

The powers of receivers are set out in the appointment document and in the Corporations Act. These will generally be powers to manage, preserve and realise the company's assets for the benefit of the secured creditor. If the receiver is given the power to manage the affairs of the company, as is usual, the receiver will be referred to as a receiver and manager.

Impact of a receivership

Unlike in winding up and administration, the powers of the company's officers are not strictly affected during the receivership. However, practically – particularly where a receiver has been appointed to all of the assets of a company – directors will have little left to do other than attend to their statutory obligations.

Another difference from administration and winding up is that the appointment of a receiver to assets of a company imposes no constraints on the shareholders of that company dealing with their shares (although the receiver may also be appointed to those shares if the secured party also had security over some or all of the shares).

The receiver takes the assets to which he or she is appointed subject to prior equities and other security interests with higher priority.

The appointment of a receiver does not, of itself, constitute a repudiation of contracts to which the company is a party. As a result of the *ipso facto* reforms to the Corporations Act which became effective from 1 July 2018, there is now a general prohibition in a receivership (involving the whole or substantially the whole of a company's property) on counterparties relying on *ipso facto* clauses to terminate for an insolvency event of default (subject to a range of exclusions).



Although the receiver does not have the formal power to disclaim contracts as a liquidator does, the receiver may repudiate some contracts requiring performance by the company, leaving counterparties to pursue their entitlement to damages for breach of contract against the company (which may – if the company is in administration or being wound up – have the effect that the claim can only be pursued by lodging a proof of debt and participating pro rata for whatever is available for the payment of unsecured creditors).

There is no moratorium or stay on the enforcement of claims against the company in receivership, as there is in administration and winding up. This is one reason why there is often a concurrent administration with a receivership, as the receiver will effectively have the benefit of the statutory moratorium applicable in administration.

As with administration, the receiver is personally liable for debts incurred in the course of the receivership for services rendered, goods purchased or property hired, leased or occupied, a statutory obligation that does not extend to pre-appointment liabilities. The receiver has an equitable right of indemnity from the assets of the company, as well as (usually) an indemnity from his or her appointor.

Creditors' claims and priority

A receiver only attends to payment of the secured creditor's debt from the proceeds of realisation of the secured assets, returning any surplus to the company, and is not responsible for dealing with the claims of unsecured creditors. If the company is insolvent, the administrator or liquidator will be responsible for dealing with unsecured creditor claims. However, the secured creditor's claim to assets subject to a circulating security interest – usually cash, receivables, inventory and similar assets – is statutorily subordinated to specified employee claims that qualify for priority in a winding up, being wages and superannuation, leave and redundancy entitlements.

The section 420A obligation

A fundamental and distinctive feature of receivership is the obligation imposed by section 420A of the Corporations Act on a receiver (or other form of controller) in exercising a power of sale in respect of property of a corporation, to take all reasonable care to sell the property for market value (assuming the property has a market value when it is sold) or otherwise, for the best price reasonably obtainable having regard to the circumstances existing when the property is sold. There is no direct equivalent obligation in relation to administrators or liquidators.

This obligation is designed to ensure that the receiver does not simply sell the property that is subject to the security interest for an amount sufficient to pay the secured creditor in full. Instead, the receiver is obligated to obtain the best possible price for the property to ensure that whatever surplus equity there is in the property is available for subsequent secured creditors, unsecured creditors or the company (as applicable).

It is the obligation imposed on receivers by section 420A that means they will often undertake public auction and tender processes to sell property to which they have been appointed.

However, there is no obligation on a receiver to sell the property to which they have been appointed at a particular time, and so it is possible that, once appointed, the receiver may be in possession of the property, and – if applicable – to trade the business, for some time.

The role of the Court in receivership

Usually, private receiverships will not have any Court involvement. Having said that, a receiver, like a liquidator and an administrator, can seek directions from the Court and is subject to the supervision of the Court. In addition, creditors and other persons aggrieved by an act, omission or decision of a receiver can appeal to the Court.

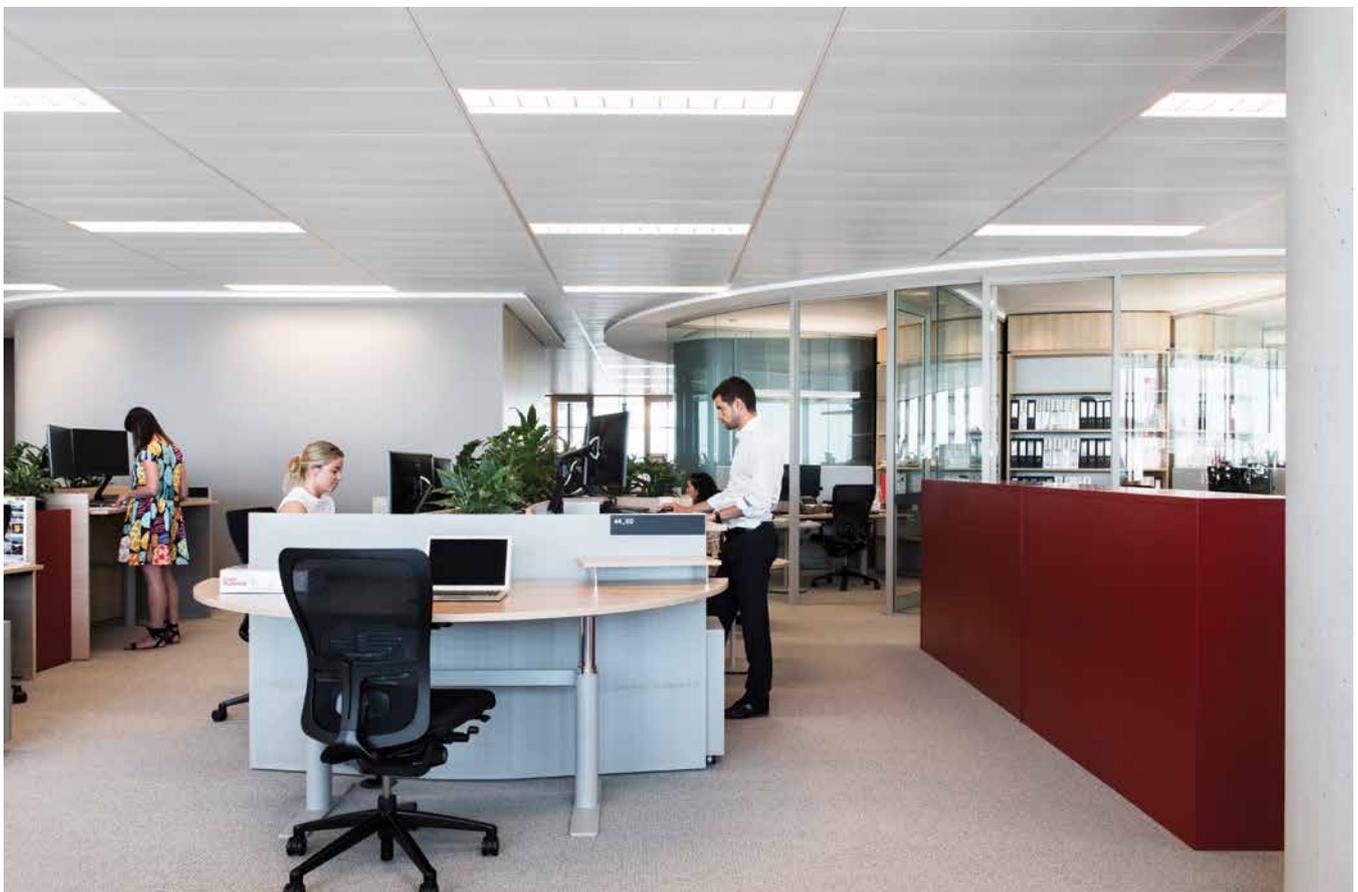
Concurrent voluntary administration/winding up and receivership

It will often be the case that voluntary administration and/or winding up take place concurrently with receivership.

In the case of a receivership that takes place concurrently with an administration, the receiver will effectively have the benefit of some of the administration moratorium provisions (such as that any landlord of premises occupied by the company cannot take possession of the premises during the period of the administration without the consent of the administrator or the leave of the Court), the receivers being personally liable for post-appointment rent if he or she elects to cause the company to remain in possession.

A concurrent receivership with a voluntary administration, DOCA or winding up generally means that:

- the receiver will have control of the assets of the company, and be responsible for trading on its business. Accordingly, dealings in relation to operational matters (such as continued supply to the company, or the continued performance by the company of its contractual obligations) or in connection with the sale of assets, are appropriately conducted by the receiver;
- the claims of unsecured creditors are progressed by way of the administration, DOCA or winding up. Meetings of creditors will be held by the administrator, deed administrator or liquidator, and accordingly proofs of debt and proxies are lodged with the administrator, deed administrator or liquidator, who will adjudicate on creditors' claims.



Winding up in insolvency

Overview

A winding up (also known as a liquidation) in insolvency is a terminal procedure intended to realise a company's assets and distribute them amongst its creditors in accordance with the priorities in the Corporations Act.

For an insolvent company, a winding up can take the form of either a Court ordered or compulsory winding up or a creditors' voluntary winding up.³

Commencement of the winding up

A Court ordered or compulsory winding up can only be effected by an order of the Federal Court of Australia or Supreme Courts of the States and Territories of Australia.

Creditors of the company and certain other eligible applicants can apply to the Court to have a company wound up on a range of bases including insolvency. The most common ground for a winding up application in insolvency is the company's failure to comply with a creditor's statutory demand for payment. Failure to comply within 21 days of the statutory demand being issued gives rise to a statutory presumption of insolvency.

If the winding up application is successful, the Court will order that the company be wound up. Upon making a winding up order, the Court will appoint a liquidator. The selection of the liquidator can be nominated by the creditor filing the winding up application by filing a "consent to act" signed by the preferred liquidator or made by the Court, so long as the liquidator is a registered liquidator with ASIC.

A creditors' voluntary winding up usually commences either:

- pursuant to a special resolution of the company's members in circumstances where there is no declaration of solvency made by the directors of the company; or
- as is now more common, by resolution of creditors at a second meeting of creditors in the voluntary administration of the company.

A liquidator appointed in a creditors' voluntary winding up must be a liquidator, appropriately qualified and registered with ASIC, and not disqualified from accepting the appointment.

It is normal to have two or more liquidators appointed jointly and severally, to ensure appropriate continuity in the event of absence or ill health.

Role and powers of the liquidator

Once appointed, a liquidator takes control of the company from the directors and acts as the agent of the company. A liquidator is a fiduciary and, as an officer of the company, subject to the duties applicable to company officers.

The liquidator's primary duties are to preserve, collect and sell the assets of the company, and then distribute the available proceeds as required by the Corporations Act.

³ This document does not deal with winding up a solvent company.

The liquidator has extensive powers, including to compel production of books of the company and to investigate the company's affairs including by way of public examinations of officers or persons otherwise involved in the affairs of the company.

As a general proposition, a liquidator will not trade on a company that is being wound up, as the winding up procedure is terminal.



Impact of the winding up

The powers of the directors are suspended in a winding up.

A transfer of shares in a company, or an alteration of the status of its shareholders, after the commencement of a winding up is void unless with the consent of the liquidator or pursuant to an order of the Court.

Upon a winding up, there is a statutory stay of proceedings against the company, and a prohibition on enforcement (by unsecured creditors) against the property of the company, other than with the consent of the liquidator or leave of the Court. Unsecured claims against the company should generally be pursued by the proof of debt procedure (discussed below).

Dealings with the property of the company after a winding up other than by the liquidator are void.

In terms of the impact of winding up on contracts, it would be usual that winding up would give a counterparty a contractual right to terminate the contract and liquidation - as a terminal insolvency regime - is considered to effect a repudiation of the company's contractual obligations. A liquidator also has the power to disclaim onerous property of the company - such as land burdened with onerous covenants or unsaleable property including contracts that are unprofitable.

Committee of inspection

A committee of creditors, called a committee of inspection, may be appointed. Essentially, the committee of inspection is available to consult with the liquidator and has powers to approve specified transactions of the company entered into during the liquidation and the remuneration of the liquidator.

The role of the Court in winding up

A compulsory or Court-ordered winding up can only be commenced by an order of the Court. However, a creditors' voluntary winding up may commence without any Court involvement.

The Court has a range of powers in connection with a company's winding up, and liquidators can seek directions from the Court and are subject to the supervision of the Court. Creditors and other persons aggrieved by an act, omission or decision of a liquidator (including the adjudication of their proof of debt) can appeal to the Court.

Creditors' claims and priority

In a winding up, all unsecured creditors with debts or claims (including contingent and future claims, and

unliquidated claims) against the company, are entitled to participate for dividend from the available assets in respect of their debt or claim, if the circumstances giving rise to their debt or claim arose before the relevant date. The relevant date is usually the date on which the winding up order was made, or the date of the appointment of the administrator if the winding up was preceded by a voluntary administration. There are set off rights where a creditor also has a liability to the company, assuming the necessary mutuality.

Claims are submitted to, and adjudicated on by the liquidator in a quasi-judicial capacity, pursuant to the proof of debt procedures specified in the Corporations Act and Insolvency Practice Rules. If a proof of debt is rejected in whole or in part, there are appeal rights.

Secured creditors are entitled to enforce their security interest during the liquidation, assuming it is not void as against the liquidator (as a matter of law - such as if the security interest has not been perfected within the applicable statutory timeframes - or by reason of a Court order). However, the secured creditor's claim to assets subject to a circulating security interest - usually cash, receivables, inventory and similar assets - is statutorily subordinated to specified employee claims that qualify for priority in a winding up, being wages and superannuation, leave and redundancy entitlements.

Specified debts and claims will take priority over the claims of unsecured creditors in liquidation, being in general terms:

- expenses incurred by an administrator or liquidator in preserving and realising the property of the company;
- the costs and expenses of obtaining any order for liquidation; and
- priority employee entitlements.

The Commonwealth has established the Fair Entitlements Guarantee or "FEG", under which employees of a company that is wound up may be eligible to receive a payment from the Commonwealth in respect of specified entitlements up to a maximum amount. The Commonwealth then subrogates to the position of the employees for the distribution of dividend in the winding-up.

The Corporations Act provides for an automatic set off on in winding up where a creditor has a debt or claim it asserts against the company, and the company also has a debt or claim it asserts against the creditor, such that only the net balance will be a claim of or against the company. The set off will not apply where the debts or claims are not held in the same capacity, or where the creditor had knowledge of the company's insolvency at the time it gave or received credit to or from the company.

There is also capacity under the Corporations Act for creditors whose claim against the company is insured to obtain any insurance proceeds received by the company.

All other unsecured debts rank equally according to the *pari passu* principle and if the property of the company is insufficient to meet them in full, they must be paid proportionately. The Australian Taxation Office (**ATO**) no longer has any priority for amounts owing to it, but has significantly enhanced powers to pursue directors for



unpaid company taxes and can also pursue directors to recover any amounts it is required to disgorge to the company's liquidator as unfair preferences (discussed below).

Liquidator recoveries

Liquidators have the power to investigate the affairs of the company and to take appropriate legal action against directors or third parties to recover certain assets or undo certain transactions for the purpose of increasing the estate available for distribution to unsecured creditors.

Increasingly, third party funding (including from litigation funders) is available for liquidators to pursue investigations (such as by undertaking public examinations) and liquidator recovery actions. However, such litigation is generally protracted, particularly given that whether, and if so when, the company was insolvent is inevitably in issue, which delays dividends being paid.

The primary tools for recovery by a liquidator are voidable transactions (which include unfair preferences and uncommercial transactions) and insolvent trading claims. There are other causes of action available to liquidators, including in relation to unfair loans and unreasonable director-related transactions, that are beyond the scope of this document.

Unfair preferences

Unfair preferences are the most common type of liquidator recovery.

An unfair preference is a payment made to, or benefits received by, a creditor of the company in respect of an unsecured debt owed by the company within a period of six months prior to the deemed commencement of the winding up,⁴ if:

- that unsecured creditor has been preferred over other unsecured creditors (i.e. the creditor has received more than if they had proved in the winding up in respect of the debt and participated *pari passu* for dividend); and
- the payment or benefit was received at a time when the company was insolvent or the company became insolvent as a result of making that payment or giving that benefit.

A payment received by a creditor can still be a preference notwithstanding that the creditor provided real consideration (normally the supply of goods or services) to the company in return for the payment the liquidator seeks to recover. The liquidator's right to recover unfair preferences is designed to ensure equity as between unsecured creditors and to ensure that some unsecured creditors are not preferred to the detriment of others.

However, in circumstances where the company and the creditor have a continuing business relationship (also referred to as a running account), involving a series of transactions and movements in the net indebtedness of the company to the creditor from time to time, generally any preferential effect will be considered not in relation to each individual payment made by the company to the creditor, but over the course of the relationship. Essentially this recognises that the creditor has provided real consideration to the company during the relationship, and will generally mean that the amount of the unfair preference is any net reduction in the indebtedness of the company over the period of the relationship (up to the statutory six months prior to the deemed commencement of the liquidation in respect of which unfair preferences can be recovered).

There are potential defences to an unfair preference claim, most commonly if the creditor can establish that they:

- became a party to the transaction in good faith;
- had no reasonable grounds for suspecting that the company was insolvent at the time or would become insolvent as a result of the transaction and a reasonable person in their circumstances would have had no such grounds for so suspecting; and
- have provided valuable consideration or changed their position in reliance on the transaction.

⁴ This is known as the relation-back day. It is important to note that depending on the circumstances of the winding up and its commencement, the relation-back day calculation can change. Section 91 of the Corporations Act comprehensively outlines the process for calculating the relation-back day. An explanation of each of these circumstances is beyond the scope of this document.

This defence is difficult to establish in practice, as normally payments will have been received as a result of pressure from the creditor asserted because of concerns about the company's solvency, and there will usually be a document trail to this effect which evidences a suspicion of insolvency.

Uncommercial transactions

An uncommercial transaction of the company entered into within two years prior to the deemed commencement of the liquidation is voidable on the application of the liquidator if it was entered into or given effect to at a time when the company was insolvent, or if the company became insolvent as a result of it entering into the transaction.

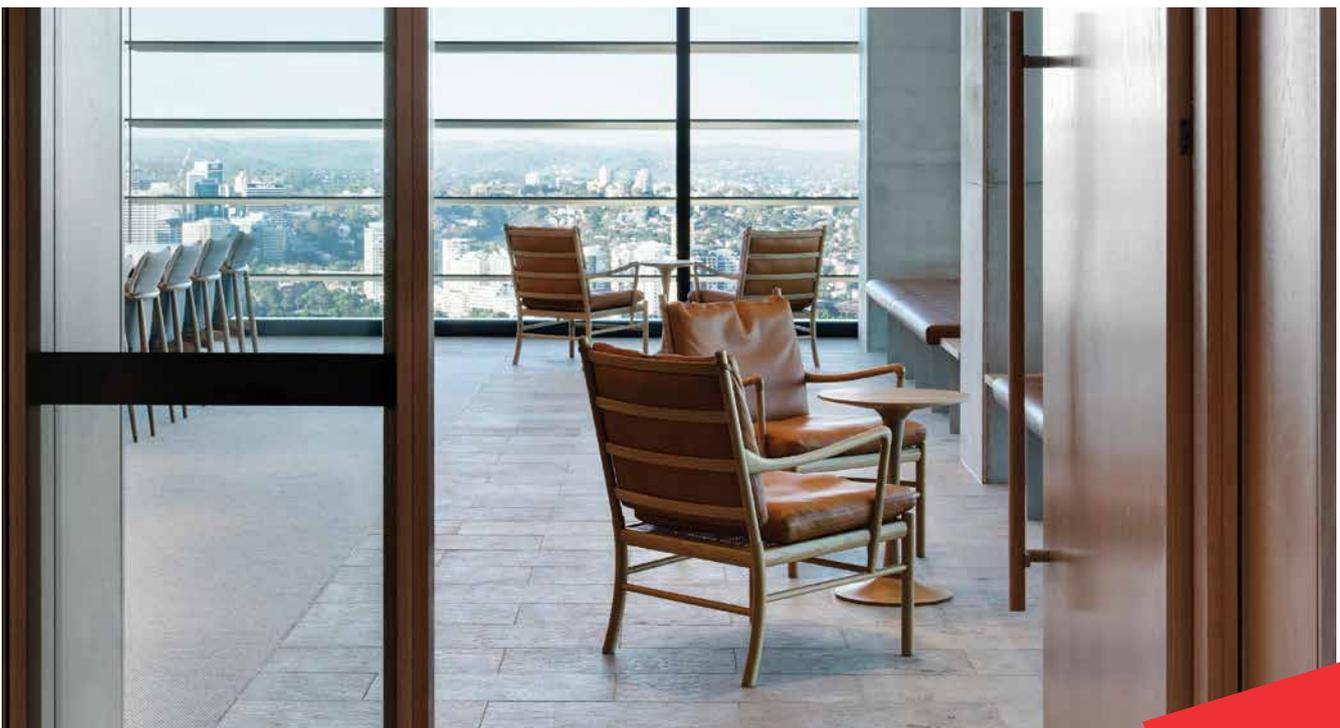
Whether a transaction is "uncommercial" is assessed by reference to, among other factors, the benefits and detriment to the company and to other parties of entering into the transaction. The test for what constitutes an uncommercial transaction has been expressed as "a bargain of such magnitude that it could not be explained by normal commercial practice." Although the quintessential uncommercial transaction is a disposition of company property at an undervalue (such as in phoenix company conduct), the concept is not so limited.

There are potential defences to an uncommercial transaction claim, most commonly if the defendant can establish that they:

- became a party to the transaction in good faith;
- had no reasonable grounds for suspecting that the company was insolvent at the time or would become insolvent as a result of the transaction and a reasonable person in their circumstances would have had no such grounds for so suspecting; and
- have provided valuable consideration or changed their position in reliance on the transaction.

Insolvent trading

Under the Corporations Act, directors have a positive duty to prevent the company from trading while insolvent. If the company incurs a debt while insolvent or becomes insolvent as a result of incurring that debt, and a director at the time the debt is incurred is aware that there are grounds for suspecting the company is insolvent, or a reasonable person in a like position in the company's circumstances would be so aware, that director will have breached their duty by failing to prevent the company from incurring that debt. Insolvent trading can also be a crime where dishonesty is involved.



There are only limited defences available to an insolvent trading claim, including that, when the debt was incurred, the director:

- had reasonable grounds to expect, and did expect, that the company was solvent and would remain solvent;
- had reasonable grounds to believe that a competent and reliable person was fulfilling their obligation to provide adequate information as to whether the company was solvent and would remain solvent, and expected, on the basis of this information, that the company was solvent and would remain solvent;
- did not take part in the management of the company;
- took all reasonable steps to prevent the company incurring the debt (including whether the person took steps to appoint an administrator to the company); or
- is able to rely on the safe harbor provision, section 588GA of the Corporations Act (discussed further below).

If a director has been found to have breached the duty to prevent insolvent trading, the liquidator may recover from the director, as a debt due to the company, the amount of any loss or damage suffered by an unsecured creditor whose debt was incurred while the company was insolvent. In limited circumstances, the affected creditor can sue for recovery of its loss and damage directly.

Australia's insolvent trading laws are particularly onerous and are actively enforced by liquidators and, on occasion, by ASIC. Directors' apprehension of potential personal liability for insolvent trading will often compel them to appoint an administrator.

Safe harbour from insolvent trading liability

2017 saw the introduction into the Corporations Act of section 588GA, the safe harbor provision which effectively operates as a defence to insolvent trading liability.

The safe harbor only applies in relation to a debt if at a particular time after the director starts to suspect the company may become or be insolvent, they start developing one or more courses of action that are reasonably likely to lead to a better return for the company and the debt is incurred directly or indirectly in connection with any such course of action during the period starting at that time and ending at the earliest of:

- if the person fails to take any such course of action within a reasonable period, the end of the reasonable period;
- when the person ceases to take any such course of action;
- when any such course of action ceases to be reasonable likely to lead to a better outcome for the company; and
- the appointment of an administrator or liquidator to the company.

In determining whether the course of action is reasonably likely to lead to a better outcome, the Court can have regard to a list of non-exhaustive factors including whether the director:

- properly informed themselves of the company's financial position;
- took appropriate steps to prevent any misconduct by officers or employees of the company that could adversely affect the ability of the company to pay its debts;
- took steps to ensure the company kept appropriate financial records consistent with the size and nature of the company;
- obtained advice from an appropriately qualified entity or entities who was or were given sufficient information to give appropriate advice; or
- developed or implemented a plan for restructuring the company to improve its financial position.

Directors seeking to rely on the safe harbour bear the evidentiary burden that they have taken appropriate steps.

Additionally, to ensure the safe harbor is available the director must ensure that employee entitlements are paid when due and all ATO documents are lodged when required and co-operate with any external administrator (if appointed).

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IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE

COMMON LAW DIVISION

S ECI 2025 02829

BETWEEN:

Plaintiffs

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

Defendants

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

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

**JOINT REPLY TO JOINT OUTLINE OF SUBMISSIONS OF SECOND DEFENDANT
AND PROPOSED THIRD DEFENDANT DATED 18th JULY 2025**

Date of Document: 29th July 2025

Solicitors Code:

Filed on behalf of: Dorota-Donata Borkowski and Andrew Morton Garrett, Unitary Executive,
International Crown Attorney General, Liquidator, And Managing Controller Proposed Tenth
Defendant, Relator and Intervenor as of a Right.

Prepared by: Dorota-Donata Borkowski

Telephone: 0405 107 365

Ref:

Email: doriborkowski@bigpond.com

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

Alleged Solicitors for the Second Defendant (Westpac Banking Corporation)

Waterfront Place, 1 Eagle Street, Brisbane QLD 4000

Email brisbanelitigation@minterellison.com

Proposed Third Defendant

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

1 Spring St, Melbourne, VIC 3000

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

Proposed Fourth Defendant

To: JACLYN SYMES, ATTORNEY GENERAL OF THE STATE OF VICTORIA,
Together with
MARK DREYFUS, ATTORNEY GENERAL OF COMMONWEALTH OF AUSTRALIA
CIK; 0000805157 (LIQUIDATOR AND MANAGING CONTROLLER APPOINTED) ABN
86 150 409 985 for and on behalf Of the Sherriff's Office, the Department of Justice and
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Ground Level, 277 William Street, Melbourne, VIC 3000
Email: jaclyn.symes@parliament.vic.gov.au ; moneylaundering@ag.gov.au;
processservice@ags.gov.au ;

Proposed Fifth Defendant

To: AUSTRALIAN FINANCIAL COMPLAINTS AUTHORITY LIMITED
ABN 38 620 494 340 (AFCA)
130 Lonsdale Street, Melbourne, VIC 3000
Email. info@afca.org.au

Proposed Sixth Defendant

To: AUSTRALIAN FINANCIAL TRANSACTIONS ANALYSIS REPORTING CENTRE
ABN: 32 770 513 371 (AUSTRAC)
Level 27, Tower 2, 727 Collins Street, Docklands VIC 3008
Email. info@afca.org.au

Proposed Seventh Defendant

TO: OFFICE OF FOREIGN ASSETS CONTROL OF U.S. DEPARTMENT OF THE
TREASURY,
Treasury Annex / Freedman's Bank Building,
1500 Pennsylvania Avenue, NW, Washington, DC 20220
Email: SBLFIInstitutions@treasury.gov

Proposed Eighth Defendant

TO: MCDONALD J as trustee for DEPARTMENT OF JUSTICE AND COMMUNITY
SAFETY trading as THE SUPREME COURT OF VICTORIA (ABN 32 790 228 959)
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Email: requests@fundsincourt.vic.gov.au ; mcdonald.chambers@supcourt.vic.gov.au

Proposed Ninth Defendant.

TO: ANDREW MORTON GARRETT , INTERNATIONAL CROWN ATTORNEY
GENERAL, LIQUIDATOR, MANAGING CONTROLLER, TRUSTEE IN BANKRUPTCY,
UNITARY EXECUTIVE and as trustee of THE OENOVIVA (AUSTRALIA; NATIONAL
REDRESS SCHEME) PUBLIC INTEREST WORKING CAPITAL TRUST,
GLOBAL HEAD OFFICE: LEVEL 29, OLAYA TOWERS TOWER B, INTERSECTION
OF OLAYA STREET & MOHAMMED BIN ABDUL-AZIZ STREET, RIYADH 11523.
KINGDOM OF SAUDI ARABIA,
Address for Service; Unit 3/ 11 Harvey Street, Nailsworth, SA 5083

Email: amg@betterworldfuturefund.org

Proposed Tenth Defendant.

TO: ANTHONY LEONARD DICKMAN, ACTING SECRETARY OF THE RESERVE BANK OF AUSTRALIA, ABN 50 008 559 486 (LIQUIDATOR AND MANAGING CONTROLLER APPOINTED) ABN 78 837 313 084

65 Martin Place Sydney, NSW, 2000

Email: secretary@rba.gov.au

Proposed Eleventh Defendant.

These Submissions should be read in conjunction with the Submissions dated 4th July 2025 (“**ANNEXURE 2**”) confirmed by the Joint Plaintiffs by email on the 28th of July 2025 (“**ANNEXURE 1**”) the subject of rejection by registry on the 28th of July 2025

eFile ID	Filing Type	Case Number	Case Title	Filing Status	File Date
521932	Subsequent Filing	S ECI 2025 02829	S ECI 2025 02829 Borkowski, Dorota-Donata vs The County Court of Victoria ABN: 32 790 228 959)	Rejected	28/07/2025 02:07 PM
521877	Subsequent Filing	S ECI 2025 02829	S ECI 2025 02829 Borkowski, Dorota-Donata vs The County Court of Victoria ABN: 32 790 228 959)	Rejected	28/07/2025 12:10 PM
521876	Subsequent Filing	S ECI 2025 02829	S ECI 2025 02829 Borkowski, Dorota-Donata vs The County Court of Victoria ABN: 32 790 228 959)	Rejected	28/07/2025 12:08 PM
521696	Subsequent Filing	S ECI 2025 02829	S ECI 2025 02829 Borkowski, Dorota-Donata vs The County Court of Victoria ABN: 32 790 228 959)	Rejected	25/07/2025 05:34 PM
521694	Subsequent Filing	S ECI 2025 02829	S ECI 2025 02829 Borkowski, Dorota-Donata vs The County Court of Victoria ABN: 32 790 228 959)	Rejected	25/07/2025 05:32 PM
521617	Subsequent Filing	S ECI 2025 02829	S ECI 2025 02829 Borkowski, Dorota-Donata vs The County Court of Victoria ABN: 32 790 228 959)	Rejected	25/07/2025 03:46 PM

The evidence relied upon by the Plaintiffs and the proposed Tenth Defendant/ Intervenor is all the evidence in the Court below and this proceeding as follows:

Plaintiff’s Evidence in the Court below/ The Second Defendant/ The proposed Third Defendant in these Proceedings relied upon by the Second Defendant and the proposed Third Defendant, the Plaintiffs and the proposed Tenth Defendant

1. COUNTY COURT No. CI-23-01883

- 1) Brenda Jones Affidavit of Service dated 6th May 2023 relating to service on the 4th of May 2023 of:
 - a) Originating Writ of Summons dated 27th April 2023
 - b) Statement of Claim dated 26th April 2023
- 2) Minters Affidavit sworn by Samantha Gee-Clark on 22 May 2023, no annexures. Seeking recovery of land.
- 3) Ben Gordon De Silva (Legalstream) Affidavit of Service dated 23rd May 2023 Default Notice dated 2nd August 2022
- 4) Brenda Jones Affidavit of Service dated 6th June 2023 relating to service on 1st June 2023 of Letter from Minter Ellison dated 26th May 2023 annexing Default Judgment for “Recovery of Land” dated 24th May 2023 in:
 - a) default of filing a defence,
 - b) the amount of costs of \$3,926.40

c) Westpac Affidavit sworn by Alex Manoel dated 28th April 2025 annexing Bundle Exhibits of 548 pages marked as AM-1.

(SERVED ONE DAY BEFORE THE SUPREME COURT HEARING SET DOWN FOR 4th JULY 2025)

2. SUPREME COURT: S ECI 2025 02829

1) Shufei Qu Affidavit on behalf of the Proposed Third Defendant sworn 2July2025

(SERVED ONE DAY BEFORE THE SUPREME COURT HEARING SET DOWN FOR 4th JULY 2025)

AND The Evidence relied upon by the Plaintiffs filed in:

3. COUNTY COURT No. CI-23-01883

1) Dorota- Donata Borkowski Affidavit dated 23rd April 2025 annexing exhibits marked as:

“A” Purported Default Judgement of Minter Ellison not executed or acknowledged by Registrar as exercise of discretionary public powers other than filing.

“B” Purported Warrant of Possession of Minter Ellison not executed or acknowledged by Registrar as exercise of discretionary public powers other than filing.

“F” Purported Mortgage of Land Instrument

“G” Better Particulars Request

“H” Certificate of Title

“J” Purported Westpac loan account Statement

2) Dorota- Donata Borkowski Affidavit dated 6th May 2025 annexing exhibits marked as:

“A” Copy of the Default Judgment dated 24 May 2023

“B” Copy of the purported Warrant of Possession dated 26 June 2024

“C” Photographs documenting property damage from enforcement

“D” Correspondence with the Sheriff of Victoria

“E” Extracts from Westpac internal memos, AFCA file

“F” Written notices and formal communications with parties

“G” Personal hearing notes from 30 April 2025 and County Court transcript request

“H” Timeline of Events and FOI confirmation

3) Dorota- Donata Borkowski Affidavit dated 13th May 2025 annexing exhibits marked as:

“I” County Court transcript dated 30 April 2025

“J” Timeline of Title and Enforcement Events (confirming post-eviction eCT registration of interest of Minter Ellison)

4) Dorota- Donata Borkowski Affidavit dated 19th May 2025 annexing exhibits marked as:

“K” Internal Westpac memo extracts confirming enforcement was pre-authorised

“L” Order made by Judge Burchell on 30 April 2025 in CI-23-01883

4. SUPREME COURT: S ECI 2025 02829

- 1) Dorota- Donata Borkowski Affidavit dated 24th June 2025 annexing exhibits marked as:
 - “DDB 1” Search of the Title dated 4th April 2025
 - “DDB 2” Form 5G Originating Process as finalised with Registry and the Originating Summons
 - “DDB 3” Instructions Registry Review Public Officials confined the nature of the Application on 14th May 2025
 - “DDB 4” Instructions Registry Review Public Officials confined the nature of the Application on 19th May 2025
 - “DDB 5” Copy of internal processes of the Second Defendant marked as ANNEXURE 5 by the proposed Fifth Defendant
 - “DDB 6” Notice of Summons and Notice of Indictment dated 23rd June 2025 seeking leave and/or abridge time to file a Defence Statement of Counter Claim/ Indictment Information in the Court below and/or file a Statement of Claim/ Indictment Information seeking leave to amend the Claim
 - “DDB 7” Amended Statement of Claim (*Defence and Counterclaim in Ci-23-01883*) and Cross Claim / Indictment Information dated Monday, 23 June 2025
 - “DDB 8” Decision of the proposed Fifth Defendant dated 7th April 2025
 - “DDB 9” County Court 23June2025 “HARDIMAN LETTER” Borkowski v CCV & Westpac.
 - “DDB 10” Service on the Court registry by email with an Interlocutory application dated 23rd June 2025

- 2) Dorota- Donata Borkowski Affidavit dated 30th June 2025 annexing exhibits marked as:
 - “A” Copy of Unsigned and Unstamped Warrant of Possession solicitor upload pages 9-11
 - “B” Copy of Sherriff’s FOI release claiming MMB was shown Warrant of Possession in person pages 12-13
 - “C” Letter from Registrar of Titles confirming Administrative Hold pages 14-17
 - “D” Internal Westpac Memos confirming missing foundation loan documents pages 18-20
 - “E” LMI Westpac memos conforming LMI activation and payout pages 21-22

- 3) Dorota- Donata Borkowski Affidavit dated 9th July 2025 annexing exhibits marked as:
 - DDB 13” Second release of Internal Westpac Memos from AFCA

- 4) Dorota- Donata Borkowski Affidavit dated 29th June 2025 annexing exhibits marked as:

To be completed on the basis of continuous full disclosure obligations of the Crown and its officers, employees, officials, agents, delegates, contractors , licensees or otherwise related to it,

MATTERS ARISING IN THIS PROCEEDING AND THE PURPORTED COURT BELOW; RULE 53 AS INVALID CREATION OF POWER CONFERRAL

Additional “matters arising in these proceedings” and the Court below, in addition to the Primary Matter identified in the Outline of Submissions of the Plaintiffs dated 4th July 2025 are:

- 1) The failure of the Originating Writ dated 27th April 2023 annexing a Statement of Claim dated 26th April 2023 authored by the proposed Third Defendant acting for the Second Defendant to enliven the jurisdiction of the County Court as a “Competent Court” within the meaning of *the County Court Act 1958 (Vic)*, *the Supreme Court of Victoria Act 1989 (Vic)* and *the Transfer of Land Act 1958 (Vic)* because:
 - a. The Statement of Claim fails at paragraph 1 of the Statement of Claim ¹, the Second Defendant is a Constitutional Corporation within the meaning of s51(xx) of *the Commonwealth of Australia Constitution Act 1900 (AU)* (“The Constitution”).
 - b. The First Defendant ², the Second Defendant, the proposed Third Defendant, the proposed Fifth Defendant and the proposed Ninth Defendant know this to be fact from the correct interpretation of s143 and s144 of *the Evidence Act 1995 (AU)* within the meaning of the Intention of the Australian Parliament.³
 - c. There is no evidence of a Loan Offer or related credit contract in respect to either:
 - i. The alleged First Loan account⁴
 - ii. The alleged Second Loan account⁵
 - d. Mortgage No. AF820083F was not then, never has been, and cannot be in the future, security for any money that the Plaintiffs acknowledge was advanced by the Second Defendant to the Plaintiffs, on an unsecured basis, without any personal guarantees in the amount of AUD\$300,000.00 on the 28th of April 2025 ⁶

Date	Description	Withdrawal	Deposit	Balance
2008				
27 Apr	Opening Balance			0.00
28 Apr	INITIAL DRAWING OF LOAN	300000.00		-300000.00
02 May	REFUND OF STAMP DUTY		2250.00	-297750.00
08 May	DEPOSIT ST ALBANS VIC		759.54	-296990.46
15 May	DEPOSIT ST ALBANS VIC		829.50	-296160.96
22 May	DEPOSIT ST ALBANS VIC		629.50	-295531.46
28 May	INTEREST	1960.46		-297491.92
28 May	Closing Balance			-297491.92

¹ Paragraph 3(a) of the Amended Statement of Claim/ Amended Counter Claim dated 23rd June 2025 served by email and annexed as the Exhibit DDB 7 to the affidavit of the Joint Plaintiffs dated 24th June 2025

² As redefined to be BURCHELL J as trustee for DEPARTMENT OF JUSTICE AND COMMUNITY SAFETY trading as COUNTY COURT OF VICTORIA (ABN 32 790 228 959) as named in FURTHER AMENDED MIXED PROCEEDING ORIGINATING MOTION, SUMMONS AND NOTICE OF INDICTMENT dated 23rd July 2025 lodged for filing 25th July 2025.

³ Paragraph 4(d) of the FURTHER AMENDED MIXED PROCEEDING ORIGINATING MOTION, SUMMONS AND NOTICE OF INDICTMENT dated 23rd July 2025 lodged for filing 25th July 2025 and the AMENDED SUMMONS dated 23rd June 2025 served by email and lodged for filing 28th July 2025 annexed as the Exhibit DDB 6 to the affidavit of the Joint Plaintiffs dated 24th June 2025.

⁴ The Plaintiffs deny the existence of the alleged First Loan Account and the existence of any debt whatsoever

⁵ The Plaintiffs deny the existence of the alleged Second Loan Account and the existence of any debt whatsoever

⁶ Page 68 of the Un-indexed bundle of exhibits marked “AM-1” to the affidavit of Alexander Manoel dated 28th April 2025 filed in the Court below

- e. At the time of filing the alleged originating writ in the court below, The First Defendant, the Second Defendant, the proposed Third Defendant, the proposed Fifth Defendant and the proposed Ninth Defendant knew that Loan Mortgage Insurance (“LMI”) Fees had been paid by the Plaintiffs to the Second Defendant from the AUD\$300,000 on the 30th of April 2025⁷

30 Apr WITHDRAWAL 0000055 ST
ALBANS VIC

21216.05

67639.09

Paying the amount required under the Loan Offer accepted by the Plaintiffs of 19,318.80 plus disbursements.⁸

- f. The alleged Mortgage dated 24th March 2008 cannot exist at law because no consideration passed in relation to the Mortgage⁹

The mortgagor mortgages to the mortgagee the estate and interest specified in the land described subject to the registered encumbrances affecting the land including any created by dealings lodged for registration before the lodging of this mortgage. This mortgage is given for value, including the Lender, as you have requested, giving or continuing credit or not exercising certain rights in relation to that credit or agreeing to do so (even conditionally).

- g. The Mortgage was invalid from the date of alleged registration on the 24th March 2025/ Registered on the 5th May 2008 for the reasons disclosed above and as a result:

- i. the Standard “You and Your Loan” Standard booklet of conditions¹⁰ dated 2007 prior to the findings of the Hayne Royal Commission into the Financial Services Sector published on the 1st March 2019 and subsequent Legislation enacted by the Australian Parliament cannot be held to apply to the unsecured loan advance AND there is no evidence that this booklet of provisions was disclosed at any time to the Plaintiffs.
- ii. Memorandum of Common Provisions¹¹ registered 6th October 1999 prior to the findings of the Hayne Royal Commission into the Financial Services Sector published on the 1st March 2019 and subsequent Legislation enacted by the Australian Parliament cannot be held to apply to the unsecured loan advance AND there is no evidence that this booklet of provisions was disclosed at any time to the Plaintiffs.

- h. The burden of proof in matters of issuing Constitutional Writs of Prohibition/ Mandamus/ Certiorari/ Habeus Corpus/ Quo Warranto and/or. Orders in the nature of

⁷ Page 69 of the Un-indexed bundle of exhibits marked “AM-1” to the affidavit of Alexander Manoel dated 28th April 2025 filed in the Court below

⁸ The Plaintiffs have attempted to obtain further and better particulars see Exhibit “G” of the affidavit of the Plaintiffs dated 23rd April 2025 including the relevant settlement statement at the transfer of title to the Plaintiff’s from the previous owners under the contract note shown as Annexure to the Outline of Submissions of the Plaintiffs dated 4th July 2025 served in these proceedings.

Page 7 of the Un-indexed bundle of exhibits marked “AM-1” to the affidavit of Alexander Manoel dated 28th April 2025 filed in the Court below

⁹ Page 47 of the Un-indexed bundle of exhibits marked “AM-1” to the affidavit of Alexander Manoel dated 28th April 2025 filed in the Court below

¹⁰ Page 17-46 of the Un-indexed bundle of exhibits marked “AM-1” to the affidavit of Alexander Manoel dated 28th April 2025 filed in the Court below

¹¹ Page 48-65 of the Un-indexed bundle of exhibits marked “AM-1” to the affidavit of Alexander Manoel dated 28th April 2025 filed in the Court below

Prohibition/ Mandamus/ Certiorari/ Habeus Corpus/ Quo Warranto is a burden on the Decision maker NOT the Applicant for Judicial Review.

- i. The proposed Third Defendant applied for orders for Recovery of Possession of Land in the Court below and did not name the power invoked to grant that proposed order¹² because that Court does not have power to hear proceedings under the Transfer of Land Act 1958 (VIC) which in respect to Orders of Possession by the Mortgagee is the exclusive Domain of the Supreme Court of Victoria under Division 4 of the Supreme Court of Victoria Act 1989 (Vic)

AND THE PLAINTIFF CLAIMS AGAINST THE DEFENDANTS:

A. Possession of the Land.

B. Costs.

DATED: 26 April 2023

MinterEllison
Solicitors for the plaintiff

- j. The proposed Third Defendant did NOT seek Judgment Debt because there was no enforceable Debt even though it was pleaded¹³:

Loan Accounts

- 5. On or about 24 March 2008, the plaintiff advanced to the defendant the sum of \$300,000.00 pursuant to Loan Account No. 037149390747 (**First Loan Account**).
- 6. The First Loan Account was subsequently split as follows:
 - (a) a portion of the debt was transferred to Loan Account No. 037186655046, which loan account was a non-interest bearing account (**Second Loan Account**); and
 - (b) the balance debt remained in the First Loan Account, with the terms and conditions of that account unchanged.(together referred to as the **Loan Accounts**).
- 7. It was a term of the Loan Accounts that the defendants would make repayments of moneys owing on the Loan Accounts on a monthly basis.

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4 of 7

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- 8. The defendants were on 2 August 2022 in arrears of moneys owing under the First Loan Account in the sum of \$33,892.32 and were therefore in default under the First Loan Account and under the Mortgage.

¹² Page 9 of the Brenda Jones Affidavit of Service dated 6th May 2023 relating to service 04.05.2023

¹³ Page 7 and 8 of the Brenda Jones Affidavit of Service dated 6th May 2023 relating to service 04.05.2023

9. On or about 2 August 2022 the plaintiff served upon the defendants separately, a combined notice pursuant to section 76 of the *Transfer of Land Act 1958* (VIC) and section 88 of the *National Credit Code 2010* (Cth) requiring the defendants to pay the arrears in the sum of \$33,892.32 owing under the First Loan Account and under the Mortgage and specifying that:

- (a) upon failure to rectify the default, all amounts owing under the First Loan Account and under the Mortgage would be immediately due and payable; and
- (b) if the default was not rectified within 31 days the plaintiff would take possession of and sell the Land.

10. The defendants were on 1 December 2022, in arrears of moneys owing under the Second Loan Account in the sum of \$2,096.34 and were therefore in default under the Second Loan Account and under the Mortgage.

11. On or about 1 December 2022 the plaintiff served upon the defendants separately, a combined notice pursuant to section 76 of the *Transfer of Land Act 1958* (VIC) and section 88 of the *National Credit Code 2010* (Cth) requiring the defendants to pay the arrears in the sum of \$2,096.34 owing under the Second Loan Account and under the Mortgage and specifying that:

- (a) upon failure to rectify the default, all amounts owing under the Second Loan Account and under the Mortgage would be immediately due and payable; and
- (b) if the default was not rectified within 31 days the plaintiff would take possession of and sell the Land.

12. The defendants, notwithstanding the elapse of 31 days since service of the combined notices, have not paid the arrears and remain in default under the Loan Accounts, under the Mortgage, and in possession of the Land.

k. No Orders for Judgment were made by the court below.

l. No orders of any kind were made by any person exercising the power conferred (quasi- Judicial OR Judicial) save as to acknowledgement of filing, under the County Court Act 1958 (AU) ¹⁴

FILED: 27 April 2023



Registrar

¹⁴ Page 5 of the Brenda Jones Affidavit of Service dated 6th May 2023 relating to service 04.05.2023

AND ¹⁵

Judgment in default of Appearance

was filed in the County Court in this proceeding under Part 2 of Order 28 of these Rules on 24-05-2023 15:50

CASE DETAILS

Case Number: CI-23-01883
Case Description: WESTPAC BANKING CORPORATION vs BORKOWSKI & ANOR
Court Location: Melbourne
Case Type: Commercial Div-Bank & Fin List
Cause of Action: Banking and Finance Case
Your Reference: 1443821



The attached document has been filed in the County Court of Victoria.
This document must be retained as proof of filing of the attached document – refer to Rules 28.14 and 40.08.

- m. Rule 28.11(2) does not confer power on proposed Third Defendant to exercise the powers of the County Court Act 1958 (Vic) which can only be authorised by the Parliament of Victoria Legislature AND cannot be authorised by **Parliamentary Counsel** in the shoes of the Legislature.

28.11 Registrar may accept a document for filing

- (1) If satisfied that a copy of a document sought to be filed electronically in the Court by an authorised provider complies with the requirements of the Rules, the Registrar must—
- (a) retain a copy of the document; and
 - (b) record the date and time the document was received and entered in CITEC Confirm; and
 - (c) in the case of a document which, if filed personally would be required to be sealed and dated by the Registrar—
 - (i) authorise the affixing by CITEC Confirm of an electronic watermark or electronic stamp containing a facsimile of the seal of the Court to the document; or

¹⁵ Page Brenda Jones Affidavit of Service dated 6th June 2023 relating to service on 1st June 2023

- (ii) authorise the production of a filing confirmation notice by electronic communication to the authorised provider.

(2) A filing confirmation notice shall be in Form 28 and shall contain a facsimile of the seal of the Court.

Authorised by the Chief Parliamentary Counsel

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- n. Similarly Rule 53 in its entirety cannot exist at law because it was not authorised by the Victorian Parliament Legislature having been properly debated by the Houses of Australian Parliament under the Constitution relating to Separation of Powers:

Order 53—Summary proceeding for recovery of land

53.01 Application of Order

- (1) Subject to paragraph (2), this Order applies where the plaintiff claims the recovery of land which is occupied solely by a person or persons who entered into occupation or, having been a licensee or licensees, remained in occupation without the plaintiff's licence or consent or that of any predecessor in title of the plaintiff.
- (2) This Order does not apply where the land is occupied by a mortgagor or successor in title and the claim is made by the mortgagee or successor in title.

53.02 Originating process

- (1) The plaintiff may make the claim in a proceeding in accordance with this Order.
- (2) The proceeding shall be commenced by originating motion.
- (3) The originating motion shall be in Form 5E.

53.03 Who to be defendant

- (1) Each person in occupation of the land whose name the plaintiff knows shall be a defendant.
- (2) If the plaintiff does not know the name of any person in occupation the proceeding may be commenced without naming any person as defendant.

53.04 Affidavit in support

At the time the proceeding is commenced an affidavit shall be filed stating—

- (a) the interest of the plaintiff in the land;
- (b) the circumstances in which the land has been occupied without licence or consent and in which the claim for recovery of the land arises; and
- (c) that the plaintiff does not know the name of any person occupying the land who is not a defendant.

53.05 Service

- (1) The originating motion and a copy of the affidavit and of any exhibit referred to therein shall be served—
 - (a) on each defendant, if any; and

- (b) on any person occupying the land who is not a defendant.
- (2) Service on a defendant shall be personal.
- (3) Service on a person occupying the land who is not a defendant shall be effected—
 - (a) by—
 - (i) affixing a copy of the originating motion and a copy of the affidavit to some conspicuous part of the land; and
 - (ii) if practicable, leaving in the letter box or other receptacle for mail on the land a copy of the originating motion and a copy of the affidavit enclosed in a sealed envelope addressed to "The Occupiers"; or
 - (b) in such other manner as the Court directs.

53.06 Occupier made a party

The Court may order that a person occupying the land who is not a defendant be made defendant or added as a defendant, as the case requires, and that the person file an appearance.

53.07 Judgment for possession

(1) In a proceeding under this Order no judgment for possession shall be given except by a Judge.

- (2) The judgment shall be in Form 53A.

53.08 Warrant of possession

- (1) A warrant of possession to enforce a judgment for possession in a proceeding under this Order shall not be issued without the leave of a Judge where three months have elapsed since the judgment took effect.
- (2) An application for leave under paragraph (1) may be made without notice to any person, unless the Court otherwise orders.
- (3) A warrant of possession to enforce a judgment for possession in a proceeding under this Order shall be in Form 53B.

- o. Rules of the Court are defined in *the County Court Act 1958 (Vic)*:

Rules means the Rules of Court made by the judges of the court whether under the powers conferred by this Act or otherwise;

It is Invalid, Unlawful, Impossible and Ouster Office (Quo Warranto) for Rules of the Court to be published under the authority of Parliamentary Counsel without amendment and ratification of *the County Court Act 1958 (Vic)* under due Parliamentary process in accordance with the provisions of the Constitution and the Charter of the Commonwealth 2013 (Regina) relating to Separation of Powers and Rule of Law. Without Freedom of Information Compliance there can be no exercise of Freedom of Expression under the Charter of the Commonwealth

V.

FREEDOM OF EXPRESSION

We are committed to peaceful, open dialogue and the free flow of information, including through a free and responsible media, and to enhancing democratic traditions and strengthening democratic processes.

VI.

SEPARATION OF POWERS

We recognise the importance of maintaining the integrity of the roles of the Legislature, Executive and Judiciary. These are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and adherence to good governance.

VII.

RULE OF LAW

We believe in the rule of law as an essential protection for the people of the Commonwealth and as an assurance of limited and accountable government. In particular we support an independent, impartial, honest and competent judiciary and recognise that an independent, effective and competent legal system is integral to upholding the rule of law, engendering public confidence and dispensing justice.

VIII.

GOOD GOVERNANCE

We reiterate our commitment to promote good governance through the rule of law, to ensure transparency and accountability and to root out, both at national and international levels, systemic and systematic corruption.

The Judiciary cannot enact own source of power being Treason against the laws of the King.

- p. For the same reasons the commentary attributable by the Australian Monarchists League to the Governor General dated 24th June 2025 (“ANNEXURE 3”) Invalid, Unlawful, Impossible and Ouster Office (Quo Warranto) as an enactment changing the Constitution in the absence of a Referendum under s128 of the Constitution.

*Her Excellency the Honourable Sam Mostyn AC
Governor-General of Australia
Government House
Yarralumla ACT 2600*

Your Excellency

We write with deep concern regarding remarks attributed to you in The Sydney Morning Herald of 24 June 2025, in which you are reported as stating:

“But the King doesn’t direct me and I don’t seek his advice. It’s the prime minister and the ministry I take my counsel from, and that I work with.”

Such a statement, if accurately reported, appears to depart from the conventions that have long guided the office of Governor-General. While it is

understood that the Governor-General acts on ministerial advice in most matters, the office is held as the representative of the Sovereign, not as a delegate of the Prime Minister. The distinction is not merely symbolic; it is foundational to the integrity of our constitutional system.

We are particularly concerned that the phrasing of your remarks may be interpreted as dismissive of the King's role and suggestive of an overly close alignment with the Prime Minister and his government.

The Governor-General must remain above politics and be seen to uphold the impartiality and dignity of the Crown. To imply that counsel is sought exclusively from the Prime Minister and ministry risks undermining public confidence in the independence of the high office to which the King has appointed you.

If Your Excellency does not wish to uphold the duties, conventions, and constitutional responsibilities of the Governor-General as the King's representative in Australia, we respectfully submit that resignation would be the appropriate course.

Yours sincerely,



OVERARCHING PURPOSE COMPLIANCE¹⁶

- q. *The purpose of this outline of submissions is to identify the nature of the controversies as "All of the Matters arising in the Proceedings" between the Plaintiffs and the current defendants and the proposed 3rd-8th Defendants¹⁷ to assist the Judicial Officer presiding in this proceeding with some relevant law and evidence to make orders in Prohibition/ Injunctive Relief as a matter of urgency in respect to unlawful eviction and possession of Land, and given more time such further:*
- 1. Constitutional Writs of Prohibition/ Mandamus/ Certiorari/ Habeus Corpus/ Quo Warranto and/or.*
 - 2. Orders in the nature of Prohibition/ Mandamus/ Certiorari/ Habeus Corpus/ Quo Warranto.*

¹⁶ Page 2 of the Outline of Submissions of the Plaintiffs dated 4th July 2025

¹⁷ **DDB 7** Amended Defence, Counterclaim and Cross Claim dated 23rd June 2025 AND **DDB 6** Form 46A Summons and Notice of Indictment DECISION MAKER COUNTY COURT, and ors 23.06.2025

- r. **Chief Justice Robert French AC** then of the High Court of Australia sets out in his paper on Public Law - An Australian Perspective ¹⁸

“The High Court is the final appellate court for all Australian jurisdictions”¹⁹

“The separation of legislative and executive from judicial powers in Australia is sharp. In a leading decision, the Boilermakers' Case, which affirmed that separation, the Privy Council said that:

In a federal system the absolute independence of the judiciary is the bulwark of the constitution against encroachment whether by the legislature or by the executive.²⁰

“The separation of legislative and executive power however is qualified, in Australia, by the doctrine of responsible government under which Ministers of State are required to be Members of Parliament, are accountable to the Parliament and may effectively be removed from office by a vote of no confidence passed by the Parliament. It is also qualified by the common practice of delegating legislative power to the Executive in relation to the making of regulations and other legislative instruments. Nevertheless, the general separation of powers subsists. The High Court said in 1996:

The Constitution reflects the broad principle that, subject to the Westminster system of responsible government, the powers in each category – whose character is determined according to traditional British conceptions – are vested in and are to be exercised by separate organs of government. The functions of government are not separated because the powers of one branch could not be exercised effectively by the repository of the powers of another branch. To the contrary, the separation of functions is designed to provide checks and balances on the exercise of power by the respective organs of government in which the powers are reposed²¹

THE EXECUTIVE POWER OF THE COMMONWEALTH

- s. *Section 61 of the Commonwealth Constitution provides:*

The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth.

As the Governor-General appoints Ministers of the Crown this means that executive power can be exercised by Ministers and other officials acting on their behalf.

Generally the executive power is exercised pursuant to statutory authority. There has, however, been a debate about the extent to which s 61 confers power to act without statutory authority.

¹⁸ Public Law Public Law - An Australian Perspective (Scottish Public Law Group, 6 July 2012, Edinburgh);

¹⁹ Constitution, s 71.

²⁰ Attorney-General for the Commonwealth v The Queen; Ex parte Boilermakers' Society of Australia (1957) 95 CLR 529, 540.

²¹ Wilson v Minister for Aboriginal and Torres Strait Islander Affairs (1996) 189 CLR 1, 10-11.

There is as yet no complete account of the scope and content of the executive power. It includes the following elements:

- *powers necessary or incidental to the execution or maintenance of a law of the Commonwealth;*²²
- *powers conferred by statute;*²³
- *powers defined by reference to such of the prerogatives of the Crown as are properly attributable to the Commonwealth;*²⁴
- *powers attributable to the capacities which the Commonwealth has in common with legal persons;*²⁵
- *the inherent authority which derives from the character and status of the Commonwealth as a national government.*²⁶

*The executive power has had only limited consideration in the High Court. There have been two decisions made on it recently, one in 2009 – Pape v Federal Commissioner of Taxation²⁷ and Williams v Commonwealth²⁸ delivered on 20 June 2012.*²⁹

CONTINUOUS FULL DISCLOSURE MODEL LITIGANT OBLIGATIONS AND THE PUBLIC INTEREST

- t. In its 1979 report on the then draft Commonwealth Freedom of Information Bill, the Australian Senate Committee on Constitutional and Legal Affairs described the public interest as, ‘...a convenient and useful concept for aggregating any number of interests that may bear upon a disputed question that is of general – as opposed to merely private – concern’.³⁰

The Committee also said that the:

²² R v Kidman (1915) 20 CLR 425, 440-441 (Isaacs J); *Re Residential Tenancies Tribunal (NSW); Ex parte Defence Housing Authority* (1997) 190 CLR 410, 464 (Gummow J).

²³ *Victorian Stevedoring and General Contracting Co Pty Ltd and Meakes v Dignan* (1931) 46 CLR 73, 101 (Dixon J); *Davis v Commonwealth* (1988) 166 CLR 79, 108 (Brennan J); *Pape v Federal Commissioner of Taxation* (2009) 238 CLR 1, 55 [111] (French CJ), 121 [343]-3[44] (Hayne and Kiefel JJ).

²⁴ *Farey v Burvett* (1916) 21 CLR 433, 452 (Isaacs J); *Barton v Commonwealth* (1974) 131 CLR 477, 498 (Mason J), 505 (Jacobs J); *Davis v Commonwealth* (1988) 166 CLR 79, 93-94 (Mason CJ, Deane and Gaudron JJ), 108 (Brennan J).

²⁵ *New South Wales v Bardolph* (1934) 52 CLR 455, 509 (Dixon J); *Davis v Commonwealth* (1988) 166 CLR 79, 108 (Brennan J); *Pape v Federal Commissioner of Taxation* (2009) 238 CLR 1, 60 [126] (French CJ). As noted in *In re KL Tractors Ltd* (1961) 106 CLR 318, 335 (Dixon CJ, McTiernan and Kitto JJ): ‘The word “powers” here really means ‘capacity’, for we are dealing with the ‘capacity’ or a ‘faculty’ of the Crown in right of the Commonwealth.’

²⁶ *Victoria v Commonwealth and Hayden* (1975) 134 CLR 338, 397 (Mason J); *R v Duncan; Ex parte Australian Iron and Steel Pty Ltd* (1983) 158 CLR 535, 560 (Mason J); *Davis v Commonwealth* (1988) 166 CLR 79, 93-94 (Mason CJ, Deane and Gaudron JJ), 110-111 (Crennan J); *R v Hughes* (2000) 202 CLR 535, 554-555 [38] (Gleeson CJ, Gaudron, McHugh, Gummow, Hayne and Callinan JJ); *Pape v Federal Commissioner of Taxation* (2009) 238 CLR 1, 63 [133] (French CJ), 87-88 [228], 91-92 [242] (Gummow, Crennan and Bell JJ), 116 [328]-[329] (Hayne and Kiefel JJ).

²⁷ (2009) 238 CLR 1.

²⁸ (2012) 86 ALJR 713; 288 ALR 410.

²⁹ THE PUBLIC INTEREST WE KNOW IT’S IMPORTANT, BUT DO WE KNOW WHAT IT MEANS Chris Wheeler AIAL FORUM No. 48

³⁰ Attempts have been made in some Acts to define public interest, eg, s.24 Surveillance Devices Act 1998 (WA) states that the public interest ‘includes the interests of national security, public safety, the economic wellbeing of Australia, the protection of public health and morals and the protection of the rights and freedoms of citizens.’ In some Acts there are also definitions of public interest information, eg, SA Whistleblowers Protection Act 1993. @ 5.25

... 'public interest' is a phrase that does not need to be, indeed could not usefully, be defined... . Yet it is a useful concept because it provides a balancing test by which any number of relevant interests may be weighed one against another. ...the relevant public interest factors may vary from case to case – or in the oft quoted dictum of Lord Hailsham of Marylebone 'the categories of the public interest are not closed'.³¹

The meaning of the term has been looked at by the Australian courts in various contexts. In one case the Supreme Court of Victoria said:

*The public interest is a term embracing matters, among others, of standards of human conduct and of the functioning of government and government instrumentalities tacitly accepted and acknowledged to be for the good order of society and for the well being of its members. The interest is therefore the interest of the public as distinct from the interest of an individual or individuals*³²

In another case the Federal Court of Australia said:

9. *The expression 'in the public interest' directs attention to that conclusion or determination which best serves the advancement of the interest or welfare of the public, society or the nation and its content will depend on each particular set of circumstances...*
10. *The expression 'the public interest' is often used in the sense of a consideration to be balanced against private interests or in contradistinction to the notion of individual interest. It is sometimes used as a sole criterion that is required to be taken into account as the basis for making a determination. In other instances, it appears in the form of a list of considerations to be taken into account as factors for evaluation when making a determination...*
11. *The indeterminate nature of the concept of 'the public interest' means that the relevant aspects or facets of the public interest must be sought by reference to the instrument that prescribes the public interest as a criterion for making a determination*³³

The dilemma faced by those trying to define the public interest was summed up in another case in the following few words:

The public interest is a concept of wide meaning and not readily limited by precise boundaries.

³¹ @ 5.28

³² Appeal Division of the Supreme Court of Victoria in *Director of Public Prosecutions v Smith* [1991] 1 VR 63

(at 75), per Kaye, Fullagar and Ormiston JJ.

³³ Full Court of the Federal Court of Australia in *McKinnon v Secretary, Department of Treasury* [2005] FCA FC 142 per Tamberlin J (at 245).

*Opinions have differed, do differ and doubtless always will differ as to what is or is not in the public interest.*³⁴

The term was referred to in the following more colourful, but pragmatic, terms by an American commentator:

*Plainly the 'public interest' phrase is one of those atmospheric commands whose content is as rich and variable as the legal imagination can make it according to the circumstances*³⁵

FREEDOM OF INFORMATION³⁶

- u. Without information, people cannot adequately exercise their rights and responsibilities as citizens or make informed choices.³⁷ Government information is a national resource. Its availability and dissemination are important for the economic and social well-being of society generally.

*Information is the currency that we all require to participate in the life and governance of our society. The greater the access we have to information, the greater will be the responsiveness of our governments to community needs, wants, ideas and creativity. Alternatively, the greater the restrictions that are placed on access, the greater the feeling of 'powerlessness' and alienation.*³⁸

Information enhances the accountability of government. It ensures that members of Parliament are aware of the activities of the Executive, which is especially important in light of the imbalance in power between them.⁹ ³⁹Information is an important defence against corruption.

*Freedom of information is but one important weapon in exposing potentially corrupt activity.*⁴⁰

Access to one's own personal information not only promotes government accountability but also enables individuals to protect their privacy.⁴¹ Some commentators regard such access as particularly important in light of developments in information technology,

³⁴ *Right to Life Association (NSW) Inc v Secretary, Department of Human Services and Health* (1995) 128 ALR 238 per Lockhart J.

³⁵ Glen O Robinson, 'The Federal Communications Act: An Essay on Origins and Regulatory Purpose', in *A Legislative History of the Communications Act of 1934* 3, 15-16 (Max D Paglan ed., 1989) (at 16).

³⁶ Open government: a review of the federal Freedom of Information Act (1982) ALRC 77 31 December 1995

³⁷ For detailed discussion of the importance of information in enabling Australians to participate fully in society and to access services and entitlements and the need to increase the community's use of information see *House of Representatives Standing Committee for Long Term Strategies Australia as an information society: grasping new paradigms* AGPS Canberra 1991.

³⁸ *Cth Ombudsman Annual Report 1994-95* AGPS Canberra 1995, 33.

³⁹ Opposition members usually use the FOI Act but there is no reason in theory why a government backbencher may not also need to rely on the Act to obtain information. L Tsaknis claims that the new managerialism in the public sector demands increased scrutiny for which access to information is essential: 'Commonwealth secrecy provisions: time for reform' (1994) 18 *Criminal Law Journal* 254.

⁴⁰ L Stirling Submission 3.

⁴¹ See further at para 4.10.

which have significantly increased the volume of information government can collect and the ease with which it can be transferred and manipulated.

THE DEFENDANTS AS TRIBUNALS DETERMINING THIRD PARTY RIGHTS

- v. ALL The Defendants and proposed Defendants fall into the definition of a tribunal. There are many variations to the theme of definition of a tribunal however the central theme is best described in *the Administrative Law Act 1978* (Vic) which sets out;

tribunal means a person or body of persons who, in arriving at the decision in question, is or are by law required, whether by express direction or not, to act in a judicial manner to the extent of observing one or more of the rules of natural justice, but does not include—

(a) a court of law or a tribunal constituted or presided over by a Judge of the Supreme Court; or

(b) a Royal Commission, Board of Inquiry or Formal Review within the meaning of the *Inquiries Act 2014*

decision means a decision operating in law to determine a question affecting the rights of any person or to grant, deny, terminate, suspend or alter a privilege or licence and includes a refusal or failure to perform a duty or to exercise a power to make such a decision;

Under *the Administrative Decisions Judicial Review Act 1975* (Cth)

decision to which this Act applies means a decision of an administrative character made, proposed to be made, or required to be made (whether in the exercise of a discretion or not and whether before or after the commencement of this definition):

(a) under an enactment referred to in paragraph (a), (b), (c) or (d) of the definition of enactment; or

(b) by a Commonwealth authority or an officer of the Commonwealth under an enactment referred to in paragraph (ca) or (cb) of the definition of enactment; other than:

(c) a decision by the Governor-General; or

(d) a decision included in any of the classes of decisions set out in Schedule 1.

duty includes a duty imposed on a person in his or her capacity as a official of the Crown.

Tribunal; a special court or group of people who are officially chosen, especially by the government, to examine (legal) problems of a particular type.

JUDICIAL REVIEW IS A COMMON LAW RIGHT ⁴²

- w. The Second and proposed Third Defendants suggest Judicial Review is amenable to Summary Judgment in circumstances where the Right of Judicial Review of the exercise

⁴² Inherent to the source of power for the enacting of the Constitution by the Queen

of discretionary public powers is a Common Law Right.⁴³

FIDUCIARY DUTY NOTICE; RE SELF REGULATION IS MIS-REGULATION ⁴⁴

- x. During the Second reading of *the Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Bill 2012, Courts Legislation Amendment (Judicial Complaints) Bill 2012* the Fifth Defendant lied and said:

Australia is very well served by its judiciary. Removal from judicial office for misconduct has been very rare. There were a few colourful instances of removal of judges of superior courts in the 19th century but, since the adoption of our Constitution in 1900, no federal judges have been removed. In fact, only one judge has been dismissed from a superior court—that is, from a state supreme court—and that was Angelo Vasta. He was dismissed from the Supreme Court of Queensland in 1989.

The constitutional provision to which the Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Bill 2012 and the Courts Judicial Misbehaviour and Legislation Amendment (Judicial Complaints) Bill 2012 relate is section 72 of the Australian Constitution. There are no detailed provisions in the Constitution which deal directly with the discipline of judges, but section 72 says:

The Justices of the High Court and of the other courts created by the Parliament:

- (i) shall be appointed by the Governor-General in Council;*
- (ii) shall not be removed except by the Governor-General in Council, on an address from both Houses of the Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity;*
- (iii) shall receive such remuneration as the Parliament may fix; but the remuneration shall not be diminished during their continuance in office.*

Originally, the justices of the High Court and of other federal courts were appointed for life. But, as a result of a constitutional amendment in 1977, the last occasion we had a successful referendum in this country, a maximum age of 70 has been fixed for federal judges.

The Constitution having indicated that it is a matter for this parliament to remove judges from office for misconduct, we have not, up until now, had any standing arrangement for receiving, investigating or determining complaints of misconduct, corruption or similar conduct on the part of federal judicial officers.

⁴³ Judicial Review of the Exercise of Discretionary Public Power An address given on 27 April 2017 to the Queensland Chapter of the Australian Institute of Administrative Law (“ANNEXURE 4”)

⁴⁴ AMG 71; “Self-Regulation of Judicial Mis-Conduct could be mis regulation” D’Amato, Anthony, “Self-Regulation of Judicial Misconduct Could Be Mis-Regulation” (2010). Faculty Working Papers. Paper 69. <http://scholarlycommons.law.northwestern.edu/facultyworkingpapers/69>

AMG 72; “The Ultimate Injustice When a Court Mistakes the Facts” Anthony D’Amato Northwestern University School of Law 11 Cardozo Law Review 1313 (1990) PUBLIC LAW AND LEGAL THEORY RESEARCH PAPER SERIES • NO. 10–31

There are a range of mechanisms that might be adopted. People wishing to make a complaint could write to the federal Attorney-General, to members of parliament, to the chief judge or chief magistrate of a particular court; they could raise it in the media or with non-governmental organisations—but there is no clear system provided for the handling of such complaints. What these two bills seek to do is regularise a system, a transparent system at that, for handling complaints against the judiciary.

A couple of events might be said to have provided the impetus for this legislation. The first worth mentioning is when complaints of misconduct were made against Justice Lionel Murphy as a judge of the High Court of Australia. I do not think I need to go through the tortuous history of the multiple parliamentary inquiries—both Senate and other—or the multiple trials that took place in New South Wales in 1985, but it is worth mentioning that, ultimately, what was an ad hoc parliamentary commission of inquiry was established by special legislation to investigate the 42 allegations that were made against Justice Murphy. It was a commission that comprised three retired judges.

In July 1986, the commission determined that 28 of the allegations against Justice Murphy were completely lacking in substance but decided that it would go on to investigate the remaining 14 allegations. Then, tragically, it was discovered that Justice Murphy was in fact dying of incurable cancer. He returned to the High Court to sit for one week.

The commission halted its work, and subsequently the statute under which that parliamentary commission of inquiry had been established was repealed. Justice Murphy died in October 1986. We will never know how the commission would have gone on to deal with those allegations. However, the ad hoc nature of the inquiry was criticised, and that can be seen to have provided some of the impetus here to establish a regular system, one that is known in advance—not one that is devised in the heat of some political controversy but, rather, an established system, so people know what will happen when a complaint is made against a federal judge and needs to be investigated.

Equally, the events surrounding the removal of then Justice Angelo Vasta from the Supreme Court of Queensland, because of the manner in which they unfolded, demonstrate the usefulness of having an established procedure. Angelo Vasta was removed under a constitutional provision similar to that which is found in the federal Constitution, following the vote of the single house of the Queensland parliament.

That vote was taken after a debate, after hearing from Angelo Vasta in his own defence and after the report of a commission of inquiry established by the Queensland government and headed up by a former Chief Justice of the High Court of Australia, the Rt Hon. Sir Harry Gibbs. The inquiry was lengthy, going for three months, with a large volume of evidence. It looked at a whole range of allegations that had come to light during the Fitzgerald inquiry, partly as a result of the diaries of Sir Terence Lewis, the then Queensland police commissioner, who was one of the primary focuses of the Fitzgerald inquiry.

The commission of inquiry chaired by Sir Harry Gibbs looked at those allegations, which included the involvement of Angelo Vasta in a family trust company, a toilet paper manufacturing company. There was evidence given about a mysterious Sicilian benefactor, a very generous brother-in-law, a beachfront Gold Coast unit, overseas trips and a range of luxurious German cars. The inquiry went on to find that Angelo Vasta, along with Cosco Holdings Pty Ltd, the makers of the toilet paper, had misled the tax office—to their respective and

sometimes mutual advantage—and that Justice Vasta was an unreliable witness.

The inquiry chaired by Sir Harry Gibbs ultimately found—and I stress that these were not allegations of misconduct in relation to decisions that Justice Vasta had made in court; rather, they were allegations of misconduct more generally—that Angelo Vasta had committed an act of misconduct, and the state parliament then voted in favour of his removal, on 7 June 1989.

Again, as was the case when Justice Murphy was the subject of complaints never resolved, after the dismissal of Angelo Vasta from the Supreme Court of Queensland there followed a range of criticisms of the procedures that had been followed. They focused on the role of the parliament and the role of the commission of inquiry. There was criticism of the Queensland government's failure to pay the legal costs that Angelo Vasta had incurred in defending himself and his office. But the focus was on the absence of a procedure that people knew in advance would be followed in the event of a judge being the subject of a complaint of misconduct that might lead to their removal from court.

The two bills that are before the House build on work done by the Hon. Duncan Kerr as a private member. When he was member for Denison in February 2010 he brought before this House a private member's bill called the Parliamentary (Judicial Misbehaviour or Incapacity) Commission Bill 2010. It was not ultimately proceeded with before the last election but was something Duncan Kerr had pursued with tremendous vigour because he saw the need to legislate in this area, to provide, as I have indicated, a clear procedure which was going to be available in the event—and it is acknowledged by everybody participating in this debate and it is acknowledged by people who have publicly commented that we do not expect these provisions to be invoked at all frequently.

Indeed, the history of a near complete lack of judicial misbehaviour leading to dismissal would suggest that these provisions are likely to be used extremely infrequently.

Nevertheless, it is helpful that there be a clear framework in place.

This parliamentary commission bill is going to provide for the establishment, as needed, of a commission. It will not be a standing commission; it will be a commission established following the making of specified allegations of misbehaviour or incapacity of a particular Commonwealth judicial officer. It would be available to inquire into the conduct of any federal judicial officer, including a justice of the High Court of Australia. It would comprise the three members appointed by force of the bill on the resolution of the houses of parliament.

It is intended that the process to be followed by this commission would, on every occasion, be as bipartisan as possible. Two members, including the presiding member, would be appointed on the nomination of the Prime Minister and one would be appointed on the nomination of the Leader of the Opposition in the House of Representatives, and at least one member will need to be either a former Commonwealth judicial officer or a current or former judge of a supreme court of a state or territory. No current Commonwealth judicial officer would be eligible to be a member of the commission.

The commission would investigate the allegation, or allegations, and report to the parliament its opinion of whether or not there is evidence that would let the houses of parliament conclude that the alleged misbehaviour or incapacity is proved. It needs to be stressed that, under the bill, the role of the commission would be to inquire into allegations and gather information and evidence so that, in the very rare event that the

parliament needs to make a decision, it can be well-informed in its consideration of the removal of a judge from office.

The processes to be followed are set out in the Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Bill 2012. The commission would have investigative and inquiry powers, including the power to summon witnesses, take evidence on oath, conduct hearings in private, require the production of documents and issue search warrants. The commission will provide a report to the houses of parliament through each of the parliamentary providing offices.

The accompanying bill, the Courts Legislation Amendment (Judicial Complaints) Bill, will support the implementation of a largely non-statutory reform framework to assist heads of jurisdiction, other than the High Court, to manage complaints about judicial conduct which are referred to them. Again, it is going to be a transparent process. Australians will be able to see how complaints are to be handled and how, if there is any suggestion that a judge needs to be removed, that will be dealt with by this parliament through the means of the appointment of a commission.

I commend both these pieces of legislation to the House and note again the helpful work on which this is based, being the work done by Duncan Kerr as a backbencher in this parliament in 2009 and 2010.

- y. The proposed Fifth Defendant has abdicated office of “Guardian/ Champion of the Public Interest” as a Public Trustee and has failed to establish a Parliamentary Committee as a Standing Committee or otherwise in the last 15 years despite the acknowledgement of the CEOs of Australia as a Commonwealth Entity in successive CHOGM Communiques of 2013, 2018 and 2023 of the bunding nature of the Charter of the Commonwealth
- z. Fiduciary duty as a public official you encompass a range of ethical and legal responsibilities to perform in the best interests of the public you serve. These duties include:
 1. Fiduciary Duty of Loyalty: as a public official you must prioritize the public interest above personal or private interests. You should avoid any conflicts of interest and perform in a manner that benefits the public and upholds trust in public institutions.
 2. Fiduciary Duty of Care: as a public official you are expected to perform your duties with diligence, competence, and prudence. This includes making well-informed decisions based on careful consideration of all relevant information and potential impacts.
 3. Fiduciary Duty of Integrity: as a public official you must conduct yourself with honesty and integrity, avoiding any behaviour that might undermine public confidence in government. This includes refraining from corrupt practices, fraud, and any form of unethical conduct.
 4. Fiduciary Duty of Confidentiality: as a public official you must maintain the confidentiality of sensitive information obtained in the course of your duties. You should not disclose or misuse such information for personal gain or to the detriment of the public interest.
 5. Fiduciary Duty to Perform Within Authority: as a public official you must perform within the scope of your authority as defined by laws, regulations, and organizational

policies. You should not exceed your legal or organizational boundaries.

6. **Fiduciary Duty of Fairness:** as a public official you are obligated to perform fairly and impartially in your interactions with the public and colleagues. This includes ensuring equal treatment and avoiding discrimination or favouritism.
7. **Fiduciary Duty to Uphold the Law:** as a public official you must comply with all applicable laws, regulations, and ethical standards. You should ensure that your actions and decisions are lawful and promote the rule of law.
8. **Fiduciary Duty to be Transparent and Accountable:** as a public official you should be transparent in your actions and decisions, providing clear and accurate information to the public and relevant authorities. You must be accountable for your actions, decisions, and the use of public resources.
9. **Fiduciary Duty to Promote Public Trust:** as a public official you should perform in a manner that enhances public trust in government and public institutions. This includes being responsive to public needs and concerns and demonstrating a commitment to serving the public good.
10. **Fiduciary Duty to Avoid Conflicts of Interest:** as a public official you must avoid any personal, financial, or other interests that could conflict with your official duties. You should disclose any potential conflicts and take appropriate steps to mitigate or eliminate them.
11. **Fiduciary Duty to be Ethical:** as a public official you should adhere to high ethical standards in all aspects of your work. This includes promoting integrity, honesty, and ethical behaviour within your organizations and in your interactions with the public.

These fiduciary duties help you to ensure that as a public official you must perform in a manner that is responsible, ethical, and in the best interests of the public you serve. Breaching fiduciary duties can lead to legal consequences, including financial penalties and the reversal of improper transactions.

As public officials you have 72 hours from service of these submissions to rebut this Fiduciary duty Notice. Your Silence is your acquiescence. Ignorance is not an excuse. It is done in good faith and without ill, will, vexatious or frivolity.

PERSONAL STAKE STANDING IN PUBLIC INTEREST PROCEEDINGS

- aa. Australian Law Reform Commission (“ALRC) Report no 27; Standing in Public Interest Litigation ALRC Report 27 supports the intervention by Mr Garrett as Relator in the Public Interest

6. *Commonwealth Reform.* The kinds of proceedings in which the Commonwealth can reform standing are limited by the need to stay within the confines of the Commonwealth’s constitutional power to legislate, and the desirability of treating two Territories (the Northern Territory and Norfolk Island) as though they were States. Accordingly, the Commission has concluded that the law of standing should be reformed for the following classes of actions in federal courts, Territory courts and State courts exercising federal jurisdiction:

- any proceeding in any court, to the extent that the relief sought in the proceeding is any of the following, namely, a declaration, an injunction or a 'prerogative writ' (certiorari, prohibition, mandamus, habeas corpus or an information of quo warranto), if the relief is sought—
 - in constitutional litigation;
 - in respect of a matter arising under any Commonwealth or Territory statute (other than a Northern Territory or Norfolk Island statute); or
 - against the Commonwealth, a person being sued on behalf of the Commonwealth or an officer of the Commonwealth;
- a proceeding in any court (other than a court applying Northern Territory or Norfolk Island law), to the extent that the relief sought is an injunction or a declaration for which the Commonwealth Attorney-General could sue; and
- a proceeding in any court, seeking relief provided for by Commonwealth or Territory legislation (other than legislation of the Northern Territory or Norfolk Island), where the relief is similar in function to the types of relief just described.

7. *Existing Rules.* The existing rules of standing in public law matters, arranged according to the various forms of relief that can be obtained, may be summarised as follows:

- *Injunctions and declarations.* The plaintiff must either:
 - be an individual, or belong to a class, whose private rights have been interfered with; or
 - show that he or she has suffered special damage or has a 'special interest' in the case (which does not include a 'mere intellectual or emotional concern').

xx / *Standing in Public Interest Litigation*

- *Writ of prohibition* (this is an order from a superior court to an inferior court preventing the inferior court from dealing with a proceeding). Anyone may seek this relief, but the court may refuse in its discretion to grant it. If the applicant for the relief is an 'aggrieved person' (that is, a person whose interests may prejudicially be affected by what is taking place), the court will normally exercise this discretion in the applicant's favour.
- *Writ of certiorari* (this is an order directed to a court which has finished hearing a matter to send the record of the proceedings to the superior court for review). The standing rules for this kind of relief are uncertain but the better view appears to be that anyone can seek this relief. However, only in exceptional circumstances will the court grant the relief to someone who is not a person aggrieved.
- *Writ of mandamus* (this is an order from a court to a public official ordering the public official to exercise a duty or perform a function according to law). Anyone who stands to benefit from the exercise of the power or the performance of the function has standing to apply. If this test is not met, a special interest (variously described as a 'real' interest, a 'sufficient' interest, or a 'legal, pecuniary or special interest') is required.
- *Writ of habeas corpus* (this is an order directing the release of someone who is being kept in custody). Anyone may apply for this, but if the prisoner does not consent to the application, the court will normally require a satisfactory explanation as to why consent is not forthcoming.
- *Information of quo warranto* (this is an order from a court removing someone from a public office). Any person may apply for this.

In addition there are a number of Commonwealth and Territory statutes establishing judicial remedies which have the same effect as the remedies mentioned above. The standing tests for these are equally varied, ranging from 'any person' tests (such as in the Trade Practices Act 1974 (Cth) s80) to restricting standing to Ministers and other government agencies.

8. *Courts Exceeding their Role?* Restrictive standing rules are sometimes said to be necessary because public interest litigation is likely to impose on courts challenges for which they are inadequately equipped. But there is no evidence that the courts are unfitted to determine the legal questions that arise in reviewing the actions of administrative officers and dealing with other forms of public interest litigation. In any event, if this were the case, the proper response would be to limit expressly the types of case in which the courts could intervene, rather than use the law of standing to deny to some plaintiffs (though not others) the right to approach the courts.

9. *The Role of Attorney-General and Governmental Plaintiffs.* Nor should the law of standing be unduly restricted by preconceptions of the role of the Attorney-General and other governmental plaintiffs. The view that the Attorney-General is the 'guardian of the public interest', and is therefore the only person who should have standing to take proceedings in the public interest, does not reflect the reality in Australia. Nor would a restriction to government plaintiffs other than the Attorney-General be adequate. The inherent conflict between the Attorney-General's role as an officer of the Crown and his political role as a member of a government means that there is always a possibility that the legal issues surrounding government action may not be exposed and tested before the courts, simply for party political reasons. That this is so can be seen from, for example, the experience of Mr RJ Ellicott QC while he was Attorney-General in connection with the *Sankey* case, and the experience of applicants for fiats to commence relator proceedings, in particular, the plaintiffs in the *Defence of Government Schools* case concerning Commonwealth funding for

Summary / *xxi*

non-government schools. The fact that political sanctions against misuse of these powers are by and large ineffective, and that courts have properly declined to review the actions of Attorneys-General in these areas, further confirms the undesirability of restricting standing in public interest litigation solely to Attorneys-General or government plaintiffs. Finally, there are significant categories of public interest litigation (in particular, claims for the prerogative writs) where standing has never been restricted in this way.

10. *Mythical Floodgates.* Claims are sometimes made that, if standing rules are widened, courts will:

- be flooded with public interest litigation; and
- be obliged to hear unmeritorious claims or many claims dealing with the same issue.

These claims are unfounded. Liberalisation of standing in certain areas – even to the extent of allowing any person to sue – has not produced a rash of litigation. The Courts have on several occasions rejected the floodgates argument. Moreover, they possess a number of powers which can be used to prevent frivolous claims being made; for example, the power to strike out a vexatious claim and the power to declare individual litigants vexatious. Similarly, there is no evidence that the phenomenon of a large number of plaintiffs, all suing on the same course of action, will arise frequently if standing is widened.

11. *A Personal Stake?* Finally, it is sometimes said that the adversary system itself requires that parties to litigation have a personal stake in the outcome of the litigation, so as to ensure that there is a 'real controversy', and that the issues in the case are fully argued to the court. The Commission can find no basis for this proposition. Certainly, of itself it is not an adequate reason for restricting standing in this way. Almost inevitably, plaintiffs will do their honest best, and there will be many situations in which a concerned but personally disinterested plaintiff (for example, an environmental or welfare association) will be better equipped to represent the public interest than a private individual who happens to be personally affected.

ab. Mr Garrett has a personal stake in the proceedings by virtue of the Operation of *The Supreme Court Act 1986 (Vic)* Division 4 relates to proper process for Recovery of Land. An Application for Possession of Land under

- a. s78(1)(b) of the Transfer of Title Act 1958 has not yet been made by you at any time in a competent court and Division,
- b. s84 of the Supreme Court of Victoria Act 1986 (Vic) has not yet been made by you at any time

84 Proceeding for recovery of land by mortgagee

(1) If—

- (a) a proceeding is brought by a mortgagee or the heir, executor, administrator or assignee of a mortgagee for the recovery of any mortgaged land; and
- (b) a proceeding is not then depending for or touching the foreclosing or redeeming of that land—then if the person who has the right to redeem that mortgaged land and who appears and becomes defendant in the proceeding at any time pending the proceeding pays to the mortgagee or, if the mortgagee refuses, brings into the Court, all the principal money and interest due on the mortgage and all costs expended in the proceeding on the mortgage, the amount so paid to the mortgagee or brought into the Court is to be taken to be in full satisfaction and discharge of the mortgage.

(2) The amount to be paid to the mortgagee or brought into the Court is to be determined by the Court.

(3) On the amount being paid to the mortgagee or brought into the Court, the Court must—

- (a) discharge the mortgagor of and from the mortgage; and
- (b) by order compel the mortgagee, at the expense of the mortgagor, to assign or reconvey the mortgaged land or the mortgagee's estate and interest in it and deliver up all documents in the mortgagee's custody relating to the title to it to the mortgagor who paid the amount or brought it into the Court or to the heir, executor, administrator or assignee of that mortgagor or to another person nominated by that mortgagor or the heir, executor, administrator or assignee of that mortgagor.

(4) Nothing in this section—

- (a) applies if the person against whom the redemption is sought insists, by writing signed by that person or by that person's legal practitioner or agent and delivered to the legal practitioner or agent for the other side before the amount is brought into the Court—
 - (i) that the party seeking the redemption does not have the right to redeem; or
 - (ii) that the land is chargeable with other or different principal sums than what appear on the face of the mortgage or are admitted by the other side; or
- (b) applies if the right of redemption is controverted or questioned by or between different defendants in the same proceeding; or
- (c) prejudices any subsequent mortgage or encumbrance.

**UNITARY EXECUTIVE, INTERNATIONAL CROWN ATTORNEY GENERAL, LIQUIDATOR,
AND MANAGING CONTROLLER⁴⁵**

It is not open to this court to reconsider matters arising in this proceeding such as standing that are the subject of Res Judicata Final Orders of an Australian Court and the making of an Order of Nolle Prosequi dated 29th July 2024 that is the subject of Enforcement Proceedings in the Honourable High Court of Hong Kong HCMP-1855-2022; IN THE MATTER OF THE CROWN (LIQUIDATOR AND MANAGING CONTROLLER APPOINTED) being “The Main Proceedings” within the meaning of *the Cross Border Insolvency Act 2008 (AU)* and related Model Law amongst other International Treaties holding primacy as Domestic Law enforceable within Australia pursuant the the Vienne Convention on the Law of Treaties.

Respectfully Submitted on Tuesday, 29 July 2025

DOROTA-DONATA BORKOWSKI
and
MICHAEL-MARK BORKOWSKI

Plaintiffs

ANDREW MORTON GARRETT

Unitary Executive, International Crown Attorney General, Liquidator, And Managing
Controller Proposed Tenth Defendant, Relator and Intervenor as of a Right

⁴⁵ AMG 8565 NSD 741 2023 TENDER BUNDLES No1 to No 25 SUMMARY INDEX (“**ANNEXURE 5**”)

ANNEXURE 1

Monday, July 28, 2025 at 1:12:46 PM Australian Eastern Standard Time

Subject: S ECI 2025 02829 - Confirmation of Supplementary Filings for 30 July Hearing
Date: Monday, 28 July 2025 at 1:10:41 pm Australian Eastern Standard Time
From: DDWIS <dorotaborkowski@bigpond.com>
To: judicialadminw@supcourt.vic.gov.au <judicialadminw@supcourt.vic.gov.au>
Attachments: image01.png

Dear Registry,

We write as the Plaintiffs in proceeding S ECI 2025 02829 (Borkowski v Westpac Banking Corporation & Ors).

We respectfully confirm that we have now uploaded all required and subsequent filings via RedCrest for consideration at the upcoming Directions Hearing scheduled for 30 July 2025.

As of today, several of the uploaded documents remain marked "Reviewing." We kindly seek confirmation of their acceptance or notification of any further procedural steps that may be required. This is time-sensitive, as we are preparing to serve the documents on the Defendants in accordance with the Court's timetable.

Please find attached a screenshot of the RedCrest filing portal confirming our submissions.

We remain available should the Court require any clarification or additional materials.

Kind regards,
 Dorota-Donata Borkowski & Michael-Mark Borkowski
 Plaintiffs (Self-Represented)

Attachment: RedCrest_filing_screenshot_28Jul2025.png

Case No.	Filing Date	Case Name	Filing Status	Filing Time	Filing Type
12-017	2025-07-28 14:10:41	S ECI 2025 02829 Borkowski, Corrine Corrine & Michael-Mark Borkowski v Westpac Banking Corporation & Ors	Completed	2025-07-28 14:10:41	Common Law Claims & Orders etc
12-018	2025-07-28 14:10:41	S ECI 2025 02829 Borkowski, Corrine Corrine & Michael-Mark Borkowski v Westpac Banking Corporation & Ors	Completed	2025-07-28 14:10:41	Common Law Claims & Orders etc
12-019	2025-07-28 14:10:41	S ECI 2025 02829 Borkowski, Corrine Corrine & Michael-Mark Borkowski v Westpac Banking Corporation & Ors	Reviewing	2025-07-28 14:10:41	Common Law Claims & Orders etc
12-020	2025-07-28 14:10:41	S ECI 2025 02829 Borkowski, Corrine Corrine & Michael-Mark Borkowski v Westpac Banking Corporation & Ors	Reviewing	2025-07-28 14:10:41	Common Law Claims & Orders etc
12-021	2025-07-28 14:10:41	S ECI 2025 02829 Borkowski, Corrine Corrine & Michael-Mark Borkowski v Westpac Banking Corporation & Ors	Reviewing	2025-07-28 14:10:41	Common Law Claims & Orders etc

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE

COMMON LAW DIVISION

S ECI 2025 02829

BETWEEN:

DOROTA-DONATA BORKOWSKI
and
MICHAEL-MARK BORKOWSKI

Plaintiffs

v

WESTPAC BANKING CORPORATION (ACN 007 457 141)
First Defendant

Defendants

OUTLINE OF SUBMISSIONS

Date of Document:	4 th July 2025	Solicitors Code:	
Filed on behalf of:	Dorota-Donata Borkowski	DX:	
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EXECUTIVE SUMMARY

1. The Primary “Matter arising in the Proceeding”¹ as a foundational matter of Federation is the failure of Public Officials² as employees, officers, agents, servants, contractors, delegates, licensees or otherwise related to the Crown³ and/or employees, officers, agents, servants, contractors, delegates, licensees of “Constitutional Corporations”⁴ licensed by the Crown in right of Australia, in their capacity as Trustees of the Public Trust to exercise discretionary public powers conferred under enactments in a manner that is exclusively in the Public Interest.

¹ *Re Wakim; Ex parte McNally* [1999] HCA 27

² within the meaning of the *United Nations Convention Against Corruption* 2003 (AU) a.k.a. *Australian Treaty Series No 2* (“ATS 2”)

³ *Sue v Hill* [1999] HCA 30 (23 June 1999)

⁴ S51(xx) of the *Commonwealth of Australia Constitution Act* 1900 (AU)

2. At all relevant times since the Plaintiffs executed the Contract Note for purchase of the Land ⁵ for a purchase price of AUD\$340,000 on the 21st of February 2008 and accepted by the Vendor 22nd February 2008⁶ the Plaintiffs have acted personally in their capacities as Joint Trustees of the Michael and Dorota Borkowski Family Irrevocable Living Trust (“**The Trust**”) established in equity by sharing of equity and assets as follows:
 - a) Commenced cohabiting when the Plaintiffs moved in together on the 18th of September 2005
 - b) Became engaged to be married on “Guy Fawkes Day/ Bonfire Night” on 5th November 2006
 - c) Became married on 11th March 2007
 - d) The Primary Beneficiaries of the are the Plaintiffs and their children including those from prior marriage.
 - a) Jessica Polanski born 29 May 1991
 - b) Adam Polanski born 5 March 1993
 - c) Casper Borkowski 14 July 2010
 - d) Hannah Borkowski 25 November 2011
 - e) General Beneficiaries of the Trust include relatives of the plaintiffs, related corporations and related trusts
 - f) A Formal Deed of Settlement is currently being prepared for effect from the 18th of September 2005
3. The Loan Offer made to the Plaintiffs/ Trustees by the Second Defendant referred to later in these submissions was dated 28th February 2008 for an amount of AUD\$300,000 being a loan to value ratio (LTV) of 88% triggering the pre-condition in the Loan Offer and Terms and Conditions that the Plaintiffs as Mortgagors accept Loan Mortgage Insurance.

OVERARCHING PURPOSE COMPLIANCE

The purpose of this outline of submissions is to identify the nature of the controversies as “All of the Matters arising in the Proceedings” between the Plaintiffs and the current defendants and the proposed 3rd-8th Defendants⁷ to assist the Judicial Officer presiding in this proceeding with some relevant law and evidence to make orders in Prohibition/ Injunctive Relief as a matter of urgency in respect to unlawful eviction and possession of Land, and given more time such further:

1. Constitutional Writs of Prohibition/ Mandamus/ Certiorari/ Habeus Corpus/ Quo Warranto and/or.
2. Orders in the nature of Prohibition/ Mandamus/ Certiorari/ Habeus Corpus/ Quo Warranto.

PREMINARY INJUNCTION PRINCIPLES

⁵ Page 1-2 of Joint Affidavit of Plaintiffs dated 24th June 2025

⁶ Annexure 1

⁷ **DDB 7** Amended Defence, Counterclaim and Cross Claim dated 23rd June 2025 AND **DDB 6** Form 46A Summons and Notice of Indictment DECISION MAKER COUNTY COURT, and ors 23.06.2025

4. An interlocutory injunction is a discretionary and extraordinary remedy which may be granted by a judge.
5. The Plaintiffs submit that
 - a) in this case the grant ought to be made by the court as an absolute right to an effective remedy.
 - b) in order to grant an interlocutory injunction, the court will need to be satisfied of:
 - a) Whether the plaintiff has made out a prima facie case, in the sense that if the evidence remains as it is there is a probability that at the trial of the action the plaintiff will be entitled to relief (often referred to as a “serious question to be tried”).
 - b) Whether the inconvenience or injury as irreparable harm which the plaintiff would be likely to suffer if an injunction were refused outweighs or is outweighed by the injury which the defendant would suffer if an injunction were granted (often referred to as the “balance of convenience”).
 - c) The urgency of injunction under the circumstances.
 - d) Maintenance of the Status Quo
 - c) That damages are an insufficient remedy in circumstances where the land is the matrimonial Family home of the Plaintiffs and Casper and Hannah Borkowski.
6. The interlocutory injunction is sought with the other party’s knowledge,
7. The plaintiffs must ordinarily give an undertaking as to damages in which regard the Plaintiffs:
 - a) have received an unconditional compensation offer dated 1st May 2025 from the Trustees of the Australian People Future Fund trading as the Better World Future Fund ABN 26 317 275 322, for and on behalf of the Trustees of The Oenoviva (Australia: National Redress Scheme) Public Interest Working Capital Hybrid Trust ABN 84 136 965 953 declared on the 4th October 2020, Accounted for in the Year Ending 30th June 2021 Income Tax Return and Settlement Sum paid on the 30th of August 2021 in the amount of AUD\$4,350,000.00 (“The Moneys”) which has resulted in the subrogation of the Trustees as Payers to the Rights of the Plaintiffs as against the Defendants.
 - b) submit that it would be just and convenient to pay the Moneys into court and
 - a) return possession of the Land to the Plaintiffs to recommence occupancy
 - b) for the Second and Proposed Third Defendants to unconditionally endorse MORTGAGE AF820083F 05/05/2008 to the Plaintiffs as registered Forst Mortgagee and as Registered Proprietors.
 - c) Grant leave to rehear the proceedings in the Court below as an application *de novo* and file and serve the exhibits marked as:
 - **DDB 7** Amended Defence, Counterclaim and Cross Claim dated 23rd June 2025 AND

- **DDB 6** Form 46A Summons and Notice of Indictment
DECISION MAKER COUNTY COURT, and ors 23.06.2025

THE PARAMOUNT DUTY⁸

8. Amongst the myriads of questions of law arising in these proceedings is whether:
 - a) the Defendants and the proposed 3rd-8th Defendants have conspired against the rights of the Plaintiffs under Color of Law within th meaning of the International Declaration on Human Rights and the Common Law.
 - b) The Legal Practioners involved have breached the Paramount Duty owed by officers of the Court to the Court
9. The Plaintiffs submit that on the grounds of s64 of *the Judiciary Act* 1903 (AU), other applicable law referred to in the Exhibit marked as **AMG 8836**⁹ and US Title 241 it is our respectful view that this case is an appropriate vehicle for the redetermination of Judicial immunity¹⁰ and Advocates' immunity¹¹ from prosecution made by the High Court.

CIVIL RIGHTS CONSPIRACY: 18 U.S.C. § 241: Conspiracy Against Rights

Section 241 makes it unlawful for two or more persons to agree to injure, threaten, or intimidate a person in the United States in the free exercise or enjoyment of any right or privilege secured by the Constitution or laws of the United States or because of his or her having exercised such a right.

Unlike most conspiracy statutes, §241 does not require, as an element, the commission of an overt act.

The offense is always a felony, even if the underlying conduct would not, on its own, establish a felony violation of another criminal civil rights statute. It is punishable by up to ten years imprisonment unless the government proves an aggravating factor (such as that the offense involved kidnapping aggravated sexual abuse, or resulted in death) in which case it may be punished by up to life imprisonment and, if death results, may be eligible for the death penalty.

Section 241 is used in Law Enforcement Misconduct and Hate Crime Prosecutions. It was historically used, before conspiracy-specific trafficking statutes were adopted, in Human Trafficking prosecutions.

MISCONDUCT BY LAW ENFORCEMENT & OTHER GOVERNMENT ACTORS: 18 U.S.C. § 242: Deprivation of Rights Under Color of Law

This provision makes it a crime for someone acting under color of law to willfully deprive a person of a right or privilege protected by the Constitution

⁸ *Bolitho v Banksia Securities Ltd (No 18) (remitter)* [2021] VSC 666_1

⁹ Served on the parties and the proposed defendants by email on the 1st and 3rd July 2025 to be sworn into evidence by the proposed Relator, Intervenor as of a right.

¹⁰ *Vasta V Stratford* 2025 HCA-3-2025-02-12

¹¹ *Attwells v Jackson Lalic Lawyers Pty Limited* (2016) HCA 16 4 May 2016 S161/2015

or laws of the United States. It is not necessary that the offense be motivated by racial bias or by any other animus.

Defendants act under color of law when they wield power vested by a government entity. Those prosecuted under the statute typically include police officers, sheriff's deputies, and prison guards. However other government actors, such as judges, district attorneys, other public officials, and public school employees can also act under color of law and can be prosecuted under this statute.

Section 242 does not criminalize any particular type of abusive conduct. Instead, it incorporates by reference rights defined by the Constitution, federal statutes, and interpretive case law. Cases charged by federal prosecutors most often involve physical or sexual assaults. The Department has also prosecuted public officials for thefts, false arrests, evidence-planting, and failing to protect someone in custody from constitutional violations committed by others.

A violation of the statute is a misdemeanor, unless prosecutors prove one of the statutory aggravating factors such as a bodily injury, use of a dangerous weapon, kidnapping, aggravated sexual abuse, death resulting, or attempt to kill, in which case there are graduated penalties up to and including life in prison or death.

10. The Magnitsky Act 2012 (US) as expanded 2016 refer paras ¹²

- a. *Formally viewed as non-criminal measures, targeted sanctions are normally imposed based on permissive evidential standards, such as that of 'credible evidence' (US Global Magnitsky Act 2016, s 1263(a)) or 'reasonable grounds to suspect' (Sanctions and Anti-Money Laundering Act 2018 (UK), ss 11(2) and 12(5)), which are far lower than either the criminal or civil standard of proof.*
- b. *Australia's current sanctions framework does not provide for any particular evidential standard but, as described below, vests virtually unlimited discretion in the government.*
- c. *In doing so, these sanctions edge close to the domain of criminal justice, with its established legal safeguards (e.g. the presumption of innocence) and policy expectations (e.g. the prioritization of serious misconduct and minimisation of political interference with law enforcement work).*
- d. *Surprisingly, governments worldwide have invested little thought into these issues. The UK appears to be the only country to have published a (very concise) statement of principles articulating the role of corruption sanctions in its overall law enforcement efforts. The typical approach, and one taken up by the Australian government in its response to the JSCFADT's report, is to utter the magic words*

¹² Anton Moiseienko, 'Corruption and Human Rights Sanctions in Australia: Where Public Law Meets Foreign Policy' on AUSPUBLAW (20 October 2021)

'foreign policy' and thereby make most legal and policy concerns disappear. As we argue below, doing so obscures rather than resolves the key issues the government will have to confront.

- e. As the Parliamentary Joint Committee on Human Rights notes, this extraordinary amount of discretion renders judicial review nugatory because there is no standard to measure the government's decision against.*
 - f. Australia's current sanctions regime is therefore even less friendly to sanctions challenges than the US system, which has been rightly described as affording 'minimal' opportunities for judicial review.*
 - g. A more appropriate conception of corruption and human rights sanctions is as a tool to address egregious wrongdoing that would not ordinarily be within Australian criminal jurisdiction, as well as ensure that Australian individuals and companies do not do business with some of the worst 'bad actors'. This is precisely the vision of sanctions that the JSCFADT's report evinces. This vision manifests itself, for instance, in the recommendation that sanctions, be limited to non-Australian citizens, consistent with near-universal state practice. This, too, was met in the government's response with a 'noted', accompanied by the obligatory reference to the Minister for Foreign Affairs' discretion.*
 - h. The prevailing view among policymakers and sanctions experts has been that sanctions are a priori a foreign policy tool aimed at inducing 'behavioral change' by the target. To speak of other objectives of sanctions, such as punishing the perpetrators of horrible crimes, is on that view an intellectual faux pas.*
 - i. The upcoming overhaul of Australia's sanctions framework offers an opportunity to take stock of the international experience and develop a world-leading sanctions policy, especially in relation to corruption and human rights sanctions. Doing so will require a degree of clarity about what such sanctions are intended to achieve and how they will be wielded. Openness about what one will do in the future equals commitment, and so far this seems in tension with the government's eagerness to preserve room for maneuver.*
 - j. In the end, though, a credible and effective application of sanctions will require a clarity of purpose and consistency in application, which can only be attained by determining how sanctions can best serve legitimate criminal justice objectives, including the punishment of perpetrators and disruption of criminal networks. Formulaic references to sanctions as a 'foreign policy tool' are, on the other hand, of limited utility.*
- 11. The Commonwealth and the States and Territories of Australia have perpetuated a system of equity abuse as money laundering that is at odds with the International Covenant of Civil and Political Rights whereby Officers, Employees, Servants, Agents, Licensees, Contractors and otherwise related to the three arms of government believe*

they are licensed to lie¹³ and steal equity^{14,15,16} from individual and corporate citizens subject to payment of tax on Ill Gotten Gains as Ill Gotten Tax Revenues.

12. The Honorable Justice John Dixon in Judgment¹⁷ dated 11th October 2021 has today found that a litigation funder and five lawyers ('contraveners') engaged in egregious conduct in connection with a fraudulent scheme, intending to claim more than \$19 million in purported legal costs and funding commission from the settlement sum in a group proceeding. Justice John Dixon noted that the contravener's conduct had shattered confidence in, and expectations of, lawyers as an honorable profession, and corrupted the proper administration of justice.
13. His Honour concluded that the contraveners' actions were appalling breaches of their respective duties to the court, particularly the paramount duty and overarching obligations imposed on them by the Civil Procedure Act 2010 (Vic). Justice John Dixon ordered that they pay damages of \$11,700,128 to approximately 16,000 group members, plus the costs of the remitter on an indemnity basis.
14. His Honour further ordered that:
 - k. Mr Norman O'Bryan SC and Mr Michael Symons (barristers) be removed from the roll of persons admitted to the legal profession;
 - l. Mr Anthony Zita and Mr Alex Elliott (solicitors) each show cause as to whether they are fit and proper to remain on the roll of persons admitted to the legal profession; and
 - m. the reasons for judgment and the record of the trial be referred to the Director of Public Prosecutions for any further investigation and action thought appropriate.

S67 APPLICATION FOR RESTRAINING ORDER

(1) The [Attorney-General] [Director of Public Prosecutions] may apply to [the Court] for a restraining order against:

- (a) any realizable property held by the defendant;*
- (b) specified realizable property held by a person other than the defendant; or*
- (c) any terrorist property .*

(2) An application for a restraining order under subsection (1)(a) or (b) may be made ex parte and shall be in writing and be accompanied by an affidavit stating:

- (a) where the defendant has been convicted of a serious offence, the serious offence for which he or she was convicted, the date of the conviction, [the Court] before which*

¹³ Licensed to Lie by Sydney Powell; 23 October 2018

¹⁴ License To Steal: The Secret World of Wall Street Brokers and the Systematic Plundering of the American Investor by Anonymous, Timothy Harper

¹⁵ A License to Steal; The Untold Story of Michael Milken and the Conspiracy to Bilk the Nation By Benjamin Stein

¹⁶ A License to Steal; The Forfeiture of Property By Leonard W. Levy

¹⁷ *Bolitho v Banksia Securities Ltd* (No 18) (remitter) [2021] VSC 666

- the conviction was obtained and whether an appeal has been lodged against the conviction;*
- (b) *where the defendant has not been convicted of a serious offence, the serious offence for which he or she is charged or about to be charged and the grounds for believing that the defendant committed the offence;*
- (c) *a description of the property in respect of which the restraining order is sought;*
- (d) *the name and address of the person who is believed to be in possession of the property;*
- (e) *the grounds for the belief that the property is tainted property in relation to the offence or that the defendant derived a benefit directly or indirectly from the commission of the offence;*
- (f) *where the application seeks a restraining order against property of a person other than the defendant, the grounds for the belief that the property is tainted property in relation to the offence and is subject to the effective control of the defendant; and*
- (g) *the grounds for the belief that a confiscation order may be or is likely to be made under this Act in respect of the property*

TEOH’S CASE; THE DOCTRINE OF LEGITIMATE EXPECTATIONS

15. A “matter arising in these proceedings” is the primacy of treaty law over laws enacted under *the Commonwealth of Australia Constitution Act 1900* (AU) as domestic laws which was the subject of assessment by the High Court in Teoh’s case¹⁸ and whether the High Court fell into error in failing to refer to:
- a) s64 of *the Judiciary Act 1903* (AU) and
 - b) s20 and/or s21 *the Charter of the United Nations Act (1945)* (AU) (“COTUNA”) Australian Treaty Series No 1 (ATS-1)
 - c) *Boilermaker’s Case*.¹⁹
 - d) *the Vienna International Convention on the Law of Treaties 1969* (UN)
 - e) *The Foreign Corrupt Practices Act 1977* (US)
 - f) *The Insolvency Act 1986* (UK)
 - g) *United Nations Convention Against Corruption 2003* (UN) / Australian Treaty Series No 2 (“UNCAC”)
16. A failure to do so is not jurisdictional error; those omissions are deliberate treason against the laws of the King as terrorist acts²⁰ punishable in accordance with law.

THE CASE FOR REFERRAL

17. The case centers on the unlawful repossession of residential property at 15 Jacaranda Drive, Taylors Hill, VIC, involving:
- a) Execution of eviction without a valid Warrant of Possession,
 - b) Unlicensed security agents enforcing actions in breach of Victorian law,
 - c) Forgery, false affidavits, and fraudulent mortgage registration,

¹⁸ *Minister of State for Immigration & Ethnic Affairs v Ah Hin Teoh (Teoh’s case)* [1995] HCA 20

¹⁹ *Suppression Of Terrorism Financing Act 2002* (AU) Part 5.3—Terrorism; Division 100—Preliminary; Division 103—Financing terrorism

²⁰ Within the meaning of the *Suppression of Terrorism Financing Act 2002* (AU) amending the *Criminal Code Act 1995*

- d) Suppression of judicial remedies and retroactive document creation,
 - e) Breach of human rights, including denial of a fair hearing and violation of privacy and home protections.
18. These findings are confirmed by:
- a) Freedom of Information (FOI) responses from public authorities,
 - b) Internal memos from Westpac Banking Corporation,
 - c) Formal statements by Victoria Police Licensing & Regulation Division,
 - d) Statutory violations under both civil and criminal Victorian law.
19. Legal Characterization under the Rome Statute; The pattern of conduct appears to meet the threshold of crimes against humanity, particularly:
- a) Persecution (Article 7(1)(h)) – Targeting individuals via misuse of state legal systems and banking institutions to deprive them of property and legal redress;
 - b) Other inhumane acts (Article 7(1)(k)) – Illegal evictions, enforced surveillance, and deprivation of lawful ownership and dignity;
 - c) Enforced evictions without due process, constituting a severe denial of fundamental rights.
- These acts, conducted by or with the complicity of state actors, legal officers, and corporate agents, form part of a broader practice of judicial impunity and abuse of process.
20. The Plaintiffs respectfully request the State Party in the person of the Commonwealth Attorney General acting in his capacity as Champion of the Public Interest refer to the Foreign Minister to request that the Prosecutor of the International Criminal Court:
- a) Initiate a preliminary examination into the situation,
 - b) Determine whether an investigation under Article 53 is warranted,
 - c) Consider issuing Article 15 notifications to affected individuals and victims’ counsel,
 - d) If applicable, coordinate with UN human rights mechanisms and national authorities.

THE EVIDENCE SO FAR ADDUCED

The evidence will show that:

21. **The First Defendant:** The Decision maker acting for the First Defendant has breached her oath of office and has misinterpreted s143 of the Evidence Act 11995 (AU) which the plaintiffs submit out to be more properly interpreted as set out in the Exhibit produced and marked as DDB 6 of our joint affidavit dated 24th June 2025 which seeks to summons the decision maker under the reverse burden of proof applicable by decision makers exercising discretion in matters of Quo Warranto / Ouster Offic and relevantly sets out as follows:

- d. Have misinterpreted s143 of *the Evidence Act 1995* (AU) which ought to be that the Federal Parliament intended that provision to be interpreted as:

EVIDENCE ACT 1995 - SECT 143

Matters of law

- (1) Proof is ~~not~~ required about the provisions and coming into operation (in whole or in part) of:
- (a) an Act, a State Act, an Act or Ordinance of a Territory or an Imperial Act in force in Australia; or
- (b) a regulation, rule or by-law made, or purporting to be made, under such an Act or Ordinance; or
- (c) a Proclamation or order of the Governor-General, the Governor of a State or the Administrator or Executive of a Territory made, or purporting to be made, under such an Act or Ordinance; or
- (d) an instrument of a legislative character (for example, a rule of court) made, or purporting to be made, under such an Act or Ordinance, being an instrument that is required by or under a law to be published, or the making of which is required by or under a law to be notified, in any government or official gazette (by whatever name called).
- (2) A judge ~~may~~ **must** inform himself or herself about those matters in any way that ~~the judge thinks fit~~ **is exclusively in the Public Interest as a public Trust**.
- (3) A reference in this section to an Act, being an Act of an Australian Parliament, includes a reference to a private Act passed by that Parliament.

Note: Section 5 extends the operation of this provision to proceedings in all Australian courts.

22. **The Second Defendant** alleges that an offer to lend money in the amount of AUD\$300,000 was issued from the Second Defendant to the Plaintiffs showing an offer date of 28th February 2008 which was executed by the Plaintiffs on two dates 24/03/2008 (pg 11) and 25/3/2008 (pg 9), (The Loan Offer)²¹

23. The Second Defendant:

- a) did not countersign the loan offer at that time, nor was the loan offer countersigned by any person representing the Second Defendant at any other time.
- b) Refers to the Loan Offer as the combination of “The Loan Offer” and “the General Terms and Conditions”.²²

²¹ Pages 1-16 of Bundle Exhibits marked as AM-1 annexed to the affidavit of Alex Manoel dated 28th April 2025

²² Page 2 of the affidavit of Alex Manoel dated 28th April 2025