



There is no doubt in my mind that the journalist involved was instructed to write this article by You to target matters on foot in the courts of South Australia and Hobart and prejudice any fair hearing of my applications for writs of Quo Warranto as outlined in my Notice of Constitutional Matters dated 21st October 2018 at annexure 1.

The 4 X Notices of Constitutional Matters filed in NSD 1848 of 2018 are all available on the Public Record for access by Court and other Reporters in the Public Interest.....I note there is no reference to affidavits filed and served by me in the article which remain undisputed Facts albeit avoided by the Courts.

It is clear to me that the timing of this article is related to the Notices of Seizure of Collateral/ Crystallisation of Charges served on NAB dated 1st May 2016, on CBA dated 23rd June 2019, on ANZ dated 23rd June 2019, on Westpac dated 23rd June 2019 and on you dated 23rd June 2019 a copy of which is attached (**annexure 2**)

The Journalist involved is an officer of the Commonwealth and Holds Public Office in which regard all of the aforementioned materials have also been in that Journalists possession and control as your agent including (but not limited to) by virtue of the Search Warrants of February 20017.

I have sent you a number of Notices of Actual and Apprehended Bias over an extended period of time in which regard it ought to be abundantly clear that you have a pecuniary interest in all matters related to me including your Notice of Refusal to Monetise published on the 27th June 2019

I take that article as being Notice of Refusal by you to monetise the value as lawfully requested of you and your 4 Pillars Banking Licensees; RBA, NAB, CBA, ANZ, Westpac.

In serving the Form 504 Notice of appointment of Managing Controller dated 23rd June 2019 upon ASIC I had previously relied upon your silence as being a refusal of your contractual and constitutional obligation to monetise in which regard that refusal and your earlier refusal dated 19th May 2017 are matters arising under treaties in which regard you clearly also do not have jurisdiction which is the exclusive original jurisdiction of the High Court of Australia were it note for the hopeless position of conflict of interest.

NOTICE OF SEIZURE OF COLLATERAL/CRYSTALLISATION OF CHARGES & APPOINTMENT OF MANAGING CONTROLLER

I have served Notices to Admit Facts, Liability and Indebtedness on you over an extended period in which regard you have not paid the moneys admitted to be owed.

Please accept this communique as a Notice of Seizure of Collateral served upon you and a Notice of Crystallization of Equitable, Statutory and Contractual Charges secured over you previously the subject of PPSA registration Numbers set out in the Notice of Seizure of Collateral dated 1st June 2019 served upon you registered over you issued in accordance with s123 of the PPSA



amongst other security interests set on the relevant form 504 served on ASIC and you which is digitally signed by me (**annexure 3**) .

The security interest has been perfected as a consequence of this Notice in which regard control has passed in accordance with the PPSA.

By this correspondence I advise that pursuant to the aforementioned charges and security interests held over you and I am appointed as the Managing Controller by me, as the secured Party, to the property set out in Annexure 2, which appointment and acceptance of appointment is signified below by the application of my signatures

A copy of this communique will be produced as evidence of the admitted debt and seizure of collateral by the Trusts.

Executed as a Deed and Notice

FOR AND ON BEHALF OF OVCR:

The Trustees of the Andrew Garrett Family Trust No 4, Trading as **OenoViva Capital Resources /Secured Party:**

 Name: Mr. Andrew Morton Garrett
 (Chairman/Managing Trustee)
 Australian Passport #N3926144 and United Kingdom Passport #538401308
 Signed on this Sunday, June 23, 2019

FOR AND ON BEHALF OF THE APFF:

The Trustee of the Australian People Future Fund/Secured Party

 Name: Mr. Andrew Morton Garrett
 (Chairman/ Managing Trustee)
 Australian Passport #N3926144 and United Kingdom Passport #538401308
 Signed on this Sunday, June 23, 2019



THE MANAGING CONTROLLER:

A handwritten signature in blue ink, appearing to read 'A. Garrett'.

Name: Mr. Andrew Morton Garrett

Australian Passport #N3926144 and United Kingdom Passport #538401308

Signed on this Sunday, June 23, 2019

ANNEXUR



Australian
Human Rights
Commission

Our ref: 2015-10083

27 October 2015

Mr Andrew Garrett
Level 1, 2 Drewery Place
Melbourne VIC 3000

Sent via email to: andrew.garrett@taggc.com.au

Dear Mr Garrett

Closure of complaint

I am writing to advise you of my decision regarding your complaint against the Australian Taxation Office (ATO), the Federal Court of Australia (FCA), and Federal Circuit Court of Australia (FCCA) alleging a breach of human rights under the *Australian Human Rights Commission Act 1986* (Cth) (AHRCA).

The complaint

As I understand it, your complaint relates to actions and decisions taken by the ATO in relation to you and the decisions and/or conduct of FCA and/or FCCA judges in proceedings in which you were involved.

Complaint against the ATO

In your complaint form dated 1 May 2015, you state that your complaint against the ATO relates to events that occurred from 11 February 2004 and are ongoing, as set out in your submissions to the Commonwealth House of Representatives Standing Committee on Tax and Revenue dated 26 January 2015. You also refer to the Statement of Claim you filed in MLG 2265 of 2014, *Andrew Garrett v Deputy Commissioner of Taxation (DCOT)*, and you refer to the submissions you made in the following proceedings: VID 600 of 2014, *Andrew Garrett v Commissioner of Taxation & Ors*; VID 739 of 2014, *Andrew Garrett v Commissioner of Taxation & Anor*; SCI-2013-02968, *DCOT v Andrew Garrett*; SCI-2014-03380, *DCOT v Andrew Garrett*; DCCIV-2003-1666, *DCOT v Andrew Garrett*; and ADG 69 of 2004, *DCOT v Andrew Garrett*.

On 7 June 2015, you advised the Commission that the Statements of Claim and Notices to Admit Facts do not address the human rights components of your complaints, which you have now begun to address in your submissions to the Court.

You state:

'It is my complaint that my Common Law and Constitutional Human Rights to proper and lawful government have been breached as part of a relentless campaign against me by the Commissioner of Taxation.

The failures to act in accordance with the relevant Model Litigant obligations set out at Annexure B of the Legal Services Directions 2005 (Cth) give rise to an actionable cause of action under Human Rights'.

Complaint against the FCA

You state that your complaint against the FCA relates to events that occurred between July 2014 and June 2015 in various proceedings. You state that you commenced proceedings in the FCA under s 39B of the *Judiciary Act 1903 (Cth)* to review over 300 taxation and other decisions made by the Commissioner of Taxation against entities related to you.

You state that you received information from the ATO through freedom of information and that this information 'revealed significant unlawful administration issues and the issuing of Notices of Income Tax Assessment that were invalid'. You state:

'On 10 separate occasions that FOI material was placed before the Court and all of the Judicial Officers involved have chosen to be wilfully blind to that evidence that had not been in my possession and control at any earlier time. Written Submissions have been made in all proceedings relying on the evidence and without exception have thus far been ignored. As a consequence [I] have advised the Court that I seek to issue a Notice of Constitutional Matter within VID 739 of 2015.

In order to make a reasoned decision I have first sought evidence to support my conclusions that in fact the Federal Court is actively seeking to frustrate my right of access to justice rather than simply making a decision on the merits by virtue of exercising my rights under the provisions of the FOI Act, FCR 2.32 and s 17 of the Federal Court of Australia Act 1976 (Cth)'.

Complaint against the FCCA

In an email dated 6 October 2015 you advised that you wish to include the FCCA 'in respect to your complaint'.

I have accepted the FCCA as a respondent to your complaint under the AHRCA.

Opportunity to provide further information

In a letter dated 21 September 2015 an assessment of all the information before the Commission in relation to your complaint against the ATO and FCA was set out. In a letter dated 13 October 2015, an assessment of your complaint against the FCCA was set out. In each of these letters, you were invited to provide any further information or comments in support of your complaint.

You provided additional information on 6, 14, 15, 16 and 19 October 2015. You also copied the Commission in to several emails you sent to other organisations from 6 October 2015 to 27 October 2015.

The information you provided to the Commission has been reviewed.

My decision

Section 20(2)(a) of the AHRCA says that the Commission may decide not to continue to inquire into a complaint if it is satisfied that the act or practice is not inconsistent with or contrary to any human right.

Section 20(2)(c)(v) of the AHRCA says that the Commission may decide not to continue to inquire into a complaint where the Commission is of the opinion that the subject matter of the complaint has been adequately dealt with by the Commission or by another statutory authority.

Section 20(2)(c)(vi) of the AHRCA says that the Commission may decide not to continue to inquire into a complaint where the Commission is of the opinion that the subject matter of the complaint could be more effectively or conveniently dealt with by another statutory authority.

Section 20(2)(c)(ii) of the AHRCA says that the Commission may decide not to continue to inquire into a complaint if the Commission is of the opinion that the complaint is misconceived or lacking in substance.

I have considered all the information that has been provided and I wish to advise that I have decided not to continue to inquire into your complaint under sections 20(2)(a), 20(2)(c)(v), 20(2)(c)(vi) and/or 20(2)(c)(ii) of the AHRCA.

I understand you may be disappointed by my decision and I would like to explain the reasons for my decision.

Reasons for my decision

Human rights are strictly defined in the AHRCA and relate to those rights and freedoms recognised in the provisions of the international human rights instruments scheduled to or declared under the AHRCA, such as the *International Covenant on Civil and Political Rights* (ICCPR). These human rights instruments, such as the ICCPR, cover rights and freedoms including: freedom from torture, cruel inhuman or degrading treatment or punishment; freedom from arbitrary arrest or detention; people deprived of their liberty are treated humanely; right to a fair and public hearing in criminal matters, freedom of expression and opinion; and the right of peaceful assembly.

While you have provided the Commission with a large volume of information, you have not alleged any specific act or practice by or on behalf of the Commonwealth, including the ATO, FCA or FCCA that could arguably constitute a breach of human rights as defined in the AHRCA.

Therefore, I have decided not to continue to inquire into your complaint pursuant to section 20(2)(a) of the AHRCA.

My decision not to continue to inquire into your complaint is also based on the reasons set out below.

Allegations against the ATO

Section 20(2)(c)(v) of the AHRCA says that the Commission may decide not to continue to inquire into a complaint where the Commission is of the opinion that the subject matter of the complaint has been adequately dealt with by the Commission or by another statutory authority.

Section 20(2)(c)(vi) of the AHRCA says that the Commission may decide not to continue to inquire into a complaint where the Commission is of the opinion that the subject matter of the complaint could be more effectively or conveniently dealt with by another statutory authority.

The subject matter of your allegations concerning the ATO appear to relate to actions and decisions taken by the ATO in relation to you.

I note that the Administrative Appeals Tribunal (AAT) is a statutory authority established by the *Administrative Appeals Tribunal Act 1975* (Cth) and it has jurisdiction to review ATO actions or decisions about tax affairs. I also note that the FCA is a statutory authority established by the *Federal Court of Australia 1976* (Cth) and the FCA also has jurisdiction to review ATO actions or decisions about tax affairs.

I note that you state that you commenced proceedings in FCA to review over 300 taxation and other decisions made by the Commissioner of Taxation and his personnel against entities related to you. I also note that in your email to the FCA Registry on 17 July 2015, you advise that you will also commence proceedings in the High Court of Australia.

On the basis of the information before the Commission, I am of the opinion that the subject matter of the complaint against the ATO has been adequately dealt with by another statutory authority and/or could be more effectively or conveniently dealt with by another statutory authority, being the AAT and/or FCA. Therefore, I have also decided not to continue to inquire into the complaint against the ATO on these grounds.

Allegations against the FCA and FCCA

Section 20(2)(c)(ii) of the AHRCA says that the Commission may decide not to continue to inquire into a complaint if the Commission is of the opinion that the complaint is misconceived or lacking in substance.

I note that you claim that the FCA erred in considering your case against the Commissioner of Taxation and that this amounts of a breach of your human rights. You state that all of the judicial officers involved did not consider the evidence that was placed before the Court. The subject matter of your complaint against the FCA appears

to relate to the decisions and/or conduct of judicial officers in the course of exercising their judicial power.

Judicial immunity protects judicial officers and others performing their functions, or functions closely associated with judicial functions, from legal action. The issue of whether judicial immunity extends to the protection of judicial officers from claims brought under Commonwealth anti-discrimination and human rights laws was specifically considered by the High Court of Australia in *Re East: Ex Parte Nguyen (1998) 196 CLR 354*. In that decision, the High Court of Australia affirmed that 'the well established immunity from suit which protects judicial officers from actions arising out of acts done in the exercise of their judicial function or capacity' applies to the actions of judicial officers who are alleged to have breached Commonwealth anti-discrimination and human rights laws.

If a person is not satisfied with a decision made by a judge, it is generally open for them to pursue an appeal against it. In this respect, I note that you have stated that you plan to commence proceedings in the High Court of Australia.

For these reasons, I consider that the principle of judicial immunity applies in relation to your allegations against the FCA and FCCA and therefore fall outside of the Commission's human rights complaint handling jurisdiction.

Therefore, on the basis of the information before the Commission, I am of the opinion that your complaint against the FCA and FCCA is misconceived and/or lacking in substance and I have also decided not to continue to inquire into the complaint on this basis.

Possible further action

If you think that my decision is not legally correct you can apply to the FCA or FCCA for the decision to be reviewed under the *Administrative Decisions (Judicial Review) Act 1977 (Cth)*. The court would not look at whether I made the correct decision. Rather, if the court thinks I made a legal error or did not exercise my powers correctly, it may refer the matter back to the Commission for further consideration. Any application to the court must be made within twenty eight (28) days of my decision.

Other concerns

In an email dated 14 October 2015 you advised that you also wished to raise concerns about:

1. The Commissioner of Taxation;
2. The Chief Executive of Austrade;
3. The Deputy Commissioner of Taxation;
4. The Board of Treasury Wine Estates Vintners Limited;
5. The Board of Fosters Brewing Group Limited;
6. The Board of International Vintners Pty Limited;
7. The Board of National Australia Bank Limited;
8. The South Australian Attorney General;
9. The Supreme Court of South Australia;
10. Justice Timothy Anderson (Retired) of the Supreme Court of South Australia;

11. Master Lunn (Retired) of the Supreme Court of South Australia;
12. Justice Layton (Retired) of the Supreme Court of South Australia;
13. Justice Riordan of the Supreme Court of Victoria;
14. Associate Justice Derham of the Supreme Court of Victoria;
15. Associate Justice Mukhtar of the Supreme Court of Victoria;
16. Justice Lander of the Federal Court of Australia;
17. Registrar Caporale of the Federal Court of Australia;
18. Registrar Layton of the Federal Court of Australia;
19. Justice Davies of the Federal Court of Australia;
20. Justice Mortimer of the Federal Court of Australia;
21. Justice Tracey of the Federal Court of Australia;
22. Justice Pagone of the Federal Court of Australia;
23. Justice Jessup of the Federal Court of Australia;
24. Chief Justice Allsop of the Federal Court of Australia;
25. Justice Beach of the Federal Court of Australia;
26. Justice Kenny of the Federal Court of Australia;
27. Registrar Byrne of the Federal Circuit Court of Australia;
28. Judge Burchard of the Federal Circuit Court of Australia; and
29. Judge Reithmuller of the Federal Circuit Court of Australia.

You state 'it is my contention that the aforementioned parties have breached my Human Rights as expressed above, for the second time in my life I find myself confronted by;

1. a sequestration order made in respect to an alleged debt that could not lawfully exist within the meaning of the GST Act 1999 (Cth) the Findings of the High Court in Project Blue Sky
2. Misbehaviour of the Judiciary listed within the meaning of *the Federal Court of Australia Act 1976 (Cth)*, *the Federal Circuit Court of Australia Act 1976 (Cth)*, *the Supreme Court Act 1935 (SA)*, *the Supreme Court Act 1986 (Vic)* and *the District Court Act 1991 (SA)*
3. The Secret Society described in State Parliament
4. The Mafia Like Proportions of the South Australian Law Society and the Victorian Law Society'.

In relation to your concerns about the conduct of the Supreme Court of South Australia, a registrar and several retired and current judges. For the reasons outlined above, the Commission's human rights complaint handling jurisdiction does not cover the conduct of courts and/or tribunals when exercising judicial power.

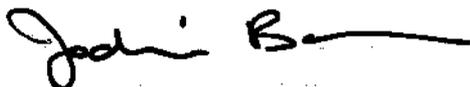
In relation to your concerns about the Board of Treasury Wine Estates Vintners Limited, the Board of Fosters Brewing Group Limited, the Board of International Vintners Pty Limited, the Board of National Australia Bank Limited, and the South Australian Attorney General, the Commission can only investigate complaints about alleged breaches of human rights when it involves an act by or on behalf of the Commonwealth. It is not clear that any of the abovementioned agencies would be engaging in acts or practices in relation to you on behalf of the Commonwealth.

Additionally, in relation to the individuals and organisations listed from 1 to 29 you have not specified a specific act or practice that they have engaged that could arguably constitute a breach of your human rights as defined in the AHRCA.

On the basis of the information you have provided to the Commission at this time, the Commission will not be taking any further action in relation to your concerns about these above listed individuals/organisations.

If you have any questions about this letter, please contact Caroline Tjoa by phone on (02) 9284 9630/1300 369 711 or by email at caroline.tjoa@humanrights.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read "Jodie Ball", with a long horizontal flourish extending to the right.

Jodie Ball
Delegate of the President

No VID 129 Of 2015

Federal Court of Australia
 District Registry: Victoria
 Division: Common Law

ANDREW MORTON GARRETT

Applicant

COMMISSIONER OF TAXATION & ORS

Respondents

**OUTLINE OF SUBMISSIONS OF DEFENDANT
 re BILLS OF EXCHANGE**

10th April 2016

1. Overview

1.1. These submissions have been prepared in support of my application

1.1.1. pending in respect to issuing of Bills of Exchange on the Balance Sheet of the Trustee of the Andrew Garrett Family Trust No 4.

1.1.2. My application dated 14th March 2016

1. Materials Relied upon

1.1. The Materials filed in this proceeding

1.2. The Materials referred to in my applications dated 8th, 16th and 21st February 2016

2. OBLIGATIONS AND DUTIES OF AMG AS TRUSTEE OF GARRETT TRUSTS

3. The Laws of Australia /15Equity/15.14 Trustees chapter 5 sets out;

4. Part A - General;

5. 15.14:66[66] **Upon acceptance of his or her office, a trustee becomes subject to the duties and acquires the powers of that office.** Duties are imperative. They compel actions or prohibit

Filed on behalf of (name & role of party)	The Defendant		
Prepared by (name of person/lawyer)	Andrew Garrett		
Law firm (if applicable)	N/A		
Tel	0424 324 135	Fax	03 8648 0656
Email	andrew.garrett@taggc.com.au		

Address for service

(include state and postcode) Level 1, 82 Flinders Street, Adelaide, SA 5000

[Form approved 01/08/2011]

a trustee from acting in a certain way. Powers, on the other hand, are facultative. They enable a trustee to act in a certain way, but leave the trustee with a discretion as to whether she or he should so act

6. 15.14:67[67] **The first duty of the trustee is to obtain and acquaint himself or herself with all documents concerning the trust and with the state of the trust property.**
7. 15.14:68[68] **The trustee must ensure that title to the trust property is vested in him or her**
 - 7.1. The trustee's duty to preserve the trust property cannot be adequately carried out unless the property is under her or his control.
 - 7.2. If a better title to the trust property is obtainable, the trustee is obliged to activate himself or herself concerning it.
8. 15.14:69[69] **It is the duty of the trustees to ensure that trust property is preserved and does not fall into decay from want of repair:** As a corollary, trustees may dispose of trust property of a hazardous nature: The trustee is duty bound to preserve the corpus of the trust as well as income.
9. 15.14:83[83] **The trustees' duty to act personally is manifested in three principal ways.**
 - 9.1. First, trustees must not allow their discretion to be fettered:
 - 9.2. Secondly, trustees must act unanimously:
 - 9.3. Thirdly, trustees must not delegate their powers and duties as trustees:
10. 15.14:84[84] **The duty to act personally requires trustees not to act under dictation or commit themselves in advance as to future conduct as trustees.** Trustees must not permit others to dictate to them the manner in which the fiduciary discretion ought be exercised.
11. **Laws of Australia at Part F entitled Tender of Payment**
 - 11.1.7.5.38(380 This text states that in general a tender of payment must be made in legal currency to be effective at law.
 - 11.1.1. As a matter of construction, or by the implication of a term it may be possible to distil an agreement to accept "payment" in any form which would be so regarded by the commercial community. If a payment by cheque which is not considered by some as legal tender is not raised at the time of its receipt, then any such objection may be deemed to have been waived ¹
 - 11.1.2. Again a creditor may be estopped from relying upon such a point to achieve an unconscionable advantage ²

¹ *Stirling Properties Ltd v Yerba Pty Ltd* (1987) 74 ACTR 1

² *Westeq v Challenger Mining Corp LNL* (1988) 13 ACLR627 and see generally Unfair Dealing 35.6 Estoppel

11.2.7.5.39 The principle of tender has been developed to protect a party obliged to make a payment and who is unable to do so because of lack of co-operation by the other (recipient) party.

11.2.1. Payment is an obligation which requires co-operation in order to enable its performance. Refusal to accept a payment prevents the obligor from fulfilling the obligation of the contract in question. A tender operates to demonstrate that the obligor is ready willing and able to meet the obligation so far as it is possible to be performed without the co-operation of the obligee

11.3. At 7.5.40 A tender of payment does not constitute payment but when linked to a continued readiness to make payment it may produce legal consequences of advantage to the person making the tender.

11.3.1. Firstly, the person refusing a valid tender cannot thereafter assert that the obligor was in breach of the relevant obligation or rely upon any rights that might otherwise have arisen as a result of a breach. In such a case, payment is frustrated by the wrongful act of the obligee who will not be permitted to take advantage of the act.

11.3.2. Secondly and conversely the person making the tender can assert that he or she was ready willing and able to meet the obligation.

11.3.3. Thirdly if the obligor is sued for payment, then the tender constitutes a complete defence if the sum in question is paid into court or as in this case remains in the hands of the obligee ³In such a case, the obligee is not entitled to interest, damages and will be ordered to pay costs of the suit. ⁴

11.3.4. If the money has been paid into court then the plaintiff will not be permitted to take the money out of court without deduction for taxed costs.

11.4. At 7.5.42 an essential requirement of a valid tender is that the payment should be proffered unconditionally.

12. **Halsbury's Laws of Australia current at March 2004 at 45-675** where a contract between a debtor and a creditor for calls for payment in cash, however if tender is made by way of Negotiable Instrument or by foreign currency and a creditor makes no objection to its form, there is a waiver of the requirement of legal tender.

12.1. Legal Tender is acceptable if the contract is silent to the means of payment, custom and usage may be such as to make tender of personal cheque or other form of payment instrument a valid tender.

13. The term money is set out that it has long been recognised as denoting more than mere Cash or Notes that are Legal Tender. ⁵

14. Use of the expression "Any money due or accruing" in the Income Tax Assessment act 1936 at section 218 points to the term encompassing a debt.

³ *Australian Mid-Eastern Club Ltd v. Yassim* (1989) 1 ASCR 399

⁴ *Norton v Ellam* (1837) 2 M & W 461 (150ER839), *Graham v. Seal* (1918) 88 LJ Ch31 (CA)

⁵ *Conley v Federal Commissioner of Taxation* 81 FGR 24, 38ATR 374 handed down on the 27/2/1998

15. The intent of section 218 of the act is to empower the commissioner to seize Money.
16. Receipt no 68 set out in exhibit W shows a receipt from the Australian Taxation Office. This Bill remains in the Hands of the ATO and has not been returned to the hands of the Trustee of AGFT.
17. **BILLS OF EXCHANGE related To Garrett Trusts**
18. On the 26th August 2004 J&W Holdings sold 100 units held by it in the Agwater Infrastructure Unit Trust to Corporate Investments for \$12,377,000. The exhibit referred to as **AMG 8 of the affidavit of AMG dated 15th November 2005 in action ADG90 of 2004** is a copy of that sale agreement between the parties.
19. Payment was tendered and accepted by way of International Bills of Exchange drawn on the Balance Sheet of Creditnet Bank Internationale.
20. Further detail on the receipt including exhibits is shown at paragraph 20 to 42 of the affidavit of AMG dated 30th January 2006.
21. A further \$10 million was received by Evajade in consideration for a 10% interest in the Holy Grail Property Trust No 2.
22. In total some \$24 million has been received by the Garrett Interests in consideration of the sale of assets at a far higher price than that sought by NAB in respect of the same assets.
23. The identity of Creditnet and the ability of Robert Gray to act on behalf of the bank is exhibited within these pages.
24. The basis of the payment was the tender and acceptance between the parties that the payment was & remains cash, the only other question is whether a third party with no contractual nexus can be bound to accepting the payment as cash.
25. Due to the nexus between Bank and Customer the payment must be accepted as cash between the parties including the bank.
26. These Bills were drawn in accordance with;
 - 26.1. Mercantile Custom & Common Law
 - 26.2. Statute; under the Bills of Exchange Act of 1909 and the Banking act of 1959,
 - 26.3. The UNCitral Convention 1998 that the Commonwealth of Australia is signatory to.
 - 26.4. Case Law

27. **The Bills of Exchange Act**

An Act relating to Bills of Exchange, Cheques and Promissory Notes

27.1. In this Act, unless the context otherwise requires:

27.1.1. **Acceptance** means an acceptance completed by delivery or notification.

27.1.2. **Action** includes counter-claim and set-off

27.1.3. **Australasia** means Australia, and any Territory, New Zealand, and the Fiji Islands.

27.1.4. **Banker** includes a body of persons, whether incorporated or not, who carry on the business of banking.

27.1.5. **Bankrupt** means any person whose estate is vested in a trustee or assignee under the law for the time being in force relating to bankruptcy or insolvency.

27.1.6. **Bearer** means the person in possession of a bill or note which is payable to bearer.

27.1.7. **Bill** means bill of exchange.

27.1.8. **Delivery** means transfer of possession, actual or constructive, from one person to another.

27.1.9. **Holder** means the payee or endorsee of a bill or note who is in possession of it, or the bearer thereof.

27.1.10. **Endorsement** means an endorsement completed by delivery.

27.1.11. **Issue** means the first delivery of a bill or note, complete in form, to a person who takes it as a holder.

27.1.12. **Note** means promissory note.

27.1.13. **Person** includes a body of persons whether incorporated or not.

27.1.14. **Value** means valuable consideration.

27.2. A bill of exchange is defined in section 8 of the Bills of Exchange Act as:

27.2.1. An unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person, or to bearer.

27.2.2. Section 8 subsection 4 of the act states that A bill is not invalid by reason: (c) that it does not specify the place where it is drawn, or the place where it is payable.

27.3. A promissory note is defined in section 89 of the Bills of Exchange Act as:

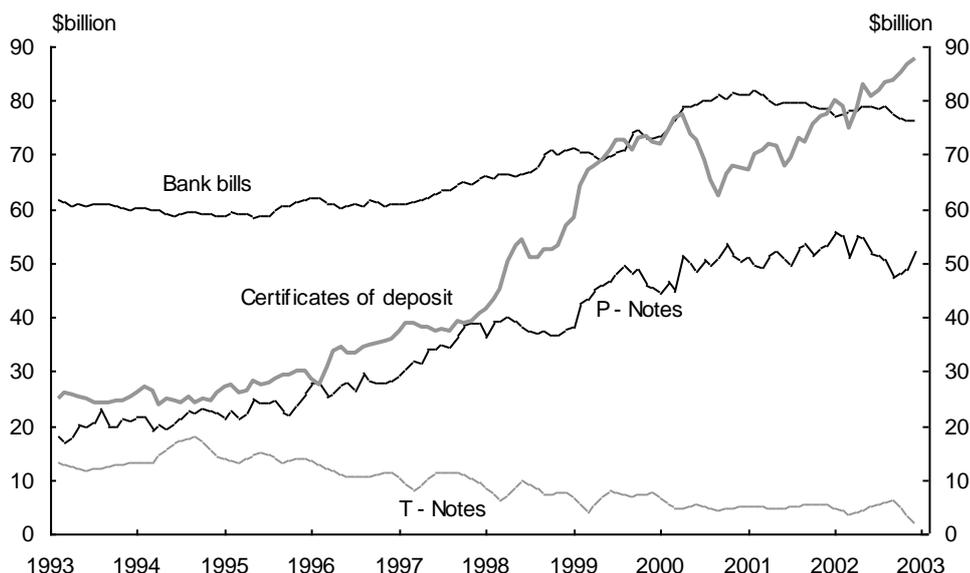
27.3.1. An unconditional promise in writing made by one person to another, signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to or to the order of a specified person, or to bearer.

28. In the "Interpretation of Terms" of the Australian Bills of Exchange Act "Value" means "Valuable Consideration". In effect it means that where a Bill of Exchange is issued for consideration of an asset's value the Bill itself represents the value of that consideration (the asset behind the bill) just like the promissory notes issued in plastic as Australian Dollars (what we call money) have no "real" value in themselves, they are just a piece of paper or plastic with ink – the same as a

Bill of Exchange “in itself” is just a piece of paper with ink; but the real value rests in the “valuable consideration” of the assets backing the piece of paper or plastic; like the assets of the country backing the money paper or the assets behind the Bills of Exchange backing the Bills of Exchange. The difference between a \$10 dollar note and a \$100 dollar note is not the size of the paper. It is the perceived “valuable consideration” that is different.

29. The overarching purpose of the Bills of Exchange Act is to codify by statute the common law relating to two types of negotiable instrument - bills of exchange and promissory notes. The Bills of Exchange Act confirms that bills of exchange and promissory notes are negotiable instruments. The particular advantage enjoyed by negotiable instruments over other financial instruments is that of negotiability. Negotiability provides a good faith purchaser of a bill of exchange or promissory note guaranteed title to the financial instrument. The Bills of Exchange Act applies to any person who becomes a party to a bill of exchange or promissory note.
30. The Bills of Exchange Act confirms that bills of exchange and promissory notes are negotiable instruments, a status evolved at common law. This gives these financial instruments a special advantage over other classes of contracts, as negotiability gives a good faith purchaser of a bill of exchange or a promissory note guaranteed title to the financial instrument.
31. Bills of exchange and promissory notes are financial instruments, in documentary form, characterised by negotiability. Negotiable instruments are documents of title, the possession of which may confer rights. Thus, a bill of exchange or a promissory note is a document that serves as a unique and transferable physical token of intangible rights and obligations.
32. **The objectives of the Bills of Exchange Act are to:**
 - 32.1. provide uniformity of law in Australia in relation to bills of exchange and promissory notes;
 - 32.2. provide legal certainty by confirming the nature of bills of exchange and promissory notes as negotiable instruments; and
 - 32.3. promote efficiency in the marketplace which utilises bills of exchange and promissory notes through the concept of negotiability.
33. **Mercantile Custom** in this country is well established in respect of the uses of Bills of Exchange

35. Short-term Money Market Securities Outstanding



36.

37. Source: RBA⁶.

38. The Australian short-term money market is dominated by bank bills and CDs (collectively known as 'bank paper'). At the end of March 2003, the total value of securities outstanding in the short-term money market⁷ was around \$A219 billion, of which bank paper outstanding totalled \$A164 billion.⁸ Bank paper also accounts for the majority of turnover in the short-term money market. For the year 2001-02, turnover in bank bills and CDs was about \$1.6 trillion. For the same period, turnover in promissory notes was \$750 billion and turnover in T-Notes was \$14 billion.⁹

39. Bank bills issued by the four major domestic banks are benchmarks for the short-dated debt sector. Liquidity in this paper is supported by the high credit quality of the issuing banks and by the fact that the bills of the four major banks are deliverable into the 90-day bank bill futures contract.¹⁰

40. Uniformity

40.1. The Bills of Exchange Act was introduced into Parliament in 1907 with the stated intention of unifying the law on bills of exchange in Australia in one code:

"Honourable Senators will recognise that it would be of considerable convenience to the trading community of the Commonwealth if they could find the law on this subject in one

⁶ Reserve Bank of Australia, *Bulletin Statistics*, May 2003, Tables D.2, D.3 and E.7.

⁷ Here defined as bank bills, certificates of deposit, promissory notes and Treasury Notes.

⁸ Reserve Bank of Australia, *Bulletin Statistics*, May 2003, Tables D.2, D.3 and E.7.

⁹ Australian Financial Markets Association & Securities Industry Research Centre of Asia-Pacific, *Australian Financial Markets Report 2002 (AFMR)*.

¹⁰ Axiss Australia, Executive Briefing, Section 5 – Short-Term Debt Instruments http://www.axiss.com.au/content/pubs/executive_briefings/debt_security/debt_securities-... (Accessed 27 May 2002).

code, and could be certain that if amendments, no matter how desirable, were introduced, they would be in relation to that one particular code.¹¹”

40.2. The Bills of Exchange Act replaced similar statutes which had previously been enacted by the various Australian colonies.¹² The colonial legislation was in turn based on the 1882 UK Bills of Exchange Act, the enactment of which reduced to statutory form the rules of the common law on negotiable instruments found in more than 2500 judicial decisions.¹³

41. Certainty

41.1. A key objective of the Bills of Exchange Act is to provide legal certainty in relation to bills of exchange and promissory notes by providing statutory confirmation of their status as negotiable instruments.

41.2. There is no simple method of establishing which instruments will be held by the courts to be negotiable instruments,¹⁴ as this matter is determined by taking into account mercantile customs and usages. If evidence is produced of a commercial custom (which is firmly established and long recognised by the mercantile community) that treats certain instruments as negotiable, the courts will treat them as having that quality, although usage over a long period is not essential.¹⁵

41.3. However, the negotiable status of a particular contract may be determined by statute as well as by the courts. Whereas bills of exchange were recognised by the common law as being negotiable instruments, promissory notes are deemed to be negotiable instruments by the Act,¹⁶ since promissory notes were held not to have enjoyed the attributes of negotiability by the usage and custom of merchants.¹⁷

41.4. In addition to confirming, in statutory terms, their nature as negotiable instruments, the Bills of Exchange Act defines the features and characteristics of bills of exchange and promissory notes, and sets out the rights, obligations and liabilities of parties to bills of

¹¹ Extract from Hansard, Senator Keating (Minister for Home Affairs), Second Reading Speech on the Bill, Australia, Senate and House of Representatives, *Parliamentary Debates*, 1907, vol XXXVI, p. 653.

¹² The Bills of Exchange Act was to supersede all State enactments on the subject. Between 1884 and 1890, all of the Australian colonies had introduced legislation based on the 1882 UK Bills of Exchange Act. By the time the Commonwealth's Bill was introduced into the Parliament in 1907, the State-based legislation regarding bills of exchange was comprised of six principal Acts and six amending Acts.

¹³ Brian Conrick, *MJL Rajanayagam's The Law of Negotiable Instruments in Australia*, 2nd edn, Butterworths, Sydney, 1989, p. 5.

¹⁴ D Everett & S McCracken, *Banking and Financial Institutions Law*, 4th edn, LBC Information Services, Sydney, 1997, p. 194.

¹⁵ See WS Weerasooria, *Banking Law and the Financial System in Australia*, 4th edn, Butterworths, Sydney, 1996, p. 161 (and the cases referred to therein).

¹⁶ In Australia, Senate and House of Representatives, *Parliamentary Debates*, 1909, vol. 1, p. 1932 on the proposed bills of exchange legislation, Mr Glynn, the Attorney-General, noted that:

‘The negotiability, or power of transfer by mere delivery, which is possessed in the case of bank notes, was challenged in regard to promissory notes, and about 1703 the Chief Justice of the Court of the Queen's Bench declared that they were not transferable, and that it was a piece of impudence for bankers to so regard them. However, a few years later, the Act 3 and 4 Anne (UK) made them equally negotiable with bills of exchange, and ever since they have formed part of the general commercial currency.’

¹⁷ D Everett & S McCracken, *Banking and Financial Institutions Law*, 4th edn, footnote 11, p. 302, citing *Buller v Cripps* (1703) 6 Mod Rep 29, per Holt CJ.

exchange and promissory notes. Division 6 of the Act sets out the rights, obligations and liabilities of parties to a bill of exchange, while section 95 designates the rights, obligations and liabilities of parties to a promissory note.¹⁸

42. *Efficiency*

42.1. The bill of exchange, as a negotiable instrument, enjoys two attractive features. It is transferable without formalities, and honest acquisition confers good title (even if the transferor did not have good title).¹⁹

42.2. A bill of exchange (and the rights that it represents) is transferable in principle. That is to say, the rightful possessor of the document can transfer his or her rights to another person simply by delivering the document to that other person. A bill of exchange is capable of being transferred by delivery (in the case of an instrument requiring payment to be made to a named person or its bearer), or by the payee's endorsement and delivery (in the case of an instrument requiring payment to be made to a named person or to the order of that named person). Legal title is vested in the transferee without any further instrument and without the necessity of giving notice of the transfer to the person liable to pay.

42.3. However, not all instruments that are capable of being transferred are negotiable. In fact, most do not benefit from this attribute.²⁰ One of the main reasons merchants developed the bill of exchange was to take advantage of the 'guaranteed title' concept of negotiability, which is not enjoyed by other contracts for the transfer of debt, such as, assignments of choses in action.²¹ A transferee (or holder) taking a negotiable instrument such as a bill of exchange in good faith, for value and without actual notice of any defect in the transferor's title, can acquire a better title than that possessed by the transferor and is not affected by prior equities (that is, he or she acquires title free from any defect in the title of the prior holder). It is these characteristics which distinguish bills of exchange (and promissory notes) from other contracts.

42.4. Under the Bills of Exchange Act, the transferee is known as a 'holder in due course',²² the legal status of which has been said to promote transactions and encourage the rapid and unimpeded flow of capital.²³ Statutory confirmation of this status by sections 43 and 95 of the Bills of Exchange Act (in relation to bills of exchange and promissory notes respectively) enables the market to rely on the characteristic of negotiability. Arguably, it is the concept of

¹⁸ The Bills of Exchange Act provides for the protection of holders of bills. The liability for repayment runs from the acceptor, to the drawer, then to the indorsers (last indorser to first indorser). Thus, the first indorser can only make a claim against the drawer or the acceptor. The sole liability established by the issuance of a promissory note is borne by the issuer, since no other party accepts the note; nor is there a series of contingent liabilities established by indorsement, as is the case with bills of exchange.

¹⁹ Joanna Benjamin, *The Law of Global Custody*, Butterworths, London, 1996, p. 16.

²⁰ D Everett and S McCracken, *Banking and Financial Institutions Law*, 4th edn, LBC Information Services, Sydney, 1997, p. 187.

²¹ Assignments of choses in action, in contrast to negotiable instruments, are 'subject to equities'. This means that the assignee (transferee) has no guarantee that his assignor has a good title to give him. For example, the assignor may have used misrepresentation against the original debtor, and may have no good title to assign to the transferee.

²² The holder in due course of a negotiable instrument takes it free of adverse claims from the issuer (for example, in respect of sums owed to the issuer by previous holders) or third parties (for example, previous holders claiming to be the true owner because an earlier transfer was fraudulent).

²³ D Frisch & HD Gabriel, 'Much ado about nothing: achieving essential negotiability in an electronic environment', *Idaho Law Review*, 1995, vol. 31, p. 758.

'guaranteed title' enjoyed by holders in due course of negotiable instruments such as bills of exchange and promissory notes which is the key to the liquidity of these instruments.

42.5. Sections 36 and 37 of the Bills of Exchange Act provide for transfer by delivery, and transfer by delivery together with endorsement, respectively.

42.6. bills of exchange have of necessity taken the form of pieces of paper because until recently electronic contracts and electronic securities were not technologically possible; and

42.7. it is the nature of the particular contractual terms which constitute them a bill of exchange, and not the form of the contract.²⁴

43. In the National Competition Policy Review of the Bills of Exchange Act in July 2003,

43.1. the Working Group considers that there may be a number of reasons for retaining the provisions in the Bills of Exchange Act relating to conventional bills of exchange

43.2. The Working Group considers that the provisions of the Bills of Exchange Act underlying the paper form of bills of exchange and promissory notes should be retained for use in circumstances such as those set out below.

43.3. Trust deeds requiring paper bills of exchange and promissory notes.

43.4. Delivery under deliverable bank accepted bill futures contracts.

43.5. Use by import/export companies in international trade.

44. The UNCITRAL Convention on International Bills of Exchange

45. The Working Group understands that paper form bills of exchange are used in international trade²⁵ and will continue to be used for this purpose for some time to come.

46. *Delivery and possession*

46.1. The concepts of 'delivery' and 'possession' are also bound up with the documentary nature of bills of exchange and promissory notes. A bill of exchange or promissory note is a document of title, the possession of which may confer rights.

46.2. The rightful possessor of the document can transfer his or her rights to another simply by delivering the document to the other person, in the case of a bearer bill, and in other cases, by delivery and endorsement of the document. In the case of bills and notes, 'delivery' means transfer of possession, actual or constructive, from one person to another. Sections 36 and 37 of the Bills of Exchange Act provide for transfer by delivery, and transfer by delivery together with endorsement, respectively.

²⁴ Arguably, the form requirement is not an essential element of a bill of exchange or promissory note; rather it is the rights and obligations arising between the parties which constitute the bill or note as a negotiable instrument or security.

²⁵

46.3. Possession of the document of title is necessary before a holder can transfer title to the instrument. It has been suggested that property is always with the holder, or the person in possession, and that for this reason, a negotiable instrument must be capable of possession. Indeed, it has been argued that if it were incapable of possession, the negotiable instrument could not confer upon its possessor (the holder) the status of a 'holder in due course'.²⁶

46.4. The 'holder in due course' of a negotiable instrument enjoys a favoured legal position as a bona fide purchaser for value, who can take and enforce negotiable instruments free from most claims and defences.

46.5. The status of the 'holder in due course' is confirmed by section 43 of the Bills of Exchange Act, which provides for transfer of title free from previous defects.

46.6. This characteristic of a negotiable instrument, that it is transferable so as to give the holder a 'guaranteed title'

46.7. To obtain or transfer the right or title incorporated in a negotiable instrument, it is necessary to obtain or transfer the ownership of the original document.

46.8. The original document is unique because it is prima facie evidence of ownership of the right or title bound up in the negotiable instrument.

46.9. Thus, it would appear that a unique document capable of possession is necessary to transfer the rights and liabilities bound up in the negotiable instrument.

47. The UNCITRAL (United Nations Commission on International Trade Law) Secretariat has suggested that:

47.1. There is generally no statutory means in place by which commercial parties, through the exchange of electronic messages, can validly transfer legal rights in the same manner possible with paper documents.

47.2. In the present state of legislation, negotiability cannot be divorced from the physical possession of the original paper document.

48. Under Section 57 of the act the holder of a Bill has duties as regards drawee or acceptor

48.1. When a bill is accepted generally, presentment for payment is not necessary in order to render the acceptor liable.

48.2. When, by the terms of a qualified acceptance, presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures.

48.3. In order to render the acceptor of a bill liable, it is not necessary to protest it, or that notice of dishonour should be given to him.

48.4. Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid, the holder shall forthwith deliver it up to the party paying it.

49. Pursuant to section 59 of the act the liability of payment of the Bill lies with the Acceptor and such acceptance can occur by tendering the Bill for payment across the Counter

49.1. The acceptor of a bill, by accepting it:

49.2. engages that he will pay it according to the tenor of his acceptance; and

49.3. is precluded from denying to a holder in due course:

49.4. the existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill; and

49.5. in the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his endorsement; and

49.6. in the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his endorsement.

50. "Modern Banking Law" 3rd Edition (Ellinger, Lomnicka & Hooley) sets out at page 698 that payment of the bill is to be arranged by the acceptor, most usually this role is assumed by a Bank. The instrument is made payable at the premises of that bank set out on the face or a designated branch of it. Where a bill is drawn on a body other than a bank the drawee accepts the bill; as payable at his own bank. *Ibid*, s.19(2)(c)

50.1. The Holder is obliged to present the Bill at the designated domicile. BEA, s45(4)(a)

50.2. The Banks duty to obey an order is to the customer and in its role as acceptor.

50.3. The Bill may be made payable by the acceptor at the premises of a bank *Ibid*, s45

51. Banking Law in Australia, 5th Edition (Tyree) at section 4.96 sets out that the acceptor is the person who is primarily liable on the Bill. By accepting the Bill the acceptor

51.1. Promises that he or she will pay the bill according to the tenor of his acceptance s59(a)

51.2. Is estopped from denying to a holder in due course that the front of the Bill is what it appears to be s59(b)

51.3. An acceptor may not argue that the payee has no authority to indorse, the acceptor may however challenge the authenticity of the actual endorsement.

51.4. Section 4.98 also sets out that any endorser of a bill also becomes liable and promises to pay according to its tenor at the time of endorsement sections 60(2)(a)

- 51.5. Consequently he is also estopped from denying to a holder in due course the genuineness and regularity of the drawer's signature or that of previous endorsers
52. Bills of Exchange (issued in perpetuity) are to be treated just like currency money, which is put on the balance sheet as a cash asset.
53. For every transaction where a customer who **borrow**s a Bill of Exchange there must be a **Lender** of a bill of exchange. The Lender is operating in the BLACK and the borrower is operating in the RED.
54. In the handling of the Bills of Exchange tendered as payment by Andrew Garrett for the liabilities of he and his wife some financial Institutions have been handling the Bills of Exchange as Bills for Collection..... in error shows an example of a Bill of Exchange that has been receipted by Bank SA and marked on the face of it as a bill for collection.
55. The rear of this Bill has been indorsed by the bank and signed thereby rendering the Bank as a Party to the Bill and liable in the chain in the same way as the drawer of the Bill.
56. The Bill has been accepted by Bank SA and it must pay the amount due on the face of the Bill as instructed by the drawer of the Bill under the act.
57. The Bills have been properly presented for acceptance across the counter.
58. Bills for collection are issued in the RED as a DEBT obligation – like a promissory note,
59. Bills of Exchange are issued in the BLACK as a CREDIT instrument – like currency money.
60. The elements required for a Bill of Exchange are clearly set out at section 508 through to 516 of Everett & McCracken's Banking and Financial Institution Law 5th Edition. (1st Authority)
61. Once a bill has been presented for acceptance (section 522)
62. The bill needs to be accepted (section 519) A mere signature is sufficient.
63. Upon acceptance the acceptor who is generally a bank is bound to pay to the account of the Payee the face value of the Bill.
64. The acceptor becomes a holder for value at section 32(2) of the act
65. A prima facie presumption that value has been given operates in favor of each party who signs or receipts a bill so that a party is deemed to be prima facie holder for value under section 35(1)
66. The holder in due course of the Bill is set out at section 533
67. The liabilities of the parties is defined by Everett & McCracken at section 537 to 547.

67.1. Section 545 summarizes the process in respect to rules that must be followed once a Notice of Dishonor has been received and must be strictly complied with as they are designed to give certainty to the transactions

67.2. Any party failing to honor a Bill is liable for damages as set in section 551

68. In the Law relating to Banker and Customer in Australia at section 7.3060 it is rare for the paying bank to be liable to anyone other than its customer for any wrongful act or omission on the part of the bank in relation to a Bill or note²⁷

69. Due to the contractual Nexus between the Bank and its customer the Bank is liable for any Bill presented.²⁸

70. When a bank acceded to a request by a customer or a correspondent bank to present a bill or note for acceptance or a bill or note for payment then a , subject to any specific instruction or agreement to the contrary, the bank is subject to all the statutory duties that apply to a holder in such circumstances; see Art 9 of the Uniform rules for collections (International Chamber of Commerce Publication No 322)

71. If the customer or correspondent (as the case may be) suffers loss by reason of the bank's failure to carry out these duties then the bank will be liable to make good the loss²⁹

72. The effect of the cases is that where an initiating Bank (the "Remitting Bank") on instructions from a customer requests a collecting bank to present a bill of note for acceptance, the initiating bank is liable for any negligence.

73. The language of money is set out well on the current ANZ site where a Bill of exchange on which the name of a bank appears either as acceptor the domicile bank then the bank is the acceptor, the bill ranks as a bank accepted bill; where the Bank endorses the Bill on the Bank then it raises the Bills status to a bank endorsed bill of exchange.

74. A Bank accepted bill is a bill of exchange that has been accepted by the bank. This means that the accepting bank is obliged to pay the face value of the bill to its customer on the maturity date. Commonwealth Bank Web site

75. **BANK AND CURRENCY ACT 1890 54 VIC NO 1164**

Section 3

The provisions of this Act shall extend and apply

75.1. To every company, firm or individual engaged in the ordinary business of banking by receiving deposits and issuing bills or notes payable to the bearer at sight or on demand.

75.2. To every Foreign Banking Company trading in Victoria.

²⁷ *Manning and Farquarson* (p256) cited *Lily v Hays* (1836) 5 Ad & E 548 111 ER 172 and *Noble v National Discount Co* (1860) 5H&N225; 157ER1167 .

²⁸ *Schroder v Central Bank of London* (1876) 34 LT (NS) 735

²⁹ *City Bank v Australian Joint Stock Bank* (1870) 9SCR (NSW) 259; *Bank of Van Diemen's Land v Bank of Victoria* (1871) LR 3 PC; *Bank of Scotland v Dominion Bank (Toronto)* (1891) AC 592

75.3. To every company, firm or individual banker trading in Victoria engaged in the ordinary business of banking by receiving deposits and issuing in Victoria or elsewhere bills or notes payable to the bearer at sight or on demand.

76. CURRENCY ACT 1965 –1973

77. An Act relating to Currency, Coinage and Legal Tender *(NB-Legal Tender)*

77.1. All transactions to be in Australian Currency

77.1.1. 9. (1) Subject to this section, every sale, every bill of exchange or promissory note, every security for money, and every other contract, agreement, deed, instrument, transaction, dealing, matter or thing relating to money, or involving the payment of, or a liability to pay, money, that is made, executed, entered into, or done, shall, unless it is made, executed, entered into or done according to the currency of some country other than Australia, be made, executed, entered into or done according to the currency of Australia provided by this Act.

77.1.2. 10. (1) Subject to this section: -

a reference in the law of the Commonwealth;

a reference in a bill of exchange, promissory note, security for money, contract or agreement (whether the contract or agreement is in writing or not), deed or other instrument; and

a reference in any other matter (not being a reference in a law other than a law of the Commonwealth), to an amount of money in the currency provided for in the repealed Acts...

78. Conrick “Laws of Negotiable instruments in Australia set out at section 2.2 that in business transactions a person takes a bill as being akin to Legal tender. This has been repeatedly emphasized by the Court of Appeal and the House of Lords

79. In a decision of the UK High Court in *Sibora SNC v SIP (Industrial Products) Ltd.* 1976 1 Lloyd’s Report page 271, Sachs - Lord Justice at page 278 – 279 said:

“Any erosion of the certainties of the Application by our Courts of the Law Merchant relating to bills of exchange is likely to work to the detriment of this country, which depends on International Trade to a degree that needs no emphasis. For some generations one of those certainties has been that the bona fide holder for the value of a bill of exchange is entitled, save in truly exceptional circumstances, on its maturity to have it treated as cash”.

80. Stephenson L J (at page 278 of Lloyds report) in the same Judgement said:

“Bills of exchange are treated as cash.....”

81. Bill of exchange is legal tender and is representative of a contract. **“every bill of exchange or promissory note, every security for money, and every other contract, agreement, deed, instrument, transaction, dealing, matter or thing relating to money, or involving the**

payment of, or a liability to pay, money,” can be an asset and justifiable has value for “valuable consideration”.

82. Effectively the contract in itself is an asset of value and therefore is “valuable Consideration”
83. In Halsbury's Laws of England vol 9 para 524 an argument was put that tender by cheque was not payment by Legal Tender however as referred the distinction here is clear that a Bill of Exchange is Legal Tender.
84. It was also noted that if the creditor makes no objection to form but refuses to accept the cheque or bill on any other ground that a larger sum was due or any other ground, he will be considered to have waived the objection to tender.³⁰
85. The effect of this is to ensure that once a discharge of a debt has been tendered to the creditor he cannot later change his mind.
86. In effect the creditor is estopped from complaining that the Bill is not Legal Tender³¹
87. The importance of the definition is that a foreign Bill appearing on the face of it to be such , MUST be protested for non-acceptance and for non-payment at section 56(2) of the act and as to the balance if it has been accepted as to part.
88. In Atkins Encyclopaedia of Court Forms in Civil proceedings 2nd Edition Volume 6(1) at page 271 para 239 it states
- 88.1. “ A cheque is the equivalent of cash , so in an action on a bill of exchange a cross claim for unliquidated damages cannot amount to a defence of set off even if it was based on the transaction was given “³²
- 88.2. Every holder of an instrument, except the payee is prima Facie deemed to be a holder in due course. *Bills of Exchange Act (1882) s30*
- 88.3. Where value has at any time been given the holder is deemed to be a holder for value as regards the acceptors and all parties prior to the giving of value *Bills of Exchange act (1882) section 27 ;*³³
- 88.4. The burden of proof, if absence of consideration is relied upon lies upon the defendant and this must be specifically pleaded.
- 88.5. The defence is available between immediate parties and also between remote parties where the Bill has been transferred intermittently without consideration. *Halsbury's laws (4th edition 2002 edition) Bills of Exchange and other Negotiable instruments*
- 88.6. Once a Bill is admitted or proved that the acceptance, issue or subsequent negotiation of the Bill or note is affected with fraud duress or illegality, the burden of proof is shifted to the

³⁰ See *Daly v Egan* (1886) 12 V.L.R. 81 and *George v Cluning* (1979) , 28 A.L.R. 57.

³¹ *Paynter v Willems* (1983) 2 VF 377

³² *Nova (jersey)Knit Ltd v Kammagarn Spinnerrei GmbH* (1977) 2 All ER 463 1 WLR

³³ *Diamond v Graham* (1968) 1 WLR 1061, CA

claimant (That is the Holder) unless and until he proves that, subsequent to the fraud or illegality, value in good faith has been given *Bills of Exchange Act (1882) s 30*.

88.7. Where Fraud is alleged it must be **distinctly alleged and distinctly proved**³⁴

88.8. When the burden of proof has shifted the holder must prove that value has been given in good faith with notice *Tatum v Haslar (1889) 23 QBD 345*

88.9. The only defences to an action on a bill which is accepted as genuine are that it has been obtained by Fraud or illegality or where there has been a total failure of consideration.

88.10. Summary judgement without a stay of execution *Nova (jersey)Knit Ltd v Kammagarn Spinnerrei GmbH (1977) 2 All ER 463 1 WLR*, *Montecchi v Shimco (UK) Ltd (1979) 1 WLR 1180* may be otherwise obtained by the drawee of a dishonoured bill and if it can be supported by the evidence of contemporary documents the claimant will have discharged the onus of proof and be entitled to judgement.

88.11. The standard of Proof when Fraud is alleged is the civil standard of proof (the balance of probability) but the court will require stronger evidence to discharge that balance when the allegation is fraud in cases where the issue does not involve moral blameworthiness *Lek v Mathews (1927) 29 L1 L Rep 141, HL*; *Hornal v Neuberger Products Ltd (1957) 1 QB 247, (1956) 3 All ER 970, CA*.

89. DUTIES OF BANKS IN RELATION TO BILLS

89.1. Banks come into frequent contact with Bills of Exchange and promissory notes. As paying banks they have functions to perform in relations to bills accepted payable, and notes made payable at a bank.

89.2. The Paying Bank

89.3. 7.3020 Duty to pay domiciled acceptances

89.4. *In Kymer v Laurie (1849) 18 LJCB218* it was held that, where a customer accepts a bill and makes it payable ("domiciles it") at the customers bank, this authorise the bank to pay on due presentation, even if there are insufficient funds to meet the drawing.

89.5. The wrongful dishonour of a bill payable at a bank would give rise to a liability to pay damages in the same as the wrongful dishonour of a cheque. *Troedel v Colonial Bank of Australasia (1870) 1 AJR 99*

90. Summary

91. The Applicant submits that to allow the Judgements and or administrative actions of the proposed 1st – 11th Defendants by Cross Claim and the proposed 57th - 87th cross defendants to stand would result in

³⁴ *Arab Bank Ltd v Ross (1952) 2 QB216 (1952) 1 All ER 709*

91.1.1.1. , "...irregularities so fundamental as to create an unconditional right, *ex debito justitiae*, to have all of the judgments set aside"³⁵;

92. And has created a "grave risk of a miscarriage of justice": see *Manning v Bernard Manning and Co Pty Ltd* [1960] HCA 20; (1960) 101 CLR 345, at p. 351 also *Strange v Hybinett* [1988], VicRp 50; [1988] VR 418 (24 August 1987), Per Murphy, Gray And Phillips JJ; and

92.1.1.1. "would tend to bring the administration of justice into disrepute because it would lend the assistance of the compulsory processes of the Courts to the litigant who was the most effective fraudster"³⁶.

Settled by the Applicant

A handwritten signature in blue ink, appearing to read "Andrew Morton Garrett". The signature is fluid and cursive, with a large initial 'A' and 'G'.

Andrew Morton Garrett
10th April 2016

³⁵ *Clone Pty Ltd v Players Pty Ltd (In Liquidation Receivers Appointed) & Ors*, [2012] SASC at [104]

³⁶ *Clone Pty Ltd v Players Pty Ltd (In Liquidation Receivers Appointed) & Ors* [2012] SASC 12 at [97]

No VID 129 Of 2015

Federal Court of Australia
 District Registry: Victoria
 Division: Common Law

ANDREW MORTON GARRETT
 Applicant

COMMISSIONER OF TAXATION & ORS
 Respondents

OUTLINE OF SUBMISSIONS OF DEFENDANT RE FRAUD ON THE COURT BY THE COURT & ORS IN VID 129 of 2015 and VID 600 of 2015

10th April 2016

1. Overview

1.1. These submissions have been prepared in support of my application to list this matter for directions and summarily set aside the reasons of Pagone J dated 26th February 2015 in this proceeding pursuant to s31A(2) of the Federal Court of Australia Act 1976 (Cth) and the proper exercise of discretion under;

1.1.1. Federal Courts Rule 1.32, and

1.1.2. summary judgement debt under Federal Court Rule 22.07 and the Common Law, and

1.1.3. The Principle of Attainment of Justice (Federal Court Website)

2. Materials Relied upon

2.1. My Affidavit dated 14th July 2014 (originally filed in VID 248 of 2014)

2.2. My Affidavit dated 7th May 2015 (originally filed in MLG 177 of 2015)

2.3. My Affidavit dated 29th September 2015 (originally filed in DCCIV-2003-1666) rejected administratively on the 3rd February 2016

Filed on behalf of (name & role of party)	The Defendant		
Prepared by (name of person/lawyer)	Andrew Garrett		
Law firm (if applicable)	N/A		
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Address for service

(include state and postcode) Level 1, 82 Flinders Street, Adelaide, SA 5000

- 2.4. My Affidavit dated 14th October 2015 (originally filed in DCCIV-2003-1666) filed in VID 949 of 2015
- 2.5. My Filed Interlocutory application dated 8th February 2016 and annexures filed in VID 949 of 2015
- 2.6. My Interlocutory application dated 16th February 2016 rejected for filing in VID 949 of 2015
- 2.7. My Interlocutory application dated 21st February 2016 and annexures rejected for filing in VID 949 of 2015.
- 2.8. My Filed Affidavit in VID 949 of 2015 dated 16th October 2015 (originally filed in DCCIV-2003-1666)
- 2.9. My Filed Affidavit in VID 949 of 2015 dated 26th October 2015 (originally filed in SCCIV-1996-2244)
- 2.10. My Filed Affidavit in VID 949 of 2015 dated 4th November 2015 (originally filed in SCCIV-1996-2244)
- 2.11. My Filed Affidavit in VID 949 of 2015 dated 19th November 2015 (originally filed in SCCIV-1996-2244)
- 2.12. My Filed Affidavit in VID 949 of 2015 dated 7th May 2015 (originally filed in MLG 177 of 2015)
- 2.13. My Filed Affidavit dated 4th November 2015 (originally filed in SCCIV-1996-2244)
- 2.14. My Filed Affidavit in VID 949 of 2015 dated 24th July 2015 (originally filed in VID 158 – VID 166 of 2015)
- 2.15. My Filed Affidavit in VID 949 of 2015 dated 8th March 2016 (originally filed in DCCIV-2006-1499)
- 2.16. My Outline of Submissions dated 13th May 2015 and 27th July 2015 filed and served in VID 158 – VID 166 of 2015, and
- 2.17. My Outline of Submissions in VID 949 of 2015 made by email dated 4th, 6th, 10th and 11th February 2016 to the chambers of the Honourable Justice Middleton
- 2.18. My emails plus annexures sent to chambers of Middleton J and Kenny J between the 4th February 2016 and today's date.

3. FALSE Affidavit of Deponent dated 22nd December 2015 in VID 949 of 2015

- 3.1. The aforementioned affidavit of the Deponent Matthew Critchley is not compliant with Corporations Rule 2.5(a) and must be dismissed as inadmissible¹

¹ Submissions 27th July 2015 in VID 158 of 2015

- 3.2. It is impermissible for the plaintiff to swear an affidavit in support of an application to set aside a Statutory Letter of Demand under s459 F, G or H as the solicitor is not fully apprised of the financial affairs of the company²
- 3.3. The Affidavit of the Deponent is false and is perjury by the Plaintiff and the Deponent for the following reasons (amongst others);
- 3.3.1. the exhibit MC -4 is not a true and correct copy of the Deed of Settlement dated 26th July 2000
- 3.3.2. There is no genuine dispute between the parties
- 3.3.3. The Plaintiff and counsel have admitted the facts set out in the Notice to Admit Facts dated 5th January 2016 filed and served in these proceedings
- 3.3.4. The Plaintiff and counsel are estopped (*in all forms ie contract, proprietary, promissory, common law, equitable, representation, assumption, inducement etc*) from denying the Facts set out in the Notice to Admit Facts³
- 3.3.5. The plaintiff has paid an unknown amount of money to the proposed 27th Defendant by Cross Claim in circumstances where both the Plaintiff and the proposed 27th Defendant by Cross Claim knew that the debt subject of his appointment as Trustee of the Bankrupt Estate SA 1590 of 2004 did not exist⁴
- 3.3.6. The Plaintiff and the proposed 27th Defendant by Cross Claim knew that the Bankruptcy Notice subject of the Creditor's Petition in ADG 90 of 2004 was fatally flawed as the alleged Debt subject of the sequestration order did NOT and could NOT lawfully exist⁵
- 3.3.7. The Sequestration order made on the 24th September 2004 in ADG 90 of 2004 was unlawful
- 3.3.8. The 27th and 28th Defendants by Cross Claim and their counsel have trespassed on Estates SA 1590 of 2004 and SA 2112 of 2004 and did not go behind the judgement the subject of their appointment in accordance with their Statutory, common law obligations⁶
- 3.3.9. The proposed 27th, 28th and second 28th Defendants by Cross Claim have breached their model litigant obligations⁷

² Deputy Commissioner of Taxation v Guy Holdings Pty Ltd [1994] TASSC 126; (1994) 14 ACSR 580, (1994) 12 ACLC 966 (13 September 1994)

³ Grundt v Great Boulder Pty Gold Mines Ltd (1937) 59 CLR 641 at 675; Silovi Pty Ltd v Barbaro (1988) 13 NSWLR 466, at 472; Central London Property Trust Ltd v High Trees House Ltd [1947] 1 KB 130; Combe v Combe [1951] 2 KB 215, at 220 Giumelli v Giumelli (1999) 196 CLR 101, at 121; 161 ALR 473, at 482; Riches v Hogben [1985] 2 Qd R 292, at 301. Barnes v Alderton [2008] NSWSC 107, at [55] Waltons Stores (Interstate) Ltd v Maher (1988) 164 CLR 387; 76 ALR 513

⁴ Running Balance Account of the Andrew Garrett Family Trust (Annexure 1 to these submissions)

⁵ Creditors Petition ADG 90 of 2004 (Annexure 2 to these submissions)

⁶ Wren v Mahony (1972) 126 CLR 212

⁷ Viscariello v Macks (2014) SASC 189, Viscariello v Macks (2012) SASC 165;

- 3.3.10. The Vexatious litigant orders made in SCCIV-2004-127 by Justice Anderson and in SCCIV-1996-2244 by Justice Layton dated the 31st January 2009 were made on the foundation of lack of standing flowing from an unlawful sequestration order and were made for an improper purpose as an abuse of process.
- 3.3.11. The Attorneys General and the Executive of the State of South Australia have at all times directed Judicial decisions in matters involving the Defendant in the Adelaide Magistrates Court, the District Court and Supreme Courts of South Australia at the direction of Premier and Cabinet in order to defer, frustrate and avoid payment of compensation from the Fidelity Fund, the Assurance Fund and the Victims of Crime Fund related to the release of the Duplicate certificates of title of the property known as Springwood Park to the National Australia Bank on the 25th July 2002 in circumstances where National Australia Bank did not have a lawful entitlement to hold those duplicate certificates of title.
- 3.3.12. The proposed 40th Defendant by Cross Claim;
- 3.3.12.1. was negligent in the preparation of the documentation relating to the 1st and 2nd Contracts of Finance between the Defendant in all of his capacities and National Australia Bank , and
- 3.3.12.2. acted unlawfully and invalidly in office by making delegations without the consent of the relevant minister⁸ as being an indicator of prior professional misconduct/ corrupt conduct within the meaning of *the Crimes Act 1914* (Cth)
- 3.3.13. Were it not for the Vexatious Litigant order made by Layton J the Defendant would not have executed a Deed of Settlement between him and the proposed 27th and 28th Defendants by Cross Claim dated 10th March 2009
- 3.3.14. The proposed 12th – 16th & 21st Cross Defendants interfered with the Judicial Process in respect to;
- 3.3.14.1. the proposed 1st – 11th Defendants by Cross Claim in all matters involving me heard in the Federal Court of Australia and the Federal Circuit Court of Australia raising issues related to separation of powers
- 3.3.14.2. The proposed 19th a& 20th Defendants by Cross Claim
- 3.3.15. The proposed Second Defendant by Cross Claim has failed to comply with s15 of *the Federal Court of Australia Act 1976* (Cth) in which regard this court does not have jurisdiction except under s75(v) of *the Commonwealth of Australia Act 1900* (UK), Australian Treaty Series No 23, the Common Law, the Rule of Law and the unwritten law and then only by a full bench of the court.
- 3.3.16. The proposed 1st – 16th Defendants by Cross Claim have;
- 3.3.16.1. Breached FCR 1.32 & the natural jurisdiction

⁸ *Viscariello v LPCC* (2015) SASC 132

3.3.16.2. Breached FCR 22.07 & the natural jurisdiction

3.3.16.3. breached s20 of *the Federal Court of Australia Act 1976* (Cth)

3.3.16.4. failed to comply with the provisions of *the Freedom of Information Act 1982* (Cth) to produce documents and things of an administrative Character to the Defendant⁹

3.3.16.5. Was a Fraud by the Court on the Court

3.3.17. The sequestration order made in MLG 177 of 2015 on the 15th May 2015 was a construction of the 1st – 21st Defendants by Cross Claim and was a Fraud by the Court on the court as an abuse of process for an improper purpose¹⁰

3.3.18. The proposed second 28th Defendant and counsel have trespassed on Estate VIC 1435/0 of 2015

3.3.19. The Defendant has at all times been solvent¹¹

3.3.20. The Plaintiff failed to honour contractual obligations between the date of the assignment of the Garrett Family License on the 25th August 1985 and today's date

4. Federal Court Rule 1.32 – 1.34 & Supreme Court Rule 242 & District Court Rule 242

4.1. The principles of these rules allow the court to make any order necessary in the interests of Justice including setting aside perfected orders in respect to judgements that have been “irregularly obtained”¹²

4.2. Judgment may be set aside by being obtained by Fraud¹³

4.3. the inherent jurisdiction of this Honourable Court and Rule 242 of the Supreme Court Rules (equivalent to FCR 1.32 – 1.34) and the legal principles governing the application of that Rule as espoused in:

4.3.1. *Clone Pty Ltd V Players Pty Ltd (In Liquidation Receivers Appointed) & Ors*, [2012] SASC 12, Judgment of The Honourable Chief Justice Kourakis, 3 February 2012 at paras 19-105;

4.3.2. *Players Pty Ltd (In Liquidation) (Receivers Appointed) & Ors V Clone Pty Ltd*, [2013] SASCFC 25, Per Gray, Blue & Stanley JJ, 12 April 2013 at paras 56-72 and 121;

⁹ *Kline v Official Secretary to the Governor General* [2013] HCA 52

¹⁰ *Walton v Gardiner* [1993] HCA 77;

¹¹ Statement as to Affairs dated 21st May 2015 (Annexure 3 to these submissions)

¹² *Ritchie's Supreme Court Procedure* (looseleaf, Butterworths) para 40.9.11; *Autodesk Inc v Dyason* (No 2). (1993) 176 CLR 300, 302, 303, 310, 322, 328; *Wentworth v Woollahra Municipal Council* (1982) 149 CLR 672 at 684; *State Rail Authority of NSW v Codelfa Construction Pty Ltd* (1982) 150 CLR 29 at 38; *Autodesk* (1992) 176 CLR 300 at 302, 322; *De L v Director-General, NSW Department of Community Services (No 2)* (1997) 190 CLR 207

¹³ *DJL v Central Authority* (2000) 170 ALR 659 at 670, 685, referring to *Permanent Trustee Co (Canberra) Ltd v Stocks & Holdings (Canberra) Pty Ltd* (1976) 15 ACTR 45 at 50

- 4.3.3. *Players Pty Ltd (In Liquidation) (Receivers Appointed) & Ors V Clone Pty Ltd*, [2015] SASC 133, Judgment of The Honourable Auxiliary Justice Hargrave, 28 August 2015 at paras 76-89, 101-110 and in particular para 111, 239-250 and 292 to 304
- 4.4. The Judgment of Mortimer failed to give credit to oral evidence in the hearing dated 5th August 2014 in VID 248 of 2014¹⁴
- 4.5. The Defendant has been denied Natural Justice and procedural fairness¹⁵
- 4.6. The proposed Defendants by Cross Claim have failed to apply the principles and duties of the Tribunal obligation to investigate complainants against the Plaintiff and the proposed Defendants by Counterclaim¹⁶
- 4.7. Proposed Defendants by Cross Claim and Defendants by Counterclaim are model litigants and have breached those obligations¹⁷
- 4.8. The proposed 8th 9th 10th Defendants by Counterclaim have breached the Bar Rules

4.8.1. SA Bar Rule 94 is as follows:

*“94. A barrister who appears as counsel assisting **an inquisitorial body** such as the Criminal Justice Commission, the Australian Crime Commission, the Australian Securities and Investments Commission, the ACCC, a Royal Commission **or other statutory tribunal or body having investigative powers must act in accordance with Rules 82, 84 and 85 as if the body is a court referred to in those Rules and any person whose conduct is in question before the body is an accused referred to in Rule 84.**”*

4.8.2. SA Bar Rules 82, 84 and 85 (See CB:2 at 712) are as follows:

“Prosecutor’s Duties

82. A prosecutor must fairly assist the court to arrive at the truth, must seek impartially to have the whole of the relevant evidence placed intelligibly before the court, and must seek to assist the court with adequate submissions of law to enable the law properly to be applied to the facts.

84. A prosecutor must not, by language or other conduct, seek to inflame or bias the court against the accused.

¹⁴ *Moyes & Anor v J & L Developments Pty Ltd & Anor (No 2)*, [2007] SASC 261

¹⁵ *Annetts v McCann* (1990) 170 CLR 596; (1990) 97 ALR 177; (1990) 65 ALJR 167; [1990] HCA 57 at 598; *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564; (1992) 106 ALR 11; (1992) 66 ALJR 271; [1992] HCA 10 at 577, 578 & 591-592

¹⁶ *Op cite 18; Murray v Legal Services Commissioner* (1999) 46 NSWLR 224; [1999] NSWCA 70 at [66] and especially [77]; *The Legal Practitioners Complaints Committee v Scott Malcolm Trueman* [1996] SASC 5910; BC9605856

¹⁷ *Legal Bulletin No. 2, The Duties Of The Crown As A Model Litigant*, by Crown Solicitor, G Parker, *Qantas Airways Ltd v Transport Workers’ Union of Australia* (2011) 280 ALR 503; (2011) 211 IR 1; [2011] FCA 470; *Australian Securities and Investments Commission (ASIC) v Hellicar* (2012) 247 CLR 345; (2012) 286 ALR 501

85. A prosecutor must not argue any proposition of fact or law which the prosecutor does not believe on reasonable grounds to be capable of contributing to a finding of guilt and also to carry weight.”

4.8.3. SA Bar Rules 63, 64 and 85 (See CB:2 at pp708) are as follows:

“63. A barrister must not allege any matter of fact in:

- (a) any court document settled by the barrister;
- (b) any submission during any hearing;
- (c) the course of an opening address; or
- (d) the course of a closing address or submission on the evidence;
- (e) unless the barrister believes on reasonable grounds that the factual material already available provides a proper basis to do so.

64. A barrister must not allege any matter of fact amounting to criminality, fraud or other serious misconduct against any person unless the barrister believes on reasonable grounds that:

- (a) available material by which the allegation could be supported provides a proper basis for it; and
- (b) the client wishes the allegation to be made, after having been advised of the seriousness of the allegation and of the possible consequences for the client and the case if it is not made out.

4.8.4. 65. A barrister may regard the opinion of the instructing solicitor that material which is available to the solicitor is credible, being material which appears to the barrister from its nature to support an allegation to which Rules 63 and 64 apply, as a reasonable ground for holding the belief required by those rules (**except in the case of a closing address or submission on the evidence**).”

4.9. The findings of the Defendants by Cross Claim in all matters related to me are contrary to the evidence¹⁸

4.10. The proposed 40th – 56th Defendants by Cross Claim failed to call witnesses in their investigations of complaints against Legal Practitioners made by me¹⁹

4.11. The conduct of the Defendants by Cross Claim and the Defendants by Counterclaim as officers of the Court and the Crown is both unlawful and invalid²⁰

¹⁸ *Walker v Walker* (1937) 57 CLR 630; [1937] HCA 44; BC3790119; *Calvert v Flower* (1836) 173 ER 172; (1836) 7 C & P 386; [1836] EngR 433; *Wharam v Routledge* (1805) 170 ER 797

See s82(4) of the LPA; *The Legal Practitioners Complaints Committee v Scott Malcolm Trueman* (supra); *Transport Accident Commission (Vic) v Bausch* [1998] 4 VR 249; (1998) 27 MVR 24; 13 VAR

¹⁹ *The Legal Practitioners Complaints Committee v Scott Malcolm Trueman* (supra); *Transport Accident Commission (Vic) v Bausch* (supra); *Ziems v Prothonotary of the Supreme Court of New South Wales; sub nom Ziems, Re* (ALR) (1957) 97 CLR 279; [1957] ALR 620; (1957) 31 ALJR 424; [1957] HCA 46; *R v ABC Broadcasting Tribunal and Others; Ex parte Hardiman and Others* (1980) 144 CLR 13; (1980) 29 ALR 289; (1980) 54 ALJR 314; [1980] HCA 13 at [45]-[49]

²⁰ *PROJECT BLUE SKY INC and OTHERS v AUSTRALIAN BROADCASTING AUTHORITY* - (1998) 153 ALR 490

4.12. The Parliament did not intend that unlawful actions of the proposed Defendants by Counterclaim and Defendants by Cross Claim could be held to be valid and rather are unlawful actions outside of the Power granted by Parliament and therefor are invalid actions and Fraud²¹

5. The Plaintiff variously in submissions made in VID 248 of 2014, SCI-1996-2244, VID 158-VID 166 of 2015 seeks only to call in aid principles of “*res judicata*”, “*issue estoppel*”, “*anshun estoppel*” “*vexatious litigant orders*” “bankruptcy” “standing” and “finality” as a means to shut out from consideration by this Court the litany of serious errors made by the 1st – 11th Defendants by Cross Claim which has occasioned a gross miscarriage of justice on the Plaintiff.
6. Principles of finality can only prevail if there has been a just outcome. The attainment of justice must always sit at the pinnacle of the Courts’ considerations.
7. The only interests prejudiced by this Court being denied the opportunity to fully consider the issues raised this Action is the public interest and legitimate expectations that Courts will deliver just outcomes.
8. “Conrad Lohe, the former Queensland Crown Solicitor, has further explained that;

‘[t]he power of the State is to be used for the public good and in the public interest, and not as a means of oppression, even in litigation.’ (emphasis added) footnotes not included.

9. This Court should not allow the Plaintiff to shut out the Court from a consideration the Plaintiff’s conduct and that of the proposed Defendants by Counterclaim as alleged which secured for it an unjust outcome and then enabled the Plaintiff to hang on to it.

“The Executive, as part of the Crown, has obligations to assist the judiciary in achieving justice. Some judges have equated the Crown’s model litigant obligation with the obligations of probity and fair dealing of judicial officers. If the Crown has responsibility to justice and maintaining litigation standards, the government ought to lead by example, act as the ‘model litigant’, the ‘moral exemplar’. Justice Mahoney has argued that the model litigant obligation extends from the executive’s obligations to justice as part of the ‘rule of law’:

10. The duty of the executive branch of government is to ascertain the law and obey it.

11. If there is any difficulty in ascertaining what the law is, as applicable to the particular case, it is open to the executive to approach the court, or afford the citizen the opportunity of approaching the court, to clarify the matter. Where the matter is before the

²¹ Fraud, malpractice and surprise as it is referred to and defined in *Cabassi v Vila* (1940) 64 CLR 130; [1941] ALR 33; [1940] HCA 41; *SZFDE v Minister for Immigration* (2007) 232 CLR 189; (2007) 237 ALR 64; (2007) 81 ALJR 1401; [2007] HCA 35; *Commonwealth Bank Of Australia v Quade and Others* (2007) 232 CLR 189; (2007) 237 ALR 64; (2007) 81 ALJR 1401; [2007] HCA 35; *Clone Pty Ltd V Players Pty Ltd (In Liquidation Receivers Appointed) & Ors* [2012] SASC 12; *Players Pty Ltd (in liq) (receivers appointed) and Ors v Clone Pty Ltd* [2013] SASCFC 25; *Players Pty Ltd (In Liquidation) (Receivers Appointed) & Ors V Clone Pty Ltd*, [2015] SASC 133

court it is the duty of the executive to assist the court to arrive at the proper and just result.” (emphasis added) footnotes not included.

12. “Justice Finn’s 1997 judgment in Hughes Aircraft Systems is often quoted in support of sourcing the model litigant obligation in the government’s obligations to the public. First and foremost, he explained that public bodies are, ultimately, owned by the Australian community. A public body must serve the community in accordance with its statutory mandate. A public body ‘has no private or self interest of its own separate from the public interest it is constitutionally bound to serve’.” (emphasis added) footnotes not included.
13. The duty of the proposed Defendants by Cross Claim as a “**moral exemplar**” and the duty of the Counsel as Counsel assisting the various Tribunals to arrive at the truth, is to impartially have the whole of the relevant evidence placed intelligibly before the Tribunal so that the Tribunal was apprised of the full facts and circumstances of the case.
14. There was a real likelihood that counsel’s misconduct in the various proceedings set out in my Interlocutory applications has had a prejudicial effect upon the proposed 1st -11th and 57th – 87th Defendants by Cross Claim, such that a miscarriage of justice should be inferred and the appeal allowed in Rees v Bailey Aluminium Products Pty, Limited (2008) 21 VR 478 [2008] VSCA 244 at 1, 4, 16, 31-40, 80, 86, 87, 104, 121, 123, 124, 125, 132, 133, 134, 136, 137 and 141.
15. “In Croll v McRae, Street CJ, in defining the jurisdiction of the appellate court to interfere with the verdict of a jury in the case of counsel’s misconduct, used the language of Griffith CJ in David Syme and observed:

“the poison, once instilled into their minds, must inevitably work and who could possibly feel any confidence in a verdict in the plaintiff’s favour arrived at after so prejudicial a statement had been made. In such a case a warning and summing up to disregard it is only to revive their recollection of it, and to renew its damaging potency.”
16. “The joint judgment of Winneke CJ, Barry and Gowans JJ in Chatzipantelis emphasises that a failure by counsel to observe his (or her) duty to ‘his client but also his duty to his opponent, to the Court and to himself, as well as his paramount duty to truth and justice ... will not infrequently result in the trial aborting, with consequent delay, expense and frustration’.”
17. I might cite a passage from Lord Macmillan's book *Law and Other Things*, at pp. 191-2: -

*“Written pleadings are frequently sent to counsel for revisal containing serious allegations of fraud, dishonesty, or misconduct. The consequence of lodging such pleadings in Court may be to cause irreparable injury to the person thus publicly accused. For an advocate to allow such charges to be launched with his name attached to them **without the fullest investigation would be to abuse the absolute protection against actions for slander which the law affords to counsel.** Counsel is not worthy of that protection unless he justifies it by the most scrupulous care in his written or oral attacks on character. He must insist upon being supplied with all the information which is thought by his client to justify the attack, and then he must decide for himself whether the*

charges made are such as can be justifiably made. In exercising his judgment in such a matter the advocate is fulfilling one of the most delicate duties to society which his profession casts upon him. It is no small responsibility which the State throws upon the lawyer in thus confiding to his discretion the reputation of the citizen. No enthusiasm for his client's case, no specious assurance from his client that the insertion of some strong allegations will coerce a favourable settlement, no desire to fortify the relevance of his client's case, entitles the advocate to trespass, in matters involving reputation, **a hair's-breadth beyond what the facts as laid before him and duly vouched and tested will justify. It will not do to say lightly that it is for the Court to decide the matter. It is for counsel to see that no man's good name is wantonly attacked.**"

18. Most of this passage was cited by Jordan CJ, speaking for the Full Court of New South Wales, in *Oldfield v Keogh* [1941] NSWStRp 33; (1941) 41 SR (NSW) 206, at p.211.

19. In similar vein, I refer to a passage in a book by Hilbery J published in 1946 - *Duty and Art in Advocacy* - at p. 19: -

*"The man who is worthy of his calling will always remember that the right of audience, which he enjoys, and the privilege which covers all he says and does in the course of a trial, **lays upon him a heavy obligation never to abuse the occasion. He must decide what he says and what he asks. With him rests the selection of the language to be used and the questions to be asked.**"*

(emphasis added)

20. In *Murray's*²² case where the Court said on the issue of a denial of natural justice:

"Conclusion:

[99] The Commissioner submitted that no purpose would be served by requiring the Commissioner to receive submissions from Mr Murray, and there was even less utility in requiring the Commissioner to give more detailed reasons. It was said in the submissions: "The result in each case will not be altered." The Commissioner called in aid *Stead v State Government Insurance Commission* (1986) 161 CLR 141. The High Court said (at 145-146) that an appellate court will not order a new trial if it would inevitably result in the making of the same order as that made by the primary judge at the first trial:

"By way of illustration, if all that happened at a trial was that a party was denied the opportunity of making submissions on a question of law, when, in the opinion of the appellate court, the question of law must clearly be answered unfavourably to the aggrieved party, it would be futile to order a new trial.

Where, however, the denial of natural justice affects the entitlement of a party to make submissions **on an issue of fact, especially when the issue is whether the evidence of a particular witness should be accepted, it is more**

²² *Murray v Legal Services Commissioner* [1999] NSWCA 70

difficult for a court of appeal to conclude that compliance with the requirements of natural justice could have made no difference It is no easy task for a court of appeal to satisfy itself that what appears on its face to have been a denial of natural justice could have had no bearing on the outcome of the trial of an issue of fact."

[100] Their Honours said (at 147):

"All that the appellant needed to show was that the denial of natural justice deprived him of the possibility of a successful outcome. In order to negate that possibility, it was, as we have said, necessary for the Full Court to find that a properly conducted trial could not possibly have produced a different result."

[101] There is no material before this Court upon which the Court could reach the conclusion that there was no such possibility. What answer Mr Murray could have made to the complaint if it had been duly furnished to him is unknown. In *Kioa* (at 633), Deane J said:

"Clearly enough, the mere circumstance that there is no apparent likelihood that the person directly affected could successfully oppose the making of a deportation order neither excludes nor renders otiose the obligation of the administrative decision maker to observe the requirements of procedural fairness. Indeed, the requirements of procedural fairness may be of added importance in such a case in that they ensure an opportunity of raising for consideration matters which are not already obvious."

[102] The submission put by the Commissioner suggests, I think unintentionally, pre-judgment.

[103] In my opinion, Mr Murray is entitled to a declaration that the Commissioner's decision to institute proceedings in the tribunal against him on 1 May 1998 **is void and should be quashed and an order prohibiting and otherwise restraining the tribunal from proceeding to conduct a hearing on the information filed on 4 May 1998...**" (emphasis added)

Summary

21. The Applicant submits that to allow the Judgements and or administrative actions of the proposed 1st – 11th Defendants by Cross Claim and the proposed 57th - 87th cross defendants to stand would result in

, "...irregularities so fundamental as to create an unconditional right, *ex debito justitiae*, to have all of the judgments set aside"²³;

21.1. And has created a "grave risk of a miscarriage of justice": see *Manning v Bernard Manning and Co Pty Ltd* [1960] HCA 20; (1960) 101 CLR 345, at p. 351 also *Strange v Hybinett* [1988], VicRp 50; [1988] VR 418 (24 August 1987), Per Murphy, Gray And Phillips JJ; and

²³ *Clone Pty Ltd v Players Pty Ltd (In Liquidation Receivers Appointed) & Ors*, [2012] SASC at [104]

“would tend to bring the administration of justice into disrepute because it would lend the assistance of the compulsory processes of the Courts to the litigant who was the most effective fraudster”²⁴.

17 Inadmissibility of the Submissions of the Plaintiff

The submissions of the Plaintiff have not been prepared by the solicitor on the court file nor have they been settled by counsel.

Settled by the Applicant

A handwritten signature in blue ink, appearing to read 'A. Morton Garrett', with a large, sweeping flourish that loops back over the signature.

Andrew Morton Garrett
10th April 2016

²⁴ *Clone Pty Ltd v Players Pty Ltd (In Liquidation Receivers Appointed) & Ors* [2012] SASC 12 at [97]

No VID 129 of 2015

Federal Court of Australia

District Registry: Victoria

Division: General

ANDREW MORTON GARRETT

Applicant

THE COMMISSIONER OF TAXATION OF THE COMMONWEALTH OF AUSTRALIA and OTHERS

Respondents

OUTLINE OF SUBMISSIONS OF APPLICANT
DATED 11th JUNE 2015

1. Section 60 of *the Bankruptcy Act 1966* (Cth) (**‘the Act’**) provides relevantly as follows:

- “(2) *An action commenced by a person who subsequently becomes a bankrupt is, upon his or her becoming a bankrupt, stayed until the trustee makes election, in writing, to prosecute or discontinue the action.*
- (3) *If the trustee does not make such an election within 28 days after notice of the action is served upon him or her by the Defendants or other party to the action, he or she shall be deemed to have abandoned the action.*
- (4) *Notwithstanding anything contained in this section, a bankrupt may continue, in his or her own name, an action commenced by him or her before he or she became a bankrupt in respect of:*
- (a) *any personal injury or wrong done to the bankrupt, his or her spouse or a member of his or her family; or*
- (b) *the death of his or her spouse or of a member of his or her family.*
- (4A) *Notwithstanding paragraph (1)(b), this section does not empower the Court to stay any proceedings under the Proceeds of Crime Act 1987 or a corresponding law.*

(5) *In this section, “**action**” means any civil proceeding, whether at law or in equity.”*

2. I make these submissions to the Court in support of the orders sought and my continuation of these proceedings personally pursuant to the provisions of s60(4) of the Act, as trustee of Trusts and on the basis that the proceedings have a criminal element that the Court may have a duty to refer.
3. I submit that it is my demonstrable view supported in evidence so far adduced in this proceeding as well as that filed in VID 297 of 2015 that the conduct of the Respondents falls outside of the provisions of ;
 - 3.1. *Correct and proper conduct at Common Law amounting to Conscious Maladministration/Unlawful Administration, and*
 - 3.2. *The Taxation Administration Act 1953 (Cth) (“**the TAA**”), and*
 - 3.3. *The Income Tax Assessment Act 1996 (Cth) (**the ITAA**) , and*
 - 3.4. *The A New Tax System (Goods and Services Tax) Act 1999 (Cth) (“**the GST Act**”), and*
 - 3.5. *The A New Tax System (Australian Business Number) Act 1999 (Cth) (“**the ABN Act**”), and*
 - 3.6. *The Public Services Act 1999 (Cth) (“**the PSA**”), and*
 - 3.7. *The Public Governance, Performance and Accountability Act 2013 (Cth) (“**the PGPA**”), and*
 - 3.8. *The Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Rule 2014 (“**the PGPA Rule**”) and*
 - 3.9. *the Legal Services Directions 2005 (“**the Legal Services Directions**”) issued under s55ZF of the Judiciary Act, and*
 - 3.10. *the Financial Management and Accountability Act 1997 (“the FMA Act”), and*
 - 3.11. *the Commonwealth Authorities and Companies Act 1997 (“ the CAC Act”)*
 - 3.12. *The Public Service Values (“**the PSV**”), and*
 - 3.13. *The Public Service Code of Conduct (“**the PSCC**”), and*
 - 3.14. *The Tax Payers Charter (“**the TPC**”) ; which I seek this learned court to exercise its discretion and make a finding that the Tax Payer’s Charter is in fact “a Code of Conduct” issued by the Commissioner of Taxation under the provisions of the aforementioned Acts and consequently that the Respondents is able to be sue the Respondent for breaches of the Tax Payer’s Charter as a Code of Conduct in order to further enliven the Court’s Jurisdiction, and*
 - 3.15. *The Model Litigant Obligations incumbent upon representatives of the Crown,*

4. Further I also submit that the conduct and decisions of the Respondents has a criminal element pursuant to alleged breaches of s81 & s82 of *the Crimes Act 1958* (Vic) s3BA of *the Crimes Act 1914* (Cth), s134(1)(2), 135(1)(2) (4) of *the Criminal Code 1995* (Cth) s139, s140(4), and s142, s238, s251, s242, s243, s256, s270 of *the Criminal Law Consolidation Act 1935* (SA) and additionally that I also respectfully submit falls into the category of unlawful administration which is a breach by the Respondents of my Human Rights under the provisions of ;

4.1. *The Charter of Human Rights Act 2006* (Vic)

- 4.1.1.S8(2)(3)
- 4.1.2.S9
- 4.1.3.S10(a)(b)
- 4.1.4.S11(1)(2)
- 4.1.5.S13(a)(b)
- 4.1.6.S14(1)
- 4.1.7.S15(1)(2)
- 4.1.8.S16(1)(2)
- 4.1.9.S17(1)
- 4.1.10. S20
- 4.1.11. S21(a)
- 4.1.12. S24(1)
- 4.1.13. S26

4.2. Schedule 2 of *the Human Rights and Equal Opportunity Commission Act 1986* (Cth) at;

- 4.2.1. Article 1(1)(2)
- 4.2.2. Article 2(2)((3)
- 4.2.3. Article 3
- 4.2.4. Article 5
- 4.2.5. Article 6(1)
- 4.2.6. Article 7
- 4.2.7. Article 8
- 4.2.8. Article 12 (2)
- 4.2.9. Article 14 (1)
- 4.2.10. Article 15 (1)
- 4.2.11. Article 16
- 4.2.12. Article 17
- 4.2.13. Article 18(1)
- 4.2.14. Article 19(1)(2)
- 4.2.15. Article 22 (1)
- 4.2.16. Article 23 (1)
- 4.2.17. Article 26

5. **The Parties**

6. **The Applicant**

- 6.1. Is a natural person who is capable of suing and being sued, and

- 6.2. Has at all relevant times been a Trustee of the Andrew Garrett Family Trust ("**AGFT**") until the making of the sequestration order against him on the 15th May 2015 when he automatically vacated the Office of Trustee until his reappointment on the 16th May 2015 and remains possessed of a lien over the assets of AGFT as a Trustee including the Choses of Action against the Respondents and his personnel , and
- 6.3. Has at all relevant times been the Trustee of the Garrett Family Trust ("**GFT**") until the making of the sequestration order against him on the 15th May 2015 when he automatically vacated the Office of Trustee until his reappointment on the 16th May 2015 and remains possessed of a lien over the assets of GFT as a Trustee including the Choses of Action against the Respondents and his personnel, and is authorised to bring this proceeding and swear affidavit materials on behalf of GFT, and
- 6.4. Has at all relevant times been a Trustee of the Andrew Garrett Family Trust No 2 ("**AGFT 2**"), until the making of the sequestration order against him on the 15th May 2015 when he automatically vacated the Office of Trustee until his reappointment on the 16th May 2015 and remains possessed of a lien over the assets of AGFT 2 as a Trustee including the Choses of Action against the Respondents and his personnel and is authorised to bring this proceeding and swear affidavit materials on behalf of AGFT 2, and
- 6.5. Has at all relevant times been the authorised officer of the Trustee of the Andrew Garrett Family Trust No 3 ("**AGFT 3**"), until the making of the sequestration order against him on the 15th May 2015 when he automatically vacated the Office of Trustee until his reappointment on the 16th May 2015 and remains possessed of a lien over the assets of AGFT 3 as a Trustee including the Choses of Action against the Respondents and his personnel, and is authorised to bring this proceeding and swear affidavit materials on behalf of AGFT 3, and
- 6.6. Has at all relevant times been the Trustee of the Andrew Garrett Family Trust No 4 ("**AGFT 4**"), until the making of the sequestration order against him on the 15th May 2015 when he automatically vacated the Office of Trustee until his reappointment on the 16th May 2015 and remains possessed of a lien over the assets of AGFT 4 as a Trustee including the Choses of Action against the Respondents and his personnel and is authorised to bring this proceeding and swear affidavit materials on behalf of AGFT 4, and
- 6.7. Has at all relevant times been the Trustee of the Andrew Garrett Family Superannuation Fund ("**AGSF**") until the making of the sequestration order against him on the 15th May 2015 when he automatically vacated the Office of Trustee until his reappointment on the 16th May 2015 and remains possessed of a lien over the assets of AGSF as a Trustee including the Choses of Action against the Respondents and his personnel and is authorised to bring this proceeding and swear affidavit materials on behalf of AGSF, and
- 6.8. Has at all relevant times been the Trustee of the Averil Gay Garrett Family Trust ("**AGGFT**") until the making of the sequestration order against him on the 15th May 2015 when he automatically vacated the Office of Trustee until his reappointment on the 16th May 2015 and remains possessed of a lien over the assets of AGGFT as a Trustee including the Choses of Action against the Respondents and his personnel and is authorised to bring this proceeding and swear affidavit materials on behalf of AGGFT, and
- 6.9. Has been the Trustee of the Asbroek Business Trust No 2 ("**ABT 2**") since the 10th November 2014 until the making of the sequestration order against him on the 15th May 2015 when he

automatically vacated the Office of Trustee until his reappointment on the 16th May 2015 and remains possessed of a lien over the assets of ABT 2 as a Trustee including the Choses of Action against the Respondents and his personnel and is authorised to bring this proceeding and swear affidavit materials on behalf of ABT 2, and

- 6.10. Has at all relevant times been the Trustee of the Springwood Park Unit Trust ("**SPUT**") until the making of the sequestration order against him on the 15th May 2015 when he automatically vacated the Office of Trustee until his reappointment on the 16th May 2015 and remains possessed of a lien over the assets of SPUT as a Trustee including the Choses of Action against the Respondents and his personnel and is authorised to bring this proceeding and swear affidavit materials on behalf of SPUT, and
- 6.11. Has at all relevant times been the Trustee of the Sunburst Property Trust ("**SPT**") until the making of the sequestration order against him on the 15th May 2015 when he automatically vacated the Office of Trustee until his reappointment on the 16th May 2015 and remains possessed of a lien over the assets of SPT as a Trustee including the Choses of Action against the Respondents and his personnel and is authorised to bring this proceeding and swear affidavit materials on behalf of SPT, and
- 6.12. Has at all relevant times been the authorised officer of the Corporate Trustee of the Holy Grail Property Trust No 4 ("**HGPT4**") until the making of the sequestration order against him on the 15th May 2015 when he automatically vacated the Office of Trustee until his reappointment on the 16th May 2015 and remains possessed of a lien over the assets of AGFT as a Trustee including the Choses of Action against the Respondents and his personnel and is authorised to bring this proceeding and swear affidavit materials on behalf of SPUT, and
- 6.13. Was appointed Managing Controller to ACN 133 861 579 Pty Ltd (in Liquidation)(Controller Appointed), previously known as OenoViva (Australia & New Zealand) Pty Ltd ("**the Company**") on the 23rd January 2014, which entity was;
- 6.13.1. the Respondents for an EMDG Grant in its capacity as Prior Trustee of AGFT 3 in which capacity the Respondents is possessed of the lien over the assets of the AGFT 3 including the EMDG Application and the right to review the various taxation decisions made by the Respondents against AGFT 3, and
- 6.13.2. The Trustee of the OenoViva (Australia & New Zealand) Trust ("**OVANZ**"), and
- 6.13.3. The Trustee of the OenoViva (Australia & New Zealand) Plant & Equipment Trust ("**OVPET**"), and
- 6.13.4. The Trustee of the OenoViva (Australia & New Zealand) Plant & Equipment Trust ("**OVPET**"), and
- 6.13.5. A Joint Trustee of AGFT 4, and
- 6.13.6. A Joint Trustee of AGFT 3, and
- 6.14. Was appointed Managing Controller to Sanctuary Australasia Pty Ltd (in Liquidation)(Controller Appointed), ("**Sanctuary**") on the 9th May 2014, which entity was;
- 6.14.1. A Joint Trustee of AGFT, and

- 6.14.2. A Joint Trustee of AGFT 3, and
- 6.14.3. A Joint Trustee of AGFT 4, and
- 6.14.4. A Joint Trustee of the Holy Grail Property Trust No 4, and
- 6.14.5. A Joint Trustee of OVANZ
- 6.15. Is a Primary and General Beneficiary of the AGFT, AGFT 2, GFT and AGFT 2, and
- 6.16. Is a General beneficiary of AGFT 3 and AGFT 4
- 6.17. The sole Unit Holder of SPUT, OVANZ, OVPET, OVPET 2 & HGPT 4, and
- 6.18. Is the Managing Controller Appointed to the Corporate Entities set out in Annexure 1 and is possessed of the choses in action against the Respondents and His Personnel that was previously the property of those Corporate Entities, and
- 6.19. Is a person whose rights are affected at Common Law by the decisions and conduct of the Respondents and his personnel, and
- 6.20. Is a person aggrieved within the meaning of the ADJR, and
- 6.21. Is a person whose Mind and Body have been affected by the actions of the Respondents and his personnel within the meaning of s60(4) of the Act.
- 6.22. Is a person whose Human Rights set out at paragraph 4.1 and paragraph 4.2
- 6.23. Is a victim of crime pursuant to breaches of the provisions set out at paragraph 4
- 6.24. Entitled to set off the Claims of the Respondents against my equitable claims for loss and compensation payable by the Respondents at Common Law and my inalienable Human Rights.

1. The Respondent

- 1.1. Is the Commissioner of Taxation within the meaning of s4 of Part II of *the Taxation Administration Act 1953 (Cth)*. (**"The TAA"**)
 - 1.1.1. Is appointed by the Governor of the Commonwealth of Australia under s4 of the TAA, and
 - 1.1.2. the Statutory Agency Head of the Australian Taxation Office (**"ATO"**) as a Statutory Agency within the meaning of Part II of the TAA, the PSA and the *Public Governance, Performance and Accountability Act 2013 (Cth)* (**"the PGPA"**) *The Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Rule 2014* (**"the PGPA Rule"**) and the *Legal Services Directions 2005* (**"the Legal Services Directions"**) issued under s55ZF of *the Judiciary Act*, and
 - 1.1.3. Is bound by the provisions of the *Financial Management and Accountability Act 1997* (**"the FMA Act"**) and the *Commonwealth Authorities and Companies Act 1997* (**"the CAC Act"**)

- 1.2. Is a person employed (**“a PSA employee”**) under the provisions of the PSA and s4A(2) of the TAA, and
- 1.3. Is responsible and has oversight of the administration of the provisions of;
- 1.3.1. the TAA, and
 - 1.3.2. *the Income Tax Assessment Act 1953 (Cth)* (**“the ITAA”**)
 - 1.3.3. *the A New Tax System (Goods and Services Tax) Act 1999 (Cth)* (**“the GST Act”**)
 - 1.3.4. *the A New Tax System (Australian Business Number) Act 1999 (Cth)* (**“the ABN Act”**) and
- 1.4. Is capable of suing and being sued, and
- 1.5. Acts on behalf of the Crown and is bound by the Crown’s obligations to act as a model litigant, and
- 1.6. Is a person NOT bound by the PSA pursuant to s5(3) of the TAA OR the;
- 1.6.1. Code of Conduct set out at section 13 of the PSA
 - 1.6.2. The APS Values set out at section 10 of the PSA
- 1.7. Is a person bound by the Code of Conduct issued by the Respondent pursuant to the provisions of the PSA and the TAA, being **“the Tax Payer’s Charter”**.
- 1.8. Carries on a business providing services to the Government of the Commonwealth of Australia and to the Taxpayers of the Commonwealth pursuant to the terms of the ACAC Act, Australian Consumer Law at s18, s20, s21, s29, s34 and s37.
- 1.9. Has oversight to ensure that the Staff of the ATO act in accordance with the;
- 1.9.1. Code of Conduct set out at section 13 of the PSA, and
 - 1.9.2. The APS Values set out at section 10 of the PSA, and
 - 1.9.3. The Tax Payer’s Charter, and
 - 1.9.4. The terms of the ACAC Act, Australian Consumer Law at s18, s20, s21, s29, s34 and s3, and
 - 1.9.5. The Common Law
- 1.10. Has the Statutory duty to **“properly”** administer the ATO and the Australian Business Register (as the Registrar) in accordance with the TAA, the GST Act, the ABN Act and the ITAA and the other Taxation related acts of the Commonwealth;

proper, when used in relation to the use or management of public resources, means efficient, effective, economical and ethical.

1.11. Is a person whose conduct and decisions are capable of being reviewed pursuant to;

- 1.11.1. sections 5, 6 & 7 of the ADJR, and
- 1.11.2. Part IVC of the TAA, and
- 1.11.3. Section 39B, and
- 1.11.4. Section 75(v), and
- 1.11.5. *The Crimes Act 1958 (Vic)*, and
- 1.11.6. *The Crimes Act 1914 (Cth)*, and
- 1.11.7. *The Criminal Code 1995 (Cth)*, and
- 1.11.8. *The Criminal Law Consolidation Act 1935 (SA)*, and
- 1.11.9. The PSA, and
- 1.11.10. The Common Law

1.12. Is civilly vicariously liable for the actions of his personnel

1.13. Is Criminally vicariously liable for the actions of his personnel pursuant to the provisions of *the Criminal Law Consolidation Act 1935 (SA)*, *the Crimes Act 1958 (Vic)* *the Crimes Act 1914 (Cth)* and part 2.4 and part 2.5 of *the Criminal Code 1995 (Cth)*

1.14. Is obliged to pay compensation to me in all of my capacities for failures of the Respondents to comply with the provisions aforementioned under;

- 1.14.1. *The Legal Services Directions 2005 (Cth)*
- 1.14.2. The CDDA Scheme

3. The Second to Fourteenth Respondents

3.1. Are natural persons, and

3.2. Are persons employed ("**a PSA employee**") under the provisions of the PSA and the TAA

3.3. Are capable of suing and being sued, and

3.4. Act on behalf of the Crown and are bound by the Crown's obligations to act as a model litigant, and

3.5. Are persons bound by the;

- 3.5.1. Code of Conduct set out at section 13 of the PSA, and
- 3.5.2. The APS Values set out at section 10 of the PSA, and

3.5.3. *The Tax Payers Charter*, and

3.5.4. The terms of *the ACAC Act, Australian Consumer Law* at s18, s20, s21, s29, s34 and s3, and

3.5.5. *The Common Law*

3.5.6. *the Rules of Professional Conduct and Practice 2003 (SA)* , issued by the South Australia Australian Law Society in respect to the legal representatives of and/or lawyers employed by, the Respondent in the State of South Australia, and

3.5.7. *the Professional Practice and Conduct Rules 2005 (Vic)*, issued by the Law Institute of Victoria, in respect to the respondents that are legal representatives of, and/or lawyers employed by, the Respondent in the State of Victoria.

3.6. Are persons whose conduct and decisions are capable of being reviewed pursuant to;

3.6.1. sections 5, 6 & 7 of the ADJR, and

3.6.2. Part IVC of the TAA, and

3.6.3. Section 39B, and

3.6.4. Section 75(v), and

3.6.5. *The Crimes Act 1958 (Vic)*, and

3.6.6. *The Crimes Act 1914 (Cth)*, and

3.6.7. *The Criminal Code 1995 (Cth)*, and

3.6.8. *The Criminal Law Consolidation Act 1936 (SA)*, and

3.6.9. The PSA, and The Common Law

4. The Proposed Fourteenth to Twenty First Respondents

4.1. Repeats paragraphs 3.1 -3.6,

5. Preamble

5.1. I have been involved in multiple aspects of the wine industry from the age of 16 when I commenced working on the bottling line of Ryecroft wines in McLaren Vale in 1973.

5.2. I am now 58 years of age and have been committed to the Wine Industry in all of its aspects for now 42 years.

5.3. Between then and now I have been responsible for the development of at least 21 wine brands and building of around 3,000 acres of vineyards while working in the traditional channel to market and sell wines made by me or my related entities.

5.4. When I launched my own brand in 1981 there were 294 wineries in the territory of Australia & New Zealand, today there are over 3,000 which proliferation of supply has created a downwards pressure on prices to the producer.