment Interest October 2017	$ 54,14
		Post Judgment Interest November 2017	$ 55,77
	$ 961,600,516,666	Post Judgment Interest December 2017	$ 57,44
		Post Judgment Interest January 2018	$ 59,16
		Post Judgment Interest February 2018	$ 60,94
		Post Judgment Interest March 2018	$ 62,77
		Post Judgment Interest April 2018	$ 64,65
		Post Judgment Interest May 2018	$ 66,59
$2,109,801,821,935	$ 1,148,201,305,269	Post Judgment Interest June 2018	$ 68,59
		Post Judgment Interest July 2018	$ 70,65
		Post Judgment Interest August 2018	$ 72,77
		Post Judgment Interest September 2018	$ 74,95
		Post Judgment Interest October 2018	$ 77,20
		Post Judgment Interest November 2018	$ 79,51
	$ 1,371,012,405,434	Post Judgment Interest December 2018	$ 81,90

You admit the facts that;

1. you and your other colleagues in government at all levels of executive, legislative and judicial arms of Government are of the view that the Interests of Government in protecting the revenue which is Ill gotten must prevail over the public interest and/or the rights of citizens.
2. Fiat Value expressed in the Income Tax Return of AGFT 4 for the Year ending June 2016 is escalating at least at the rate of $1,479,772,549,100 for the financial period Year Ending June 2017
3. Fiat Value expressed in the Income Tax Return of AGFT 4 for the Year ending June 2016 is escalating at least at the rate of $2,109,801,821,935 for the financial period Year Ending June 2018
4. There is no tax payable by AGFT 4 at any time now, or in the future, as a consequence of the right of set off for damages caused by the Government of the Commonwealth of Australia

I reject your view and seek review as admitted at point 1 above under the aforementioned law which matter cannot be heard by the High Court of Australia as a result of Conflict and can only be heard by a court with jurisdiction, which given the criminal elements of your conduct could be the International Court or the UK Courts in which regard I am in the final stages of selection of the appropriate legal firm to represent me personally and in my representative capacity.

As a consequence of the immunity of prosecution of the Crown being void in circumstances of unlawful conduct such as yours I respectfully request that you do not deal with any personal assets or assets that are held in trust for entities related to you.

Similarly the position paper prepared by you in respect to the current audit of the OenoViva (Australia and New Zealand) Trust falls into the same category, in which regard I direct your attention to my email of the same date.

I note that I am yet to hear from any person in either State and Federal Government regarding my offer to establish a Trust fund in the interest of the Citizens of the Commonwealth of Australia to protect them from Fraud of Government

Andrew Garrett
Chief Executive Officer/ Winemaker
The Andrew Garrett Group of Companies (TAGGC)

www.oenoviva.com
www.dynamic-cws.com.au

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Level 3, 2 Drewery Place Queens Road West, , Melbourne, Vic, 3000	Level 1, 82 Flinders Street Adelaide, SA, 5000	Level 5, 56 Pitt Street, Sydney, NSW, 2000	"The Desk" 511 Shek Tong Tsui, Hong Kong

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F: +61 (0) 8 8648 0656
E: andrew.garrett@taggc.com.au

From: Coulter, Trevor [mailto:Trevor.Coulter@ato.gov.au]
Sent: 23 September 2016 13:26
To: Andrew Garrett; andrew.garrett@taggc.com.au
Subject: Internal Review/Objection [DLM=Sensitive]

Mr Garrett,

In regard to your email below, it is considered that an Internal Review for completed audits (Our reference 1-856FR7R and 1-9BCGT2V) would be inappropriate. These audits have been completed. It is appropriate that, if you are dissatisfied with the results of the audits, you should lodge an objection.

It is considered that the email below is not a valid or effective lodgement for objection. A statement merely to the effect that the assessment is wrong, without providing further information is unlikely to constitute a valid objection. To be valid and effective, an objection must be in the form approved by the Commissioner; it should be in writing

and contain a signed and dated declaration that all the information is true and correct. It should state fully and in detail the grounds on which the taxpayer relies in disputing the assessment.

Find attached the link to the ATO website to find the appropriate Objection Form.

https://www.ato.gov.au/uploadedFiles/Content/L_P/downloads/FORMS18128Objectionformfortaxpayers.pdf

The form and the website outlines **How to lodge your form.** I advise that separate objections should be lodged for the separate audits. Further, in Section 4 of the form ensure that you accurately quote the reference no's as above. I would appreciate that, when you lodge the objection that you forward me a courtesy copy of the objection form. Be aware that I am from the Compliance section of the ATO responsible for audits and that to ensure your objection is dealt with correctly it should be lodged and dealt with by the appropriate section.

The objection against an assessment must comply with the general guidelines stipulated in TAA Schedule 1 S 388-50, ie it must be in the form approved by the Commissioner and contain the required information and declaration. The objection should convey in what respects you consider the assessment to be incorrect and the reasons for that view.

Trevor Coulter
Audit Leader, Indirect Tax, Compliance
Australian Taxation Office
P 07 3121 7040 M 0401 702 846

<image006.png>

From: andrew.garrett@oenoviva.com [mailto:andrew.garrett@oenoviva.com]
Sent: Tuesday, 20 September 2016 5:02 PM
To: Coulter, Trevor
Subject: Notice of Objection (interim) and application for Internal Review
Importance: High

Australian Taxation Office
Attn Trevor Coulter

Dear Pea Brain No 4

Please accept this communique as an application for an extension of time (if necessary) in which to internally review and an application for Internal Review the decisions set out in your communiques entitled completion of Audit of the Trustee of the Andrew Garrett Family Trust No 4 ABN 42 388 204 496 for the periods set out in those communications dated 3rd August 2016 and 8th September 2016 (Copies attached).

Despite my request I note you have not yet provided the reasons in respect to your decision dated 3rd August 2016 which I consider to be a refusal to provide reasons. Please also accept this communique as a Notice of Objection to the two decisions under Part IVC of the Taxation Administration Act 1953 (Cth).

As advised I have briefed counsel to commence proceedings against you (amongst others) in which regard I reserve all of my rights. I have made application under the provisions of the FOI act in respect to the decision dated 3rd August 2016 for a copy of any document or thing related to that decision and ask you to consider this communique as an application in writing under the provisions of *the Freedom of Information Act* 1982 (Cth) for a copy of any document or thing related to your decision dated 8th September 2016.

The grounds for the request for internal review are as follows;

1. The decisions are so manifestly unreasonable that no reasonable person would have made the same decision.
2. The decisions are affected by Actual Bias in circumstances where a Notice of Apprehended Bias and Actual Bias was issued prior to the making of the decisions.
3. The decisions are made in circumstances where the decision maker failed to inquire in accordance with the obligations of a Tribunal and determine all of the relevant facts prior to making the decisions.
4. The Decisions were made in circumstances where relevant materials were withheld by others and/or the decision maker.
5. The Decision Maker did not comply with the Hearing rule that requires the ATO to provide not only the adverse materials, but all of the materials relevant to the matter in issue whether or not the decision maker intends to rely upon it.
6. There is an absence of relevant law in the decision and if the relevant law was properly applied then different decisions would have been made.
7. There are inadequate reasons given for the making of the Decisions.
8. The decisions failed to consider the evidence; if the evidence was properly considered then a different decision would have been made.
9. The decisions are not fair.
10. The Decisions are a denial of procedural fairness.
11. The decisions are a jurisdictional error of the Decision Maker that leads to the decision being a nullity and a constructive failure to exercise jurisdiction.
12. The decisions were made on the instruction of others and was not made independently and in the public interest.
13. The Decision Maker fell into error as a question of law and jurisdictional error in causing herself to identify a wrong issue and to ask himself a wrong question in order to ignore relevant materials to make an erroneous decision in order to reach a mistaken conclusion and the tribunal's exercise of power or purported exercise of power is thereby affected.
14. The Decisions are an abuse of process for the improper purpose.
15. The Decision Maker failed to make decisions on the private binding ruling in circumstances where the question of law arises whether the decision maker was obliged to do so as a consequence of its statutory obligations.
16. The Decision Maker did not give fair consideration of the case presented.
17. The question of law and fact arises whether the decision maker was Negligent.
18. There is no Evidence to support the Decisions and when all of the evidence is considered the reverse decisions are supported.
19. The Decisions are tainted by Bad Faith.
20. The Decisions are Illogical or Irrational.
21. The Decisions are uncertain in that it leaves a question of Judgment estimation and was no more than an opinion.
22. There are inadequate reasons given for the making of the Decisions.
23. The Decisions are a denial of Natural Justice.
24. The Decision Maker acted dishonestly.
25. The Decision Maker acted disproportionately
26. The Decisions are tainted by Fraud.
27. The Decision Maker did not comply with the obligation to give the Plaintiff a fair hearing.
28. The exercise of discretion to grant relief upon review would not be futile and the benefit to be gained by the applicant is substantial.

Andrew Garrett
Winemaker / Consultant
The OenoViva (Australia & New Zealand) Trust **("OVANZ")**

The Andrew Garrett Family Trust No 4 **("AGFT 4")**
The OenoViva Artisans Trust **("OVA")**
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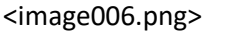
E: andrew.garrett@oenoviva.com

From: Coulter, Trevor [mailto:Trevor.Coulter@ato.gov.au]
Sent: Monday, 12 September 2016 9:43 AM
To: Andrew Garrett; andrew.garrett@taggc.com.au
Subject: Finalisation letter attached [DLM=Sensitive]

Please find copy of letter as forwarded last week.

Trevor Coulter
Acting Team Leader, Indirect Tax, Compliance
Australian Taxation Office



transmission together with any attachments.
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****

From: RBAInfo [mailto:RBAInfo@rba.gov.au]
Sent: 09 September 2016 09:57
To: 'andrew.garrett@oenoviva.com'
Subject: RE: Application for Purchased Payment Facility in the name of the Trustee of the Andrew Garrett Family Trust No 4 [SEC=UNCLASSIFIED]

Andrew

I found your email, and will get back with a response soon.

Thank you.

Best regards
Ian

Ian Chua| Senior Communications Officer | Media and Communications
RESERVE BANK OF AUSTRALIA | 65 Martin Place, Sydney NSW 2000
p: +61 2 9551 9720| E: rbainfo@rba.gov.au w: www.rba.gov.au

<image007.png>

From: andrew.garrett@oenoviva.com [mailto:andrew.garrett@oenoviva.com]
Sent: Tuesday, 6 September 2016 4:42 PM
To: RBAInfo
Subject: Application for Purchased Payment Facility in the name of the Trustee of the Andrew Garrett Family Trust No 4
Importance: High

Reserve Bank of Australia
The Board of Governors
C/O The Secretary
65 Martin Place
SYDNEY NSW 2000