

19.6.5. Between the 30th March 2012 the conduct and actions of the Commissioner of Taxation have caused loss and damage to the Company in its prior capacity as Trustee of OVPET by frustrating the manufacture of 300 sets of OenoTecas that the Company intended to sell and or lease to Urban Winery Licensees and Distributor Licensees in the Territory of Australia and New Zealand and Internationally.

19.6.6. Particulars

19.6.6.1. The conduct and decisions of the Fourth Accused in respect to OVPET as described at paragraphs 19.16.1 to 19.6.7 were driven by the bias and prejudice flowing from Operation Winebar that is/was and are/were conduct and decisions that are reviewable under s5 & s6 of the ADJR, the Common Law and the provisions of s39B of the Judiciary Act

19.6.6.2. Repeats paras 4.5.2 to 4.5.6

19.7. OVPET 2

19.7.1. OVPET 2 was settled by way of Deed of Settlement dated 26th November 2012 as a Hybrid Unit Trust for the purposes of placing an order for 50 sets of the Generation 1 sets of Oenotecas following discussions with the Audit Team.

19.7.2. The purpose of placing an order for the Generation 1 OenoTecas by OVPET 2 was to facilitate the sale of OenoTecas to the Trustee of the Fairweather Trust which entity had purchased the Master Sub Regional License for the territory of Queensland and also intended to export OenoTecas overseas to entities related to it in Vietnam, Korea and Thailand

19.7.3. The Company was the Trustee of OVPET 2 at settlement of the OVPET 2 Trust Deed.

19.7.4. I have never been a Trustee of OVPET 2.

19.7.5. Between the 30th March 2012 the conduct and actions of the Commissioner of Taxation have caused loss and damage to the Company in its prior capacity as Trustee of OVPET 2 by frustrating the manufacture of 50 sets of OenoTecas that the Company intended to sell and/or lease to the Fairweather Trust, Urban Winery Licensees and Distributor Licensees in the Territory of Australia and New Zealand and Internationally.

19.7.6. On the 7th July 2013 the Deputy Commissioner of Taxation commenced VICSC-2013-02968 against me;

19.7.6.1. In my agreed capacity as Trustee of AGFT which capacity was also my capacity at the time of the Contradicting submissions made by the Deputy Commissioner of Taxation in DCCIV-2003-1666 before the Honourable Master Norman.

19.7.6.2. In my alleged capacity as Trustee of OVPET 2 which is the subject of a hearing listed before the Honourable Zammit ASJ in the Supreme Court of Victoria.

19.7.7. On the 21st December 2012 the personnel of the Commissioner requested information in respect to OVPET 2 and issued a Notice under section 8AAZLGA of the TAA.

19.8. **Particulars**

19.8.1. The conduct and decisions of the Fourth Accused in respect to OVPET 2 as described at paragraphs 19.7.1 – 19.7.7 were driven by the bias and prejudice flowing from Operation Winebar that is/was and are/were conduct and decisions that are reviewable under s5 & s6 of the ADJR, the Common Law and the provisions of s39B of the Judiciary Act

19.8.2. *Repeats paras 4.5.2 to 4.5.6*

19.9. **Sanctuary**

19.9.1. Between February 2011 and the 14th August 2011 I became involved in trying to assist Solargen Pty Ltd (**"Solargen"**) in a restructure.

- 19.9.2. Between February 2011 and June 2011 Solargen and the business of Solargen was controlled by the Denning Family with the support of external finance from Beatrice Pty Ltd controlled by Noel McDermott
- 19.9.3. Solargen could no longer import and pay for Solar Panels required by it to honour contractual commitments to install Solar Panels to its customers without further support from Private Finance and was insolvent.
- 19.9.4. On the basis of the establishment of Green Energy Distributors Australia Pty Ltd and Solargen Australia Pty Ltd and the transfer of the Solargen Business to Solargen Australia Pty Ltd Sanctuary borrowed money from Daleford Downs Pty Ltd in order to import and pay for Solar panels required by the Solargen Business.
- 19.9.5. A dispute arose between the parties to the restructure and a settlement agreement was executed by the parties dated 14th August 2014.
- 19.9.6. As a consequence of the settlement agreement solar panels were returned to the Supplier and Sanctuary was credited with the amount of the returns.
- 19.9.7. The Credit of the Solar Panels returned by Sanctuary entitled Sanctuary to a GST Credit as it had already paid for relevant GST when the Panels were imported into Australia.
- 19.9.8. On the 10th September 2012 the Commissioner and his personnel advised Sanctuary of an audit as a function of Operation Winebar and retained the relevant GST Credit due on the return of the Solar Panels to the supplier in circumstances where there was no notice issued under section 8ZAAZLGA of the TAA within the Statutory Period.
- 19.9.9. The Commissioner retained the GST Credit in circumstances where the findings of the Federal Court in Mutiflex applied for the sole and improper purpose of rendering Sanctuary impecunious.

19.9.10. On the 26th April 2013 the Commissioner delivered a completion of Audit that the Commissioner knew could not be correct and issued a penalty for the sole and improper purpose of creating a debt in the hands of Sanctuary so that the Commissioner could pursue a strategy of placing Sanctuary into liquidation.

19.10. Particulars

19.10.1. The conduct and decisions of the Fourth Accused in respect to OVPET 2 as described at paragraphs 19.9.1 – 19.9.10 were driven by the bias and prejudice flowing from Operation Winebar that is/was and are/were conduct and decisions that are reviewable under s5 & s6 of the ADJR, the Common Law and the provisions of s39B of the Judiciary Act

19.10.2. *Repeats paras 4.5.2 to 4.5.6*

19.11. The pattern of conduct and decisions of the Commissioner and his Personnel were repeated in respect to the administration of the Tax affairs by the Commissioner and his personnel in respect to;

19.11.1. OVANZ

19.11.2. AGFT

19.11.3. AGFT 2

19.11.4. The Springwood Park Unit Trust

19.11.5. The Sunburst Property Trust

19.11.6. The Andrew Garrett Family Superannuation Fund

19.11.7. AGFT 3

19.11.8. AGFT 4

19.11.9. The Taxation Affairs of entities that I have been appointed as Managing Controller to as described at paragraph 1

19.11.10. My own taxation affairs

19.12. Particulars

19.12.1. The conduct and decisions of the Fourth Accused as described at paragraphs 19.11 were driven by the bias and prejudice flowing from Operation Winebar that is/was and are/were conduct and decisions that are reviewable under s5 & s6 of the ADJR, the Common Law and the provisions of s39B of the Judiciary Act

19.12.2. *Repeats paras 4.5.2 to 4.5.6*

19.13. Applications for Compensation

19.13.1. On the 20th October 2012 in all of my then capacities I made my first application for Compensation.

19.13.2. Subsequently the 14th Respondent wrote to me and confirmed receipt of my application for compensation and advised that she would be assessing my application.

19.13.3. On the 1st August 2013 the 14th Respondent advised me that my application for compensation was rejected on behalf of the Fourth Accused.

19.13.4. Subsequently following the provision of FOI on the 11th and 14th July 2014 I made a third application for compensation on the 7th August 2014 to the 14th Respondent which was copied to the Commonwealth Ombudsman.

19.13.5. In the 22nd August 2014 the 14th Respondent wrote to me and apologised for the delay in responding to me in respect to my third application for compensation.

19.13.6. Subsequently, on the 27th August 2014 I wrote to the 14th Respondent in respect to my Third Application for compensation annexing a copy of Volume 5 of the Book of Exhibits of my sixth affidavit filed in VICSC-2013-02968 dated 14th July 2014 and asking for a response in respect to my application for compensation.

19.13.7. I have not heard from the 14th Respondent in respect to my Third Application for compensation.

19.14. **Particulars**

19.14.1. The conduct and decisions of the 14th Respondent as described at paragraphs 19.13.1 – 19.3.7 was driven by the bias and prejudice flowing from Operation Winebar that is/was and are/were conduct and decisions that are reviewable under s5 & s6 of the ADJR, the Common Law and the provisions of s39B of the Judiciary Act

19.14.2. *Repeats paras 4.5.2 to 4.5.6*

19.14.3. *The failure to make a compensation decision on my third application for compensation is a breach of the Legal Services Directions and the provisions of the CDDA Scheme*

20. **The Distribution “In Specie”**

20.1. Prior to the actions of the Accused, The Trustees and Treasury Wine Estates Vintners Limited described above the Balance Sheet of the Trustee of the Andrew Garrett Family Trust showed net equity of \$46,133,481 as at the 31st March 2004.

20.2. The Loss of the entire value of the Balance Sheet of AGFT is attributable to the actions of the Accused and their servants.

20.3. On the 30th November 2013 the Capital Loss of \$46,133,481 and the Chose in action against the Accused was distributed to me in specie by resolution of the then Trustee of the Andrew Garrett Family Trust.

21. **The Set off claim**

21.1. By way of email to the solicitor for the Fourth Accused the amount of the claim under the Income Tax Liability was set off while reserving my rights for review as set out above.

21.2. On the 8th November 2014 I wrote to the Fourth Accused and advised again of the application of set off against my claim against the Fourth Accused

22. The Second Sequestration order made in JL 177 of 2015

22.1. On the 15th May 2015 a second sequestration order was made in favour of the Fourth Accused as the second Prosecutor in the aforementioned proceedings.

22.2. Particulars

22.2.1. The conduct and decisions of the Fourth Accused as described at paragraphs 22.1 was driven by the bias and prejudice flowing from Operation Winebar that is/was and are/were conduct and decisions that are reviewable under s5 & s6 of the ADJR, the Common Law and the provisions of s39B of the Judiciary Act

22.2.2. *Repeats paras 4.5.2 to 4.5.6*

23. Grain Master Pty Ltd

23.1. Brennan Paul Fitzallen ("**Fitzallen**") is the sole shareholder and Director of Grain Master Pty Ltd ("**Grain Master**") and the sole Director of Southern Containers Pty Ltd (Controllers Appointed) ("**Southern Containers**"), trading as OenoViva Tasmania, amongst other entities related to him.

23.2. Between 2011 and today's date the Accused and other employees of the Fourth Accused have unlawfully and invalidly harassed Fitzallen, and his related entities, for an improper purpose, being an abuse of office, solely as a consequence of the investment made by Southern Containers in the Master Sub Regional License for OenoViva Business Systems in the territory of Tasmania.

23.3. On the 3rd August 2017 the First and Second Accused at the direction of the Third Accused transferred surplus moneys held in the Tax Account of Grain Master to an unknown account that was not held for the benefit of Grain Master for the soe benefit of the Accused and the Unknown Account Holder.

23.4. Particulars

23.4.1. The conduct and decisions of the Fourth Accused as described at paragraph 23 was driven by the bias and prejudice flowing from Operation Winebar that is/was and are/were conduct and decisions that are reviewable under s5 & s6 of the ADJR, the Common Law and the provisions of s39B of the Judiciary Act

23.4.2. *Repeats paras 4.5.2 to 4.5.6*

24. Island Bio Energy Australia Pty Ltd

24.1. Robert McLeod Douglas is the sole Director of Island Bio Energy Australia Pty Ltd (“IBEA”)

24.2. Between February 2017 and today’s date the Accused and other employees of the Fourth Accused have unlawfully and invalidly harassed Douglas, and his related entities, for an improper purpose, being an abuse of office, solely as a consequence of the investment made by IBEA in a Wood Pellet production line purchased from an entity related to Fitzallen.

24.3. Particulars

24.3.1. The conduct and decisions of the Fourth Accused as described at paragraph 24 was driven by the bias and prejudice flowing from Operation Winebar that is/was and are/were conduct and decisions that are reviewable under s5 & s6 of the ADJR, the Common Law and otherwise.

24.3.2. *Repeats paras 4.5.2 to 4.5.6*

25. Taxation Decision Reference 1-CP92HCH

25.1. On the 8th November 2017 the First Accused published a Taxation Decision being an assessment for Income Tax payable by the prosecutor.

25.2. Particulars

25.2.1. The conduct and decisions of the Fourth Accused as described at paragraph 25 was driven by the bias and prejudice flowing from Operation Winebar that is/was and are/were conduct and decisions that are reviewable under s5 & s6 of the ADJR, the Common Law and the provisions of s39B of the Judiciary Act

25.2.2. *Repeats paras 4.5.2 to 4.5.6*

25.3. Separation of Powers

25.3.1. Between the 20th June 2002 and today's date the Fourth Accused and employees and agents of the Fourth accused along with other agents of the Crown have directed the Federal and State Judicial Officers, Federal and State Administrative Law Decision Makers and other Quasi-Judicial Decision Makers to make decisions that are both unlawful and invalid, a breach of the Public Trust given at Federation and against the Public Interest; in breach of the provisions of the Common Law and the Commonwealth of Australia Constitution Act 1900 (UK) relating to separation of Powers

25.4. Particulars

25.4.1. The conduct and decisions of the Fourth Accused as described at paragraph 25 was driven by the bias and prejudice flowing from Operation Winebar that is/was and are/were conduct and decisions that are reviewable under s5 & s6 of the ADJR, the Common Law and the provisions of s39B of the Judiciary Act

25.4.2. *Repeats paras 4.5.2 to 4.5.6*

Date: 22nd November 2017



.....
Signed by Andrew Morton Garrett, The Prosecutor

FEDERAL COURT OF AUSTRALIA

Garrett v Commissioner of Taxation [2015] FCA 117

Citation: Garrett v Commissioner of Taxation [2015] FCA 117

Parties: **ANDREW MORTON GARRETT v COMMISSIONER OF TAXATION OF THE COMMONWEALTH OF AUSTRALIA, JAMES O'HALLORAN, CHRIS BARLOW, ANNE EDWARDS, DEBBIE HASTINGS, AARON ELBOURNE, BRETT SWANSON, DAMIEN CHANNEL, CHRIS SPILLANE, DEBRA SIGNAL, SEAN O'DONAGHUE, ALYX SUDALL, BRETT SWANSON and JANE FERRY**

File number: VID 600 of 2014

Judge: **PAGONE J**

Date of judgment: 26 February 2015

Corrigendum: 24 March 2015

Catchwords: **PRACTICE AND PROCEDURE** – Vexatious proceedings order sought by respondents against applicant pursuant to s 37AO of the *Federal Court of Australia Act 1976* (Cth) – whether applicant has frequently instituted or conducted vexatious proceedings in Australian courts or tribunals – whether applicant has sought to re-litigate matters previously decided – whether applicant has prepared inconsistent pleadings in different proceedings in a way that could bring the administration of justice into disrepute – whether applicant has instituted proceedings without reasonable grounds – whether applicant has instituted proceedings to harass or annoy, cause delay or detriment, or achieve another wrongful purpose.

Legislation: *Federal Court of Australia Act 1976* (Cth) ss 37AM and 37AO
Federal Court Rules 2011 (Cth) rr 9.08, 16.21 and 26.01
Federal Court Rules (Cth) O 21 r 1
Judiciary Act 1903 (Cth) s 39B
Supreme Court Act 1935 (SA) s 39
Supreme Court Act 1986 (Vic) s 21
Taxation Administration Act 1953 (Cth) Sch 1 s 105-55
Vexatious Proceedings Act 2008 (NSW)

Cases cited: *Andrew Garrett Wines Resorts Pty Ltd v National Australia Bank Ltd* [2006] SASC 130

Andrew Garrett Wines Resorts Pty Ltd v National Australia Bank Ltd [2006] SASC 381
Andrew Garrett Wines Resorts Pty Ltd v National Australia Bank Ltd [2007] SASC 173
Attorney-General (NSW) v Chan [2011] NSWSC 1315
Attorney-General (Vic) v Horvath, Senior [2001] VSC 269
Attorney-General (Vic) v Weston [2004] VSC 314
Gallo v Attorney-General (Unreported, Supreme Court of Victoria, Full Court, 4 September 1984)
Garrett, as Trustee of the Garrett Family Trust [2009] FCA 252
Garrett v Australian Trade Commission [2014] FCA 575
Garrett v Bransbury [2007] FCA 529
Garrett v Deputy Commissioner of Taxation [2005] FMCA 19
Garrett v Deputy Commissioner of Taxation [2014] FCA 576
Garrett v Duncan [2014] FCA 1260
Garrett v Fosters Wine Estates Ltd [2007] FCA 253
Garrett v Macks [2006] FCA 601
Garrett v Macks [2008] FCA 1419
Garrett v Macks [2009] FCA 253
Garrett v Macks [2014] FCA 1259
Garrett v Make Wine Pty Ltd [2014] FCA 1258
Garrett v Mildara Blass Ltd [2009] SASC 19
Garrett v National Australia Bank [2007] FCA 530
Garrett v National Australia Bank Ltd [2009] FCA 191
Garrett v Rann [2007] FCA 528
Garrett v The Chief Executive Officer of Austrade [2015] FCA 39
Garrett v Tseng [2007] FCA 93
Garrett v Westpac Banking Corporation [2007] FCA 439
Garrett v Westpac Banking Corporation [2007] FCA 525
HWY Rent Pty Ltd v HWY Rentals (in liq) [2014] FCA 449
IML Pty Ltd v International Vineyards Pty Ltd [2005] SASC 396
Liao v New South Wales [2014] NSWCA 71
Re The Trustee for the Andrew Garrett Family Trust (No 3) and the Commissioner of Taxation [2013] AATA 395
Re Vernazza [1960] 1 QB 197
Saffron v Federal Commissioner of Taxation (1991) 102 ALR 19
Sea Culture International v Scoles (1991) 32 FCR 275
Seidler v University of New South Wales (No 2) [2011] FCA 1330
Soden v Kowalski [2011] FCA 318
Spalla v St George Motor Finance Ltd (No 6) [2004] FCA 1699
Sunburst Properties Pty Ltd (in liq) v Agwater Pty Ltd [2005] SASC 335

The Trustee for Oenoviva (Australia & New Zealand) Plant and Equipment Trust v Commissioner of Taxation [2014] AATA 614
Universal Holidays Pty Ltd v Tseng [2008] FCA 1011

Date of hearing: 4 February 2015

Date of last submissions: 18 February 2015

Place: Melbourne

Division: GENERAL DIVISION

Category: Catchwords

Number of paragraphs: 35

Counsel for the Applicant: The applicant appeared in person

Counsel for the Respondents: Mr P Hanks QC with Ms M Baker

Solicitor for the Respondents: Australian Government Solicitor

FEDERAL COURT OF AUSTRALIA

Garrett v Commissioner of Taxation [2015] FCA 117

CORRIGENDUM

1 In paragraph 6 of the Reasons for Judgment, the word “vexation” should read
“vexatious”.

2 In paragraph 20 of the Reasons for Judgment, the date of the settlement deed should
read “26 July 2000”.

3 In paragraph 26 of the Reasons for Judgment, the phrase “for leave to appeal to the
High Court” should be replaced with “for leave to issue a proceeding in the High Court under
rule 6.07.3 of the *High Court Rules 2004* (Cth)”.

4 In paragraph 29 of the Reasons for Judgment, “27 January 2014” should read “27
January 2015”.

5 In paragraph 32 of the Reasons for Judgment, the phrase “which ought not to
proceed” should read “which ought to be allowed to proceed”.

I certify that the preceding five (5)
numbered paragraphs are a true copy
of the Corrigendum to the Reasons
for Judgment herein of the
Honourable Justice Pagone.

Associate:

Dated: 24 March 2015

**IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY
GENERAL DIVISION**

VID 600 of 2014

**BETWEEN: ANDREW MORTON GARRETT
Applicant**

**AND: COMMISSIONER OF TAXATION OF THE
COMMONWEALTH OF AUSTRALIA
First Respondent**

**JAMES O'HALLORAN
Second Respondent**

**CHRIS BARLOW
Third Respondent**

**ANNE EDWARDS
Fourth Respondent**

**DEBBIE HASTINGS
Fifth Respondent**

**AARON ELBOURNE
Sixth Respondent**

**BRETT SWANSON
Seventh Respondent**

**DAMIEN CHANNEL
Eighth Respondent**

**CHRIS SPILLANE
Ninth Respondent**

**DEBRA SIGNAL
Tenth Respondent**

**SEAN O'DONAGHUE
Eleventh Respondent**

**ALYX SUDALL
Twelfth Respondent**

**BRETT SWANSON
Thirteenth Respondent**

**JANE FERRY
Fourteenth Respondent**

JUDGE: PAGONE J
DATE OF ORDER: 26 FEBRUARY 2015
WHERE MADE: MELBOURNE

THE COURT DECLARES THAT:

1. The applicant is a person who has frequently instituted or conducted vexatious proceedings in Australian courts or tribunals.
2. By this proceeding the respondents are each persons against whom the applicant has instituted or conducted a vexatious proceeding.

AND THE COURT ORDERS THAT:

3. The applicant is prohibited from:
 - (a) instituting in his own name; or
 - (b) causing others to institute; or
 - (c) being concerned, whether directly or indirectly, in the institution of, any proceeding in any registry of the Federal Court of Australia against the Commissioner of Taxation, any Second Commissioner of Taxation, any Deputy Commissioner of Taxation, any person who is or was employed in the Australian Taxation Office as an “APS employee” within the meaning of the *Public Service Act 1999* (Cth), or any agent or adviser of the Commissioner of Taxation without the leave of this Court.
4. The applicant is prohibited from:
 - (a) instituting in his own name; or
 - (b) causing others to institute; or
 - (c) being concerned, whether directly or indirectly, in the institution of, any proceeding in any registry of the Federal Court of Australia without the leave of this Court.
5. The proceeding be dismissed.
6. The applicant pay the costs of the respondents of and incidental to the interlocutory application made by the respondents for orders pursuant to s 37AO.
7. The applicant pay the respondent’s costs of and incidental to the proceeding.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

**IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY
GENERAL DIVISION**

VID 600 of 2014

**BETWEEN: ANDREW MORTON GARRETT
Applicant**

**AND: COMMISSIONER OF TAXATION OF THE
COMMONWEALTH OF AUSTRALIA
First Respondent**

**JAMES O'HALLORAN
Second Respondent**

**CHRIS BARLOW
Third Respondent**

**ANNE EDWARDS
Fourth Respondent**

**DEBBIE HASTINGS
Fifth Respondent**

**AARON ELBOURNE
Sixth Respondent**

**BRETT SWANSON
Seventh Respondent**

**DAMIEN CHANNEL
Eighth Respondent**

**CHRIS SPILLANE
Ninth Respondent**

**DEBRA SIGNAL
Tenth Respondent**

**SEAN O'DONAGHUE
Eleventh Respondent**

**ALYX SUDALL
Twelfth Respondent**

**BRETT SWANSON
Thirteenth Respondent**

**JANE FERRY
Fourteenth Respondent**

JUDGE: PAGONE J
DATE: 26 FEBRUARY 2015
PLACE: MELBOURNE

REASONS FOR JUDGMENT

1 Mr Garrett commenced proceedings against the Commissioner of Taxation and other named respondents (although one seems to be named twice) by application dated 28 September 2014 and statement of claim dated 29 September 2014. Mr Garrett's application seeks relief under s 39B of the *Judiciary Act 1903* (Cth), amongst other things, setting aside notices of assessment, findings that the respondents have breached various provisions of legislation, declarations that the respondents have acted contrary to various principles of law, and damages. The application also seeks various orders for interlocutory relief, including an order restraining the respondents from taking further enforcement proceedings, an order for discovery, and several orders that evidence adduced in other proceedings be adduced in this proceeding. On 12 November 2014, the respondents filed an interlocutory application seeking orders for summary judgment against Mr Garrett under r 26.01 of the *Federal Court Rules 2011* (Cth), to strike out parts of the statement of claim under r 16.21 of the Rules, and for the removal of the second to fourteenth respondents as parties to the proceeding under r 9.08 of the Rules. On 19 November 2014, Mr Garrett applied for interlocutory orders seeking, amongst other things, discovery of certain documents and the addition of four more employees of the Australian Taxation Office as parties to the proceeding. On 11 December 2014, the respondents applied for orders under s 37AO of the *Federal Court of Australia Act 1976* (Cth). On 27 January 2015, Mr Garrett filed an interlocutory application seeking, amongst other things, to file and serve an amended statement of claim as set out in an exhibit to an affidavit made by him on 27 January 2015. Mr Garrett and the respondents filed extensive material in support of their respective applications and in opposition to the applications made by the other side. Mr Garrett's written submissions, however, were not filed on time but were nonetheless received. In those submissions, and orally at the hearing, he referred to and relied upon seven affidavits which he had filed in the proceeding between 24 October 2014 to 27 February 2015 and their many exhibits. Amongst that material were references to many other affidavits and material filed in other proceedings.

2 The interlocutory applications were fixed to be heard on 4 February 2015 but on that day the respondents sought to deal first with the s 37AO application as a matter of efficient disposition of the proceedings as a whole because the outcome of the s 37AO application would necessarily have an impact upon all other interlocutory proceedings and upon the proceeding as a whole. The respondents also sought at the hearing, and were granted, leave to amend their application under s 37AO by the addition of an order under that section to dismiss the proceeding. The remaining interlocutory applications were thus left for subsequent hearing if they continued to be relevant after determination of the s 37AO application.

3 Judgment was reserved at the conclusion of the hearing on 4 February 2015, but on 10 February 2015 Mr Garrett applied to reopen the hearing “for the purpose of adducing fresh evidence of [his] that was unavailable on the 4th February 2015” and for other orders. His application to reopen the hearing was supported by an affidavit, many exhibits and lengthy written submissions. Mr Garrett was heard on 18 February 2015 and given leave to file the material which had not been available on 4 February 2015 (subject to the respondents’ opposition on the grounds that the material was irrelevant), but Mr Garrett was not otherwise granted the other orders he sought for the reasons given orally at the hearing.

4 Section 37AO(2) permits the Court to make orders where the section applies:

- (a) staying or dismissing all or part of any proceedings in the Court already instituted by the person described in s 37AO(1);
- (b) prohibiting the person from instituting proceedings, or proceedings of a particular type, in the Court; and
- (c) that the Court considers appropriate in relation to the person.

Section 37AO applies if the Court is satisfied that a person has frequently instituted or conducted vexatious proceedings in Australian courts or tribunals. The words “vexatious proceeding” are given an inclusive definition by s 37AM, but the word “vexatious” is not separately defined. In *Gallo v Attorney-General* (Unreported, Supreme Court of Victoria, Full Court, 4 September 1984), Starke J, with whom Crockett and Beach JJ agreed, said at 12:

In the light of the mischief to which the section is directed, however, it seems to me that the word "vexatious" is not in this context a term of art and is an omnibus expression, which includes proceedings which are scandalous, which disclose no

reasonable cause of action, which are oppressive, which are embarrassing, or which are an abuse of the process of the court. All of such and similar proceedings, in my opinion, fall within the meaning of the word "vexatious" in the statute.

[See also *Attorney-General v Knight* [2004] VSC 407 at [5]]

The concepts in that passage are reflected in the definition of the words "vexatious proceeding" in s 37AM(1), namely:

vexatious proceeding includes:

- (a) a proceeding that is an abuse of the process of a court or tribunal; and
- (b) a proceeding instituted in a court or tribunal to harass or annoy, to cause delay or detriment, or for another wrongful purpose; and
- (c) a proceeding instituted or pursued in a court or tribunal without reasonable ground; and
- (d) a proceeding conducted in a court or tribunal in a way so as to harass or annoy, cause delay or detriment, or achieve another wrongful purpose.

The four categories of vexatious proceedings in s 37AM(1) overlap to some extent. Perry J adopted with approval in *HWY Rent Pty Ltd v HWY Rentals (in liq)* [2014] FCA 449 at [106] the observation made by Adamson J in *Attorney-General (NSW) v Chan* [2011] NSWSC 1315 at [33] in respect of the equivalent definition in the *Vexatious Proceedings Act 2008* (NSW):

These categories are not discrete, since each of the sub-paragraphs (b)-(d) could properly be regarded as an abuse of process of a court or tribunal. Furthermore, the difference between sub-paragraph (b), which connotes a subjective intention on the part of the Defendant, and sub-paragraph (d), which does not, and is concerned with effect and consequence, rather than motive or design, relieves the Court of the obligation of determining whether the respondent to such an application intends the consequences of his or her actions, or does not.

5 The respondents in this proceeding seek the following orders:

1. Pursuant to s 37AO of the *Federal Court of Australia Act 1976* (Cth), the Applicant, Andrew Morton Garrett, is prohibited from:
 - 1.1. instituting in his own name; or
 - 1.2. causing others to institute; or
 - 1.3. being concerned, whether directly or indirectly, in the institution of any proceedings in any registry of the Federal Court of Australia against the Commissioner of Taxation, any Second Commissioner of Taxation, any Deputy Commissioner of Taxation, any person who is or was employed in the Australian Taxation Office as an "APS employee" within the meaning of

the *Public Service Act 1999* (Cth), or any agent or adviser of the Commissioner of Taxation without the leave of this Court.

2. Pursuant to s 37AO of the *Federal Court of Australia Act 1976* (Cth), the Applicant, Andrew Morton Garrett, is prohibited from:
 - 2.1. instituting in his own name; or
 - 2.2. causing others to institute; or
 - 2.3. being concerned, whether directly or indirectly, in the institution of any proceeding in any registry of the Federal Court of Australia without the leave of this Court.
- 2A. Pursuant to s 37AO(2)(a) of the *Federal Court of Australia Act 1976* (Cth) the proceeding (VID 600 of 2014), is dismissed.
3. The Applicant is to pay the Respondents' costs of and incidental to this interlocutory application.

The court may make a vexatious proceedings order under s 37AO(2) on its own initiative or on the application of the persons nominated in s 37AO(3). One of the persons who may make an application is a person against whom another person has instituted or conducted a vexatious proceeding. Each of the respondents is a person against whom Mr Garrett has instituted or conducted this proceeding and is therefore, pursuant to s 37AO(3)(c), a person on whose application the Court is able to make an order under s 37AO(2), assuming the proceeding is found to be a 'vexatious proceeding' within the meaning of s 37AM(1). The respondents have not made separate applications seeking orders only in respect of themselves individually. Instead, the orders sought are, in form, by all of the respondents seeking orders, amongst others, that would prevent Mr Garrett from commencing or continuing proceedings against all of the other respondents. Nothing turns on the fact that the form of the application made by the respondents is not a separate application by each respondent seeking orders only for the respondent making the application because the success of the application by any one of them will necessarily have the same effect upon the proceeding for the others. In this case, therefore, there is no question about the standing of one applicant for orders under s 37AO to apply for orders affecting other parties to an existing proceeding who could, but conceivably might not wish, to apply for orders under s 37AO.

6 The second order which is sought, however, would apply more generally to any other person who is not a party to this proceeding against whom Mr Garrett might hereafter seek to institute a proceeding, directly or indirectly, contrary to the terms of any order that might be

made under s 37AO(2). It is therefore broader in its application than the other orders sought by the respondents for their own benefit, and raises for consideration the extent to which a person coming within the terms of s 37AO(3)(c) may seek an order applying to potential respondents to proceedings which are not yet commenced by Mr Garrett. Section 37AO(3) identifies and limits the persons who may apply for a vexatious proceedings order. Amongst those who may apply are Attorneys-General and Court Registrars. In this case, the first respondent making the application is a public official with statutory powers and each of the other respondents making the application are public servants employed by the first respondent in the exercise of statutory duties. None, however, has responsibilities which are either as broad as those of the Attorney-General of the Commonwealth or of a State or Territory, or as specific as those of a Registrar of the Court, each of whom are expressly given the power to make applications under ss 37AO(3)(a) and (b). The basis of the application made by the respondents is that they are each, within the meaning of the words in s 37AO(3)(c), “a person against whom another person [namely Mr Garrett] has instituted or conducted” what they contend to be a vexatious proceeding. The section does not, however, prevent a person who may apply for an order under that provision from seeking orders applying more generally than to themselves. A person “who has a sufficient interest in the matter” is, by s 37AO(3)(d), also able to apply for an order within the full breadth of s 37AO(2) and there is no reason to read down the entitlement of a person coming within the terms of s 37AO(3)(c) to apply for a vexatious proceedings order by reference to s 37AO(3)(d). A person against whom another person has instituted or conducted a vexatious proceeding (assuming the latter is established) is permitted to make an application under s 37AO without needing to establish “a sufficient interest in the matter” that would need to be established by a person whose entitlement to make the application depends upon establishing the sufficient interest contemplated by s 37AO(3)(d). Since a person may apply for one or more of the orders contemplated by s 37AO(2) only because a vexation proceeding has been instituted or conducted against that person, it does not matter that the orders sought, if granted, would apply to others. Accordingly, the respondents in this case are entitled to seek orders which, if granted, will apply to potential respondents to proceedings which have not yet been commenced by Mr Garrett.

7 In considering whether a proceeding is a ‘vexatious proceeding’ within the meaning of s 37AM(1), it is necessary to look at whether the proceeding itself is vexatious, not whether it was instituted vexatiously: see *Attorney-General (Vic) v Weston* [2004] VSC 314

at [14]; *Re Vernazza* [1960] 1 QB 197, 208. In *Attorney-General (Vic) v Horvath, Senior* [2001] VSC 269, Ashley J said at [28] in relation to the comparable task required by the provision then found in s 21(2) of the *Supreme Court Act 1986* (Vic):

It is one thing to know what the word “vexatious” means. It is another thing to apply s. 21(2) to the circumstances of a particular case. In the latter task the following matters are, according to the authorities, relevant: first, where an order has been made dismissing an action as frivolous or vexatious, or striking a pleading out, it is not for a court considering a s. 21 application to go behind the order and go into the merits of the argument as a court of appeal would do. Second, findings which are required do not depend on viva voce evidence or credibility of witnesses. The critical evidence is to be found in court files – documents, judgments, orders and reasons. For that reason, any hearsay material contained in an affidavit in support of an application, even though objectionable, should be treated simply as a distraction, and ignored. Third, the question is not whether the manner in which a proceeding is conducted is vexatious; it is whether, having regard to its nature and substance, it should be so characterised. Fourth, and this is a more general proposition with respect to s. 21, in determining whether the Attorney-General has made out a case, the court is not concerned with a minute individual examination of each proceeding. It must consider the overall impression created by the number of proceedings, their general character and their results. [Footnotes omitted]

Section 37AO is not the same as the section with which his Honour was concerned in *Horvath*, but the observations made remain a useful reminder of the focus of attention.

8 Section 37AO(1)(a) requires the court to be satisfied that a person against whom an order is sought “has frequently instituted or conducted vexatious proceedings in Australian courts or tribunals”. The word “frequently” has its ordinary meaning and is not given a specific statutory meaning for the purposes of s 37AO(1) (the former O 21, r 1 of the *Federal Court Rules* had imposed the higher threshold of the need to establish that vexatious proceedings had been conducted “habitually, persistently and without reasonable grounds”). The meaning and application of the word “frequently” in s 37AO(1)(a) were considered by Perry J in *HWY Rent Pty Ltd v HWY Rentals (in liq) (No 2)* [2014] FCA 449 where her Honour said:

5.3.5 Were vexatious proceedings instituted or conducted by Mr Jarvie “frequently”?

110 Notwithstanding the seriousness of these matters, the power in s 37AO(1)(a) is enlivened only if it can be said that Mr Jarvie instituted or conducted vexatious proceedings “frequently”. As Davies J explained in *Attorney-General (NSW) v Wilson* [2010] NSWSC 1008 at [11]:

“It would not be sufficient, therefore, to point to the fact that a litigant had instituted even a number of vexatious proceedings. If the adverb ‘frequently’ could not be used in connection with the sum of them, no order can be made under s 8. That is a significant matter

because it is a serious thing to deprive litigants of their access to the courts, a right which might be thought to be an inherent right for persons living in a democratic society under the rule of law – see in that regard *In Re Boaler* [1915] 1 KB 21 at 34 and *Re De W Kennedy (Finance) Pty Ltd v Ley* (unreported – Supreme Court NSW, Holland J – 29 March 1978).”

- 111 Without detracting from the seriousness of the consequences of such an order, the use of the term “*frequently*” nonetheless imports a lesser test than that imposed by the predecessor provision in rule 6.02 which required that vexatious proceedings have been conducted “*habitually and persistently*”. That test had been said to imply “*more than great frequency*”, the word “[h]abitually suggest[ing] that the institution of such proceedings occurs as a matter of course, or almost automatically, when the appropriate conditions (whatever they may be) exist; ‘persistently’ suggest[ing] determination, and continuing in the face of difficulty or opposition, with a degree of stubbornness”: *Attorney-General v Wentworth* (1988) 14 NSWLR 481 at 492 Roden J.
- 112 The term “*frequently*” is a relative term and “*must be looked at in the context of the litigation being considered*”: *Attorney General (NSW) v Gargen* [2010] NSWSC 1192 at [7] (Davies J); see also *Attorney General (NSW) v Wilson* [2010] NSWSC 1008 at [12]; *Jones v Cusack* (1992) 109 ALR 313 (*Jones*) at 315 (Toohey J), and *Chan* at [37]. Thus, the Court may find that a person has instituted or conducted vexatious proceedings “*frequently*” even though the number of proceedings may be quite small, such as where the proceedings are an attempt to re-litigate an issue determined against the person: *Fuller v Toms* [2013] FCA 1422 (Fuller) at [77] (Barker J).
- 113 Thus in *Fuller*, for example, the applicant against whom a vexatious proceedings order under s 37AO was made had commenced five separate proceedings over a period of approximately five years. Having regard to the circumstances and the conduct of those various proceedings, Barker J was satisfied that the applicant had “*frequently*” instituted and conducted proceedings of the type contemplated by s 37AO notwithstanding that “*the number of proceedings may be considered small*”. Similarly, in *Jones*, in determining whether the applicant had “*frequently*” instituted proceeding for the purposes of former O 63, r 6(1) of the High Court Rules, Toohey J held that the five proceedings initiated by the applicant during a six year period “*readily answer[ed] that description*”.
- 114 In short, there being no numerical threshold prescribed by Part VAAA itself, the question of whether an applicant has “*frequently*” instituted or conducted vexatious proceedings for the purposes of s 37AO must be answered in the circumstances of the particular case. [Emphases in original]

In this proceeding the respondents relied upon some 27 proceedings which are said to be vexatious proceedings as evidence of the frequency. Mr Garrett challenged the respondents’ reliance upon those proceedings and sought to rely in response also upon the reasons for decision of Jessup J in *Garrett v The Chief Executive Officer of Austrade* [2015] FCA 39 and the application for a stay which Mr Garrett made in proceedings before Beach J.

9 The respondents submitted that the 27 proceedings upon which they relied in this proceeding satisfied the statutory description of “vexatious proceeding” in s 37AM(1) and the requirement in s 37AO(1)(a) that they were “frequently instituted or conducted”. The respondents contended that Mr Garrett has instituted numerous proceedings in Australian courts and tribunals that have been an abuse of process or that otherwise fall within the definition of a vexatious proceeding, and that he has taken many steps in conducting proceedings that constitute an abuse of process or fall within the definition of a vexatious proceeding. Specifically, the respondents submitted that Mr Garrett had instituted proceedings or taken steps in various proceedings:

- (a) seeking to re-litigate matters, including both instituting fresh proceedings as if the earlier proceedings had not occurred and by way of mounting a collateral attack on a final decision made by another court of competent jurisdiction;
- (b) based on inconsistent pleadings in different proceedings in a way that could bring the administration of justice into disrepute;
- (c) without reasonable grounds; and
- (d) that had the effect or consequence of harassing or annoying the other party or parties.

The respondents also contended that the present proceeding against them was, for the same reasons, a vexatious proceeding. The materials relied upon by the respondents amply establish that Mr Garrett has frequently instituted and conducted vexatious proceedings in Australian courts and tribunals and that this proceeding is a vexatious proceeding.

10 Mr Garrett has previously been declared a vexatious litigant under s 39 of the *Supreme Court Act 1935* (SA) and has been made the subject of an order under s 37AO. In *Andrew Garrett Wines Resorts Pty Ltd v National Australia Bank Ltd* [2007] SASC 173, Anderson J made orders on an application by the National Australia Bank declaring that Mr Garrett “persistently instituted vexatious proceedings” and prohibiting Mr Garrett from instituting proceedings in any court of South Australia against the National Australia Bank and various other entities and individuals associated with that bank. In *Garrett v Mildara Blass Ltd* [2009] SASC 19, Layton J similarly declared that Mr Garrett had persistently instituted vexatious proceedings as defined by s 39(1) of the *Supreme Court Act 1935* (SA) and prohibited Mr Garrett from instituting or being concerned with proceedings in any court of South Australia against Foster’s Wine Estates Limited, Foster’s Brewing Group Limited,

or any related body corporate, employee, agent or adviser of Foster’s Wine Estates Limited and Foster’s Brewing Group Limited without the leave of the Court. In *Garrett v Make Wine Pty Ltd* [2014] FCA 1258, Mortimer J made orders under s 37AO prohibiting Mr Garrett from instituting in his own name, causing others to institute, or being concerned whether directly or indirectly with the institution of any proceedings in any registry of the Federal Court of Australia against Make Wine Pty Ltd, VOK Beverages Pty Ltd, Treasury Wine Estates Vintners Ltd or any related body corporate, employee, agent or adviser of those entities without the Court’s leave. The orders now sought by the respondents in this proceeding are broader than those previously made but the material relied upon, including Mr Garrett’s institution of and conduct in the present proceeding, satisfies me that Mr Garrett has frequently instituted and conducted vexatious proceedings in Australian courts and tribunals, including this proceeding, to warrant making the orders sought under s 37AO(2).

11 It is convenient to consider the respondents’ submissions by reference to the categories upon which they relied (bearing in mind, however, that the categories overlap). The first of the categories relied upon by the respondents is the re-litigation of matters by Mr Garrett. It may be an abuse of process for a party to re-litigate matters that have been decided previously: *Spalla v St George Motor Finance Ltd (No 6)* [2004] FCA 1699 at [59]; *Liao v New South Wales* [2014] NSWCA 71 at [169]; *Garrett v Make Wine Pty Ltd* [2014] FCA 1258 at [147]-[152]. Litigants may not re-litigate matters previously decided as if the earlier proceeding had not occurred (*Seidler v University of New South Wales (No 2)* [2011] FCA 1330 at [13]), or seek to institute further proceedings in relation to matters actually raised or more appropriately raised in other proceedings (*Saffron v Federal Commission of Taxation* (1991) 102 ALR 19, 23). Mr Garrett has on more than one occasion been found, and in this proceeding continues, to refuse to accept previous decisions against him. In *Garrett v Make Wine Pty Ltd* [2014] FCA 1258, Mortimer J said at [195]:

The impression which is created, attempting to characterise this behaviour as favourably as I can for Mr Garrett, is that he is so firmly persuaded in his own mind that he has not received any “justice” that he simply refuses to accept any outcome, including a judicially imposed outcome, that does not give him what he believes he is entitled to.

That is the same impression he has created in this proceeding. His lengthy written submissions began with an attack on the motives of the respondents in making an application under s 37AO and a submission that their purpose was “to create a smokescreen to the true

issue described” in his statement of claim. The written submissions thereafter proceeded largely to propound the “justice” of his case as if prior decisions had little, if any, effect.

12 The respondents submitted in particular that Mr Garrett sought to re-litigate six matters, namely:

- (a) Mr Garrett’s dispute concerning the National Australia Bank’s right to possession of a property known as “Springwood Park” pursuant to the first of its mortgages over Springwood Park;
- (b) Mr Garrett’s standing to bring proceedings and, in particular, his contention that his status as a bankrupt did not preclude him from representing companies or other persons;
- (c) the question whether a joint sale agreement entered into by Sunburst Properties Pty Ltd, a company in the Andrew Garrett Group then in liquidation, with Agwater Pty Ltd on 5 November 2003 in respect of a property known as “Bulka Station” (including certain water licences and a pipeline) was valid;
- (d) the question whether a bill of exchange is legal tender and whether there is any legal obligation on a payee to accept such a bill (a question said by the respondents to have arisen in respect of an attempt made by Mr Garrett to avoid bankruptcy in 2004 by giving a bill of exchange to the Australian Taxation Office);
- (e) the legal effect of a deed of settlement entered into on 26 July 2000 by the “Garrett Family Trust”, Mildara Blass Estates (which subsequently became known as Foster’s Wine Estates Ltd and then Treasury Wine Estates Vintners), International Vintners Pty Ltd, Andrew Garrett Vineyards Estates Pty Ltd, Vinpac International Pty Ltd and Andrew Garrett Wine Resorts Pty Ltd, and Mr and Mrs Garrett; and
- (f) Mr Garrett’s attempt to argue that the “Garrett Family Trust” named in the deed of settlement dated 26 July 2000 was a different entity to the “Andrew Garrett Family Trust”.

13 Mr Garrett’s dispute concerning the National Australia Bank’s right to possession of a property known as “Springwood Park” pursuant to a first mortgage was the subject of one of

the proceedings considered by Anderson J in *Andrew Garrett Wines Resorts Pty Ltd v National Australia Bank Ltd* [2007] SASC 173, where his Honour said at [20]:

This action has been described in argument as an action instituted by Mr Garrett, on behalf of Evajade, in an attempt to re-litigate the "possession finding" in Action No. 127 of 2004, and including other findings relating to NAB's mortgages over Springwood Park, and brings into play findings relating to stamp duty, Mr Garrett's standing and ability to pursue any actions, and also arguments concerning a mortgage granted by the Rothschild group. The Registrar-General of the Lands Title Office, NAB and Sims Partners as agents for NAB were joined in the action as defendants with Mr Garrett purporting to act on behalf of Evajade claiming possession of Springwood Park and seeking injunctions preventing any further dealings with the property. This action was dismissed by Judge Withers on 25 November 2005 as disclosing no cause of action with costs to be paid by the plaintiff to the defendant on an indemnity basis.

At [86] to [112] his Honour returned to that proceeding and recorded in some detail Mr Garrett's application and conduct directed to attempts to re-litigate the matters which had been decided against him, saying:

Andrew Garrett Wine Resorts Pty Ltd & Anor v National Australia Bank Ltd – SCCIV-04-127

86 In relation to Action No. 127 of 2004, I will summarise the actions taken by Mr Garrett at different stages. Because of the sheer volume of the individual applications within the files I will attempt to sub-divide the applications into different stages. Within this action there are a number of applications and appeals which do not strictly fall within the definition of "proceedings" for the purpose of s 39 of the Act. The applications, which fall outside of the definition of "proceedings", I will consider as part of the factual background to explain how the Garrett matters have progressed to this point. They flavour all the applications, appeals and actions which I must consider. I will determine whether the proceedings have been instituted to harass, annoy, cause delay, or for any other ulterior purpose or without reasonable ground.

87 In addition there are numerous proceedings filed by Mr Garrett purportedly on behalf of various persons and corporate entities, which I will also consider to determine if they have been instituted vexatiously by Mr Garrett.

88 I will, therefore summarise the effect of Mr Garrett's various actions and appeals at each stage of Action No. 127 of 2004.

(i) The initial application and subsequent hearings up to the Full Court decision on 14 September 2004.

89 After instituting the action against NAB, Mr Garrett in a series of applications, sought orders which essentially related to attempts to stay the order for possession over Springwood Park. This order for possession had been made by Besanko J on 26 July 2004. Many of the orders sought were not ultimately pursued but some, such as a stay of the possession order, were eventually dismissed by the court.

- 90 On 30 July 2004 Mr Garrett brought an application seeking amongst other things that various non-parties pay approximately \$73M into court. This amount would apparently cover NAB's ultimate liability to Mr Garrett as assessed by him and was to compensate him for all the wrongs inflicted on him by NAB. Five days later, on 3 August 2004, Mr Garrett filed another application, again seeking a stay of the order for possession, the joinder of various parties and the removal of the receiver.
- 91 In my opinion, the nature of these applications is such that they should be considered "proceedings" for the purpose of s 39 of the Act. They seek substantive relief and in particular they attempt to bring an additional party into the proceedings and also to remove a party. (See *Attorney-General v Wentworth* (1988) 14 NSWLR 481 at 481)
- 92 An appeal to the Full Court against the order made by Besanko J was lodged on 9 August 2004. It was heard by the Full Court on 14 September 2004 when the appeal was dismissed. Reasons for the dismissal of the appeal were published by the Full Court on 4 November 2004. (See *Andrew Garrett Wine Resorts Pty Ltd & Ors v National Australia Bank Ltd* [2004] SASC 348; (2004) 236 LSJS 342.
- 93 Within three days of lodging his appeal to the Full Court Mr Garrett began a series of applications seeking orders, *inter alia*, that the original order be stayed, that NAB discharge its mortgages over Springwood Park and further that both the accounting firm KPMG and the solicitors for NAB pay an amount of \$73M into court. KPMG had been involved, by NAB, in certain insolvency matters involving the Garrett group. He also sought to join numerous parties who were tenants of the Springwood Park property. After these matters were adjourned on several occasions they were not finally pursued. These are also proceedings for the purpose of s 39 of the Act.
- 94 On 18 August 2004 Mr Garrett filed 3 separate applications. One application was made pursuant to the Real Property Act 1886 (SA) and sought an order for possession of Springwood Park in favour of Garrett International Investments. This application has not been pursued. At the same time a further injunction was sought relating to royalties allegedly due to Mr Garrett and again he sought a release from the order for possession. It is my opinion, that considering the relief sought in the applications, these applications should be considered proceedings for the purposes of s 39 of the Act.
- 95 On 20 August Mr Garrett took out an application for judicial review of the decision of Besanko J. This appears never to have been concluded. This is a proceeding for the purpose of s 39 of the Act.
- 96 Also on this day Mr Garrett filed an application seeking the discharge of NAB's mortgages and, amongst other orders, an order that NAB be held in contempt of court for overcharging of interest. I also consider these as proceedings for the purpose of this application.
- 97 I point out that all of these actions described to date were taken out after the appeal to the Full Court was lodged and essentially related to the actual orders that were being appealed against. In my view there was no purpose other than to harass and annoy NAB and I find Mr Garrett's actions were vexatious.

- 98 On 23 August 2004 Mr Garrett again sought orders that that NAB pay to him, in addition to an amount of \$1.6M, an amount of \$100M into a Suitor's Fund in anticipation of a successful damages claim against NAB. He also sought to have NAB's securities released.
- 99 On 30 August 2004 he sought again to have NAB's securities released. I do not consider the application filed on 30 August to seek any substantive relief and therefore I do not consider it a proceeding for the purpose of this application. However, that is not the case with the application made on 23 August 2004. It was a proceeding in my view.
- 100 On 14 September 2004 the Full Court dismissed the appeal from the orders of Besanko J. The very next day Mr Garrett took out an application again seeking a stay of the original order for possession. He also sought an order requiring NAB to purchase "the royalty stream". The royalty stream was the subject of the Berringer Blass Deed of Settlement.
- 101 Up to this point therefore it can be seen that Mr Garrett, although legitimately lodging an appeal to the Full Court from the original decision of Besanko J, then set about using whatever means he could to make life difficult for NAB by taking out a series of applications, none of which were necessary in view of the pending appeal, and all of which caused NAB to engage lawyers and pay for legal advice. As I have indicated many of these matters, the subject of the applications, were not ultimately pursued. However, the fact is that they were obstructive to the smooth running of the proceedings which involved an appeal to the Full Court. The fact that Mr Garrett chose to institute all these applications when the appeal was on foot is in my view again illustrative of the mindset of a person insistent on harassing and impeding NAB.
- (ii) Amendments to statement of claim**
- 102 Following the decision by the Full Court and the application the following day to stay the order for possession, Mr Garrett was declared bankrupt on 24 September 2004.
- 103 On 14 October 2004 Mr Garrett filed an amended statement of claim which was then further amended a few days later. On 8 November 2004 an application was made which sought to restrain NAB from exercising its power of sale and in addition seeking an order, again attempting to set aside the order for possession. This application was filed on behalf of Mrs Garrett and forms part of the factual background. The application was dismissed by Gray J on 23 March 2005.
- 104 Soon after, on 22 December 2004 Mrs Garrett filed her own petition for bankruptcy.
- 105 On 11 January 2005 Mr Garrett then took out application seeking orders that NAB, Johnson Winter & Slattery, the solicitors for NAB, and counsel for NAB be held in contempt of court for alleged breaches of undertakings made earlier by counsel. Notwithstanding the earlier history of the matter, he again sought to reinstate the earliest order made by Besanko J on 5 March 2004 and sought also to stay the order for possession which had been confirmed by the Full Court. This application which involved all of these matters was dismissed by Gray J on 1 November 2005.

- 106 In that decision Gray J on the same day, namely, 1 November 2005, also dismissed further applications made by Mr Garrett on 14 January 2005 in which Mr Garrett was again seeking orders that NAB, Sims Partners, Johnson Winter & Slattery and counsel for NAB be held in contempt of court for breaches of undertakings made by counsel on three nominated dates, two of which were covered by the earlier application taken out three days prior to this one. Once again, Mr Garrett sought reinstatement of the orders of Besanko J and again sought a stay of the order of possession. This application was similar to the application made three days earlier. There is no obvious reason why the further application was necessary.
- 107 As I have indicated Gray J dismissed both the applications of 11 January 2005 and 14 January 2005 in his decision on 1 November 2005. There is simply no valid explanation proffered by Mr Garrett as to why he would have, within three days of the first application, taken out a further application in almost identical terms except that the second application sought to involve Sims Partners as well. Sims Partners had been appointed as agents of NAB when the bank took possession of Springwood Park as mortgagee. In the second application dated 14 January 2005, the orders sought were more extensive and included an order that NAB pay the costs of the first and second plaintiffs together with damages claimed by the first and second plaintiffs, namely, Resorts and Averil Garrett.
- 108 It is my opinion that these applications are an obvious attempt to harass NAB and to re-litigate the possession findings made by Besanko J on 26 July 2004 and upheld by the Full Court on 14 September 2004. Mr Garrett, again, attempted to include new parties and new causes of action within the ambit of Action No. 127 of 2004. I consider these interlocutory applications as proceedings for the purpose of s 39 of the Act as they seek to reverse, qualify or re-litigate rulings or determinations previously made. (See *Mitsubishi Motors Australia Ltd v Kowalski* [2005] SASC 154 at [56] per Bleby J)
- 109 Following in chronological order, the time elapsed in which Mrs Garrett's trustee could elect to prosecute Action No. 127 of 2004 on 25 February 2005. The trustee made no election to further prosecute the action.
- 110 Then on 4 March 2005 Mr Garrett took out an application seeking orders that the deed of discharge of the Rothschild mortgage and NAB's two mortgages in respect of Springwood Park be declared void. I will deal with the history of the Rothschild mortgage later in these reasons. On 18 May 2005 Judge Lunn dismissed this action and awarded costs against Mr Garrett. Again, it is my opinion that these applications should be considered proceedings for the purpose of this application.
- 111 On 23 March 2005 Gray J dismissed an application taken out by Mrs Garrett to once again attempt to set aside the order for possession in respect of Springwood Park. (See *Andrew Garrett Wine Resorts Pty Ltd & Anor v National Australia Bank Ltd (No 2)* [2005] SASC 105; (2005) 239 LSJS 56)
- 112 It seems apparent that all Mr Garrett was seeking to do, in this whole series of applications, was to re-litigate all matters relevant to the possession order relating to Springwood Park. These issues had been finally determined by the Full Court decision on 14 September 2004. It is my conclusion that this whole series of applications were proceedings which were instituted vexatiously.

At [128]-[129] his Honour observed that the National Australia Bank had obtained an order for the possession of Springwood Park but that it needed to obtain the duplicate memorandum of the mortgage to effect the discharge on the titles to Springwood Park upon its sale of the property. His Honour next recounted at [129]-[170] the obstacles Mr Garrett put in the way of the bank to challenge its entitlement. Action 422 of 2005 was then instituted by Mr Garrett and described by his Honour as “an obvious attempt to re-litigate the possession finding regarding Springwood Park, the stamp duty finding, the Rothschild Mortgage finding and the finding regarding his standing”. At [200] to [208] his Honour said:

Action No. 422 of 2005 – Evajade Pty Ltd & Ors v The Registrar-General of South Australia & Ors

200 Mr Garrett instituted Action No. 422 of 2005 which was an obvious attempt to re-litigate the possession finding regarding Springwood Park, the Stamp Duty finding, the Rothschild Mortgage finding and the finding regarding his standing. In short it was an attempt to re-litigate Action No. 127 of 2004.

201 The action was commenced on 19 April 2005 by a summons for possession in relation to Springwood Park. On the same day an application was taken out for an injunction to prevent NAB from dealing with Springwood Park. Mr Garrett also sought to bring in all evidence and affidavits in other actions for use in this action. He sought orders allowing him to act and for his company to be compensated for an alleged fraud by NAB and its officers. These matters were all dealt with by Judge Withers when, on 25 November 2005, he dismissed the action as disclosing no cause of action. Judge Withers in *Evajade Pty Ltd & Ors v The Registrar General of South Australia & Ors*, 25 November 2005, Supreme Court of South Australia (unreported) found that the proceedings were an abuse of the process of the court. His Honour stated at [12] that:

As is apparent this application is part of a plethora of litigation in this Court in relation to property known as Springwood Park, rights in respect of which have already been determined by this Court at first instance and subsequently by the Full Court. This in itself is an abuse of the process of this Court.

202 Further when dealing with the question of costs in that matter his Honour stated at [51] that:

For the plaintiffs to pursue these proceedings in the light of the proceedings in action 127/2004 and the various decisions of the court in respect thereof and in light of the plaintiffs not having a registered interest on the titles of the said property, in my view deserves the disapprobation of the court.

203 Prior to Judge Withers dismissing the main action further applications had been taken out by Mr Garrett seeking leave to intervene and for leave for Mr Garrett to represent the Andrew Garrett Superannuation Fund. This application was dismissed by Judge Withers on 29 September 2005.

- 204 Again, before the decision by Judge Withers on 25 November 2005, Mr Garrett took out a further application dated 15 November 2005 requiring NAB to produce duplicate certificates of title to Springwood Park to enable registration of the change in registered proprietor, injuncting NAB from any further dealings with Springwood Park and requiring NAB to provide a pay out figure for the discharge of NAB's mortgages over Springwood Park. It was, in a nutshell, all of the Springwood Park litigation revisited. Of interest on this occasion, the applications were filed by lawyers on behalf of Mr Garrett. The application was dismissed by Judge Lunn on 30 November 2005 with an order for costs.
- 205 At the same time Judge Lunn also struck out a notice to admit which had been filed on 15 November 2005 and directed to NAB. His Honour ordered costs against Mr Garrett personally.
- 206 On 13 December 2005 a notice of appeal against a decision of Judge Withers dated 25 November 2005 was lodged, and this appeal was dismissed by Vanstone J on 8 February 2006 with an order for costs against Mr Garrett. At the same time Vanstone J dismissed a further ground of appeal against Judge Withers' decision which was an application for Mr Garrett to be joined as a party to the action in his purported capacity as trustee of the Andrew Garrett Family Trust (No. 3). Her Honour, on 8 February 2006, dismissed the appeal against Judge Withers, and therefore dismissed the action as a whole. On 13 February 2006 Mr Garrett sought leave to appeal from Vanstone J's decision which was refused on 15 March 2006.
- 207 Vanstone J's reasons indicate that the applications were doomed to fail. See *Andrew Garrett Wine Resorts Pty Ltd & Anor v National Australia Bank Ltd & Other Actions (No. 2)* [2006] SASC 75.)
- 208 I consider all of these applications as proceedings within the meaning of s 39 of the Act. They involve a range of substantive issues, new causes of action and a general re-run of proceedings finally disposed of by this Court. It is my view that the proceedings are both persistent and also vexatious.

The issue was agitated again by Mr Garrett before Judge Withers and referred to by Layton J in *Garrett v Mildara Blass Ltd* [2009] SASC 19, where her Honour said at [255]:

In the course of his detailed reasoning, Judge Withers noted the existence of a “plethora of litigation in this Court in relation to the property known as Springwood Park, rights in respect of which have already been determined by this Court”. Judge Withers noted that “[t]his in itself is a strong indication that this application is an abuse of the process of this Court”. [Footnotes omitted]

The issue arose again in *Garrett v Make Wine Pty Ltd* [2014] FCA 1258, where Mortimer J observed at [168]:

Continuing his apparent pattern of taking issue with every adverse decision, Mr Garrett issued proceedings in the Federal Court against Anderson J of the Supreme Court of South Australia, and the then Registrar of that Court, Ms Bransbury: see *Garrett v Bransbury* [2007] FCA 529. Mr Garrett's claims appeared to stem from a series of decisions in the South Australian Supreme Court concerning the forced sale of the property known as “Springwood Park” and

Mr Garrett’s attempt to secure a stay on orders made by the Court in respect of that sale by the purported deposit with the Supreme Court of an International Bill of Exchange drawn on Creditnet Bank Internationale for \$1.7 million. Mansfield J held that, for a variety of reasons expressed by his Honour (see especially at [7] and [17]) the Court had no jurisdiction in relation to the claims made. Aside from the denial of any jurisdiction, his Honour also observed (at [16]) that:

one struggles to see any foundation for the orders sought in the application in any event. The grounds for those orders, as set out in [6] above, are obviously entirely misconceived, discursive and inappropriate. I shall not dignify them by going through them individually.”

It is clear from these passages that Mr Garrett has sought to re-litigate issues concerning the sale of Springwood Park and his claims against the National Australia Bank are raised again in this proceeding.

14 Mr Garrett’s standing to represent companies or other persons, and in particular his contention of an entitlement to do so notwithstanding his status as a bankrupt, was also a matter in issue in *Andrew Garrett Wines Resorts Pty Ltd v National Australia Bank Ltd* [2007] SASC 173, where Anderson J recorded Mr Garrett’s continued attempts to assert standing to maintain proceedings in the face of adverse decisions, saying at [138] and [149]:

138 On 7 November 2005, the same day that Judge Lunn published his reasons, a further notice to admit was filed and directed to NAB. It seems that this notice was actually filed on the same day that Judge Lunn dismissed previous notices to admit and when he found that Mr Garrett had no standing in Action No. 127 of 2004 other than as a defendant to the stayed counterclaim. Judge Lunn found that there was no issue between Mr Garrett and NAB to which the notices could be relevant. This forms part of the factual background from which I will proceed.

...

149 In the reasons published by Vanstone J, her Honour held that that all appeals from the various decisions of Judge Lunn should be dismissed on the broad basis that the notices of appeal were not filed by any party to the various actions and that Mr Garrett was found not to have any valid standing. Again, Mr Garrett attempted to challenge the possession findings, the Stamp Duty findings, the Rothschild findings and also the Standing finding. This demonstrates another failure to accept the finality of a decision made by a member of this Court. Many of these findings had already been the subject of numerous applications, which in substance were appeals of sorts and when dismissed were then the subject of subsequent notices of appeal. The notices of appeal, filed on 24 November 2005, should be considered as proceedings in my opinion.

Previously, in *Andrew Garrett Wines Resorts Pty Ltd v National Australia Bank Ltd* [2006] SASC 381, Anderson J had said at [24]:

It is not appropriate to allow Mr Garrett to continue to assert that he appears pursuant to the rules for the reasons which I have set out earlier. He cannot continue to lodge appeals and file documents in his personal capacity when a trustee of his bankrupt estate has been appointed and does not consent to such a course of action. Mr Garrett has been told numerous times by different Judges that he does not have valid standing and that he cannot continue to bring actions and lodge appeals without recognised standing. The other parties to this action, namely, the liquidators appointed for Andrew Garrett Wines Resorts P/L, discontinued action 127-04 on 20 September 2005 (FDN 194). A trustee in bankruptcy has been appointed for Mrs Averil Gay Garrett. That trustee has also elected not to assume the conduct of this action. Further, NAB's counterclaims against Andrew Garrett Wines Resorts P/L, Mrs Garrett and Mr Garrett have been stayed by operation of the *Corporations Act* and the *Bankruptcy Act*. It is for these reasons that Mr Garrett does not have standing. If this action is still on foot, it is for all relevant purposes, moribund.

That observation was cited in *Garrett v Mildara Blass Ltd* [2009] SASC 19 at [25]. In that case, the issue of Mr Garrett's standing was raised by him again and considered by Layton J at [20]-[29], [196], [206]-[209], [212]-[216], [221], [231]-[234] and [284]-[288].

15 The question of the validity of a joint sale agreement entered into by Sunburst Properties Pty Ltd, a company in the Andrew Garrett Group then in liquidation, with Agwater Pty Ltd on 5 November 2003 in respect of a property known as "Bulka Station" was also in issue in *Andrew Garrett Wines Resorts Pty Ltd v National Australia Bank Ltd* [2007] SASC 173 and in *Garrett v Mildara Blass Ltd* [2009] SASC 19. In the first of those proceedings, Anderson J referred to Action 1767 of 2003, which had been commenced when an injunction was granted to restrain Mr Garrett from dealing in any way with a pipeline used to carry water to Bulka Station. The receivers and managers of Sunburst Properties Pty Ltd had sought to deal with Bulka Station and the pipeline assets and sought orders to enable them to do so in the face of obstacles which were placed by Mr Garrett. The facts are recounted in some detail by Anderson J at [171]-[199]:

Action No. 1767 of 2003 – Sunburst Properties Pty Ltd (In liq) v Agwater Pty Ltd & Ors

171 This action was commenced on 15 December 2003 when an injunction was granted which restrained Mr Garrett from dealing in any way with a pipeline used to carry water to a property known as Bulka Station. He was prevented by the injunction from encumbering the pipeline in any way, or from prejudicing any rights which the plaintiff had pursuant to a Joint Sale Agreement.

172 The receivers and managers of Sunburst Properties commenced proceedings

seeking declarations and orders to establish their entitlement to sell Bulka Station and the pipeline assets pursuant to the Joint Sale Agreement. They also sought declarations as to the proper directors of Agwater, and the validity of the J & W Holdings Pty Ltd charges. J & W Holdings Pty Ltd claims to have held an interest in the pipeline at relevant times. Mr Garrett attempted by a series of transactions to transfer the pipeline assets to J & W Holdings. Gray J dealt with these matters in his reasons which were published on 2 September 2005. (See *Sunburst Properties Pty Ltd (In liq) v Agwater Pty Ltd & Ors* [2005] SASC 335.) I will now deal with the applications made by Mr Garrett and determine if they are “proceedings” for the purpose of the Act before turning to consider the nature of such proceedings. I will deal with the various applications in three stages.

(i) Prior to the trial of the action

173 On 2 August 2004 Mr Garrett took out an application seeking an order that KPMG and NAB pay \$1,617,000 into the Supreme Court. He also sought to join various persons and entities. By a further application of the same date, namely, 2 August 2004, he sought orders that the defendant KPMG and NAB be required to make application to the court for the purpose of removing two Garrett companies, namely, Sunburst and Braidwood from receivership. He sought to join the liquidators of both of those companies. He sought to consolidate action Action [sic] No. 127 of 2004 with this action. He also sought in the same application an order that the defendant rescind the Joint Sale Agreement and terminate the contract for the sale of Bulka Station by the provision of sufficient funds into the Supreme Court Sutor's Fund. He also sought an order that both KPMG and NAB pay cash amounts into the Sutor's Fund allegedly to cover damages, which he claimed. Neither of the applications and the various orders sought, which were taken out on 2 August 2004, were ever pursued by Mr Garrett. The substance of these two applications is such that they should be treated as proceedings for the purpose of s 39.

174 At the time that these applications were made, Mr Garrett was restrained in any capacity, from in any way, impeding, prejudicing or affecting the rights of the plaintiff arising from the Joint Sale Agreement. His continuous filing of applications, which on their face seek amongst other things, the determination of trial issues, cannot have been issued for any reasonable purpose. They were clearly filed to frustrate the parties' preparation for trial.

(ii) During the trial

175 As a result of Mr Garrett's actions, on 19 November 2004 the earlier injunction granted on 15 December 2003 was further extended and it restrained Mr Garrett in any capacity from taking any action which might interfere with or prejudice the asset sale agreement or in any way prejudice the plaintiff dealing with Bulka Station. I regard this as important background to the way in which Mr Garrett was proceeding and the actions which the plaintiff was required to take.

176 After the injunction was extended, on 24 November 2004, some five days later, Mr Garrett took out an application in which he sought orders that J & W Holdings Pty Ltd sell units in the company controlling the water supply or, alternatively, the actual water licences for \$1.1M, and that the proceeds be paid into the Sutor's Fund. He also sought that NAB discharge its mortgages

over Bulka Station. Once again he did not pursue this application. In my opinion this application should be regarded as a proceeding, and appears to be in contravention of the order made on 15 December 2003.

- 177 On 29 November 2004, he took out an application in which he sought the joinder of KPMG, McGrath Nicol+Partners, and also that the plaintiff and counsel for the plaintiff be added as defendants by counterclaim. He sought the joinder of individuals Mr Greg Griffin, a solicitor, and also Mr Brenton Atkinson and Mr Edward Shipley who were both business associates involved in the Garrett group of companies. This matter was dealt with by Gray J, who refused to deal with these applications for joinder until Mr Garrett put the counterclaim in its correct form. Orders were made requiring him to file and serve his proposed new counterclaim by 16 December 2004. On 17 December 2004 Judge Lunn refused Mr Garrett leave to file the counterclaim. Because of the nature of these applications brought within this action, I consider them as proceedings for the purpose of s 39 of the Act as they seek to widen the "circle of litigation".
- 178 On the same date as those matters were raised by Mr Garrett in his earlier application, he took out a further application in which, he sought an order that the plaintiff in Action No. 1767 of 2003, counsel for the plaintiff and Mr Crosby and Mr Marshall should all stand trial for contempt of court. Both Mr Crosby and Mr Marshall were directors of Agwater. He once again sought an order for production of the certificates of title of Bulka Station and Springwood Park. This application was dismissed by Gray J on 1 November 2005. Again, but in a different action, Mr Garrett has attempted to challenge the possession finding. It is further evidence of his inability to accept any decision made by members of this Court. This application, like many others, is in contravention of an order made. In addition, it makes serious and unsubstantiated claims against officers of this court, NAB and others.
- 179 There was one further proceeding filed on 29 November 2004 seeking an order that the fees for the filing of the counterclaim be paid by the plaintiff or to the account of the second defendant. Judge Lunn refused this application on 17 December 2004.
- 180 Mr Garrett then filed a number of amended pleadings between 13 December 2004 and 16 December 2004. On 21 December 2004 he took out an application for leave for the third defendant, his wife Averil Garrett, to amend her defence. This application was out of time and it was refused by Judge Lunn on 25 January 2005. Again Judge Lunn awarded costs against Mr Garrett.
- 181 On the same date, namely, 21 December 2004, Mr Garrett took out an application for leave for J & W Holdings Pty Ltd to amend its defence. This application was also made out of time. This was refused by Judge Lunn on 25 January 2005. Both of those refusals resulted in costs orders in favour of the plaintiff.
- 182 Again on 21 December 2004, Mr Garrett filed a third application seeking leave for Mr Garrett himself to file an amended defence, again, out of time. Once again this was refused by Judge Lunn with an order for costs in favour of the plaintiff.
- 183 The applications filed between 29 November 2004 and 21 December 2004

were seeking various types of substantive relief. At this point in time, the trial in Action No. 1767 of 2003 was substantially complete. In *Sunburst Properties Pty Ltd (In Liq) v Agwater Pty Ltd & Ors* [2005] SASC 335, at [45], Gray J commented that the amended counterclaim, in any event, was “totally inadequate” and “lacked the most rudimentary particularity of serious fraud allegations”. I agree with these findings and rely on them for the purpose of finding that Mr Garrett’s intention in bringing such proceedings could only have been to harass or cause hardship to the parties in this action.

184 On 24 January 2005 an application was taken out for leave to amend defences which were all out of time. Leave was also sought to file a counterclaim for a number of the defendants and in addition, Mr Garrett sought leave to represent those defendants. Judge Lunn also refused this application and again ordered costs against Mr Garrett. Gray J delivered judgment on the merits of this matter on 2 September 2005. Gray J found amongst other things that the Joint Sale Agreement was valid.

(iii) Judgment

185 In the reasons published by Gray J, *Sunburst Properties Pty Ltd (In Liq) (Receivers and Managers Appointed) v Agwater Pty Ltd & Ors* [2005] SASC 335, his Honour made a number of findings which provide an important insight into Action No. 1767 of 2003. In particular, his Honour states at [69] that:

At times in his evidence, Mr Garrett was frank. He acknowledged the backdating of documents in an effort to frustrate NAB’s attempts to recover its alleged debts. Again these matters were confirmed by, and consistent with, other evidence.

186 This is relevant to show an intention by Mr Garrett to frustrate NAB’s attempt to recover debts owed by Mr Garrett. Such an intention is entirely consistent with his conduct in this action. I conclude that his continuous filing of applications could only have been for a similar purpose.

(iv) Following Judgment

187 Following the delivery of judgment Mr Garrett caused a number of applications to be filed in this action. In particular, on 28 September 2005 an application was taken out seeking leave for J & W Holdings Pty Ltd to continue Action No. 423 of 2005. I will deal with this action in greater detail later in my reasons. An order was also sought that the plaintiff provide a pay out figure in respect of the mortgages held by NAB over Bulka Station. Gray J also heard these matters and finally the application was dismissed on 1 November 2005 with costs against Mr Garrett. This application should in my opinion, be considered a proceeding for the purpose of s 39 of the Act.

188 On 10 October 2005 a notice to admit was filed by Mr Garrett directed to NAB. It was struck out by Judge Lunn on 7 November 2005 with costs against Mr Garrett.

189 In the second judgment delivered by his Gray J [sic] in this matter on 11 October 2005, his Honour dealt with the question of costs. (See *Sunburst Properties Pty Ltd (In Liq) v Agwater Pty Ltd & Ors (No 2)* [2005] SASC 393). This judgment again provides useful insight as to the apparent purpose

of this application. It indicates that Mr Garrett was on notice that he had no reasonable prospect of success in this action. This however, did not stop Mr Garrett from continuing to institute proceedings, all of which I find were intended to frustrate the plaintiff and therefore NAB from exercising their respective rights. His Honour in his judgment compiled a list of relevant matters to be weighed when exercising the discretion to award costs. Included within this list, at [13], were the following:

- Mr Garrett and J & W Holdings persisted with their case in the hope of obtaining the benefit of whatever finance or other advantage might be secured by maintaining control of the pipeline, and through it, Bulka Station. Essential to this strategy was the objective of frustrating the contract between Mr Paech and the plaintiff's receivers (and thereby National Australia Bank).
- If properly advised, Mr Garrett and J & W Holdings must have known that they had no real prospect of success. So much was clear from the document book, which the plaintiffs produced in advance of the hearing.
- Mr Garrett and J & W Holdings persisted in groundless accusations of misconduct against the National Australia Bank, the plaintiff (and its receivers) that were largely irrelevant to the case.
- The matters agitated by Mr Garrett and J & W Holdings and their stubborn refusal to acknowledge the plaintiff's case necessitated a prolonged hearing and occupied much of the trial.
- Mr Garrett and J & W Holdings ignored repeated warnings from the Court about the costs being incurred.

190 I rely on the findings and observations of Gray J when deciding if the proceedings, which Mr Garrett instituted within this action, are proceedings instituted vexatiously. It is my opinion that they were. There can be no doubt that his prime objectives were to frustrate, annoy and delay the inevitable. There is also little doubt that they were instituted persistently.

191 Mr Garrett admitted in the course of the trial before Gray J that he had undertaken certain actions for the purpose of frustrating NAB and the plaintiff [sic] from selling Bulka Station. It is obvious that the numerous applications filed before the trial, during the trial and also after the trial were brought for a similar purpose that is, to frustrate, harass and annoy the plaintiff and therefore NAB. They have been brought for an ulterior purpose and without any reasonable grounds.

192 On 14 October 2005 a notice of appeal to the Full Court of the Supreme Court was filed by Mr Garrett appealing the judgment of Gray J on 2 September 2005. As at this time no appeal books have been prepared in this matter and no application has been made to set it down for hearing. Pursuant to the provisions of r 95.11(3) of the *Supreme Court Rules 1987* this appeal has lapsed. Mr Garrett has not pursued this appeal but it remains as an important part of the factual background.

193 Following the delivery of these judgments on 2 September 2005, on 11 November 2005 an application was made for joinder of Mr Garrett, this

time in his purported capacity as trustee for the Andrew Garrett Family Trust No. 3. Gray J dismissed this application on 15 November 2005 with costs. Again, this proceeding was brought only to attempt to re-litigate this action. At this point the action was moribund as there were no issues to be determined.

- 194 On 2 December 2005 there was a notice of appeal filed against the order of Judge Lunn made on 7 November 2005 which struck out the notice to admit referred to earlier. That appeal was dismissed by Vanstone J on 8 February 2006. This notice of appeal is confusing in so far as it was filed and recorded in Action No. 1767 of 2003, but the detail of the appeal indicates that the file appealed from is Action No. 127 of 2004. Further, Mr Garrett seeks to rely on all documents in Action Nos. 127 of 2004, 1294 of 2005 and Action No. 1767 of 2005. It seeks substantive relief and in particular Mr Garrett seeks to challenge the standing finding and the Bulka Station finding once again.
- 195 On 23 January 2006 a further application was taken out seeking an order that a memorandum of transfer of the title relating to Bulka Station be registered. Judge Lunn refused this application and again costs were ordered against Mr Garrett. In this application Mr Garrett also sought an injunction preventing NAB from further dealing with the property, the pipeline assets or the water licences relating to Bulka Station. All applications were refused. It is obvious that in this application, in substance a new proceeding, Mr Garrett sought to re-litigate a number of findings already made. NAB also submits that it was instituted without reasonable ground and in an attempt to re-litigate the Bulka Station finding, the Standing finding and is in contravention of the 19 November 2004 injunction. I agree with NAB in that respect.
- 196 NAB also contends that all of the applications were made by Mr Garrett without any reasonable grounds. At the time the trial of Action No. 1767 of 2003 was pending and as I have indicated there was an injunction in place which restrained Mr Garrett in any capacity from in any way impeding, prejudicing or affecting the rights of the plaintiff or the rights of Sunburst arising from the Joint Sale Agreement. I agree with this submission and find that there were no reasonable grounds to support Mr Garrett's chosen course of action.
- 197 NAB further contends that the various applications I have described above were taken out by Mr Garrett for the purpose of harassing NAB, Sunburst and their agents. In addition it is suggested that the applications were in contravention of the injunction. I agree with both of these submissions.
- 198 Some of the actions taken by Mr Garrett and the issuing of the various applications I have described, were done during the time when the trial in the main action had been substantially completed and in an apparent attempt to re-litigate the finding made by Gray J regarding Bulka Station (see *Sunburst Property Pty Ltd (In Liq) v Agwater Pty Ltd & Ors (No2)* [2005] SASC 393 at [13]).
- 199 When one analyses the progress of the main action and then looks at the applications taken out by Mr Garrett along the way, the actions of Mr Garrett overall were clearly designed to harass, annoy and in particular to cause delay. As can be seen by the results regularly falling against Mr Garrett and his interests, usually with the sanction of a costs order against him, his

continued harassment in this action is, in my opinion, vexatious. I find that he has persistently instituted vexatious proceedings in this series of applications.

The validity of the agreement was also re-agitated by Mr Garrett in Action No 423 of 2005, which was brought by way of summons by Mr Garrett against the Registrar-General of South Australia, National Australia Bank and McGrath Nicol, and Action No 590 of 2006, which was brought by way of summons by Mr Garrett against Sunburst Properties Pty Ltd (in liquidation) and the National Australia Bank. The facts relevant to those proceedings were recounted by Anderson J at [209]-[226]. The issue was agitated again by Mr Garrett in *Garrett v Mildara Blass Ltd* [2009] SASC 19, in which Layton J recounted the facts at [266]-[271] and [280]-[288].

16 The question whether a bill of exchange is legal tender and obliged to be accepted by a payee was raised and decided against Mr Garrett by Judge Lunn in *Andrew Garrett Wines Resorts Pty Ltd v National Australia Bank Ltd* [2006] SASC 130, where at [12] his Honour said:

Furthermore, there was no obligation on the Registrar to accept the payment of moneys into Court by means of a bill of exchange. Such a bill of exchange is not legal tender under s 36(1) of the *Commonwealth Reserve Bank Act 1959* and s 16 of the *Commonwealth Currency Act 1965*. While it is always in the discretion of a payee to accept a conditional payment by a bill of exchange, there is no legal obligation on a payee to accept such a bill, and particularly where it is not drawn on a recognised and well-known banking institution: *The Laws of Australia* Vol 7, para 7.5.38 and particularly footnote 5. By immediately advising Mr Garrett that the bill was being held pending directions from Gray J, the Registrar did not waive the right to reject it. The actions (or lack of them) by the Registrar ultimately amounted to a rejection of the tender of the bill.

The bill of exchange in question in that case was also the subject of a decision by Anderson J in *Andrew Garrett Wines Resorts Pty Ltd v National Australia Bank Ltd* [2006] SASC 381. In the subsequent decision by Anderson J in *Andrew Garrett Wines Resorts Pty Ltd v National Australia Bank Ltd* [2007] SASC 173, his Honour set out the relevant history up to that time and concluded at [161] that those attempts were unsuccessful “because they [were] meritless”. The issue, however, was raised again by Mr Garrett in proceedings summarily dismissed by Finn J in *Garrett v Westpac Banking Corporation* [2007] FCA 439 and again in subsequent proceedings summarily dismissed by Mansfield J in *Garrett v Westpac Banking Corporation* [2007] FCA 525. Those proceedings and the issues raised in them were analysed in *Garrett v Make Wine Pty Ltd* [2014] FCA 1258 at [153]-[155] and [164]-[167]. In 2004, however, Mr Garrett had raised the same issue in an attempt to avoid bankruptcy by

giving a bill of exchange to the Australian Taxation Office. In *Garrett v Deputy Commissioner of Taxation* [2005] FMCA 19, Lindsay FM said at [39]:

The reliance by the applicant upon Bills of Exchange ultimately rejected by a [sic] Reserve Bank of Australia, as such reliance was developed by him over the three hearings which culminated in the Registrar's decision, was unfounded and the Registrar was clearly entitled to reject any suggestion that the applicant, having been given a number of opportunities to bring to fruition his plans to present various Bills of Exchange to his creditors, was able to make payment of the debts described in the decision or even that debt which gave rise to the petition. Mr Garrett was unable to put anything to me relating to the Bills of Exchange which provided any basis for a challenge to the creditor's entitlement to reject the mode of payment offered by Mr Garrett (see paragraph 7 of the Registrar's reasons). Leaving aside the issue as to whether the Court can compel a creditor to receive payment of the debt after the act of bankruptcy has been committed, Mr Garrett was unable to point to any matter which would indicate that the petitioning creditor was acting unreasonably in accepting the advice of the Reserve Bank that the relevant Bill of Sale had any value. Counsel for the petitioning creditor informed the Registrar in the most unambiguous terms are [sic] the hearing on 24 September 2004 that his client rejected the proffered mode of payment as valueless.

17 Mr Garrett's attempts to challenge the legal effect of the deed of settlement entered into on 26 July 2000 and his attempt to argue that the "Garrett Family Trust" named in the 26 July 2000 deed of settlement was a different entity from the "Andrew Garrett Family Trust" may be considered together as they are, essentially, variations of the same point. Mr Garrett sought to argue that the Garrett Family Trust was a separate entity in *Universal Holidays Pty Ltd v Tseng* [2008] FCA 1011. In that proceeding Mr Garrett sought to be joined as a party on the basis of being the trustee of the Garrett Family Trust, which he asserted (some two years into the litigation between the cross-claimants and Mr Garrett) was entitled to a debt owed or an income stream owing by Berringer Blass pursuant to a deed of settlement of 26 July 2000. Lander J dismissed that application on 3 July 2008, observing at [120]-[122]:

120 I am satisfied, as the cross-claimants contend, that Mr Garrett has made a number of representations inconsistent with the existence of the Garrett Family Trust and has conducted his affairs inconsistently with the existence of that Trust. It was not until some two years into the litigation between the cross-claimants and Mr Garrett that he first asserted, as he has now, that in fact the Garrett Family Trust was entitled to the debt owed or income stream owing by Beringer Blass pursuant to clause 9 of the Deed of Settlement of 26 July 2000.

121 In my opinion, notwithstanding the occasional reference to the Garrett Family Trust in some of the transactional documents prior to 2000, there is not, and never has been, a separate entity called the Garrett Family Trust of which Mr Garrett or Mr and Mrs Garrett was or were the trustees.

- 122 Where the expression the Garrett Family Trust is used in the transactional documents, in my opinion, it is a reference to the Andrew Garrett Family Trust which was then the only relevant trust in existence.

Mr Garrett subsequently applied to Lander J for an extension of time within which to apply for leave to appeal from the orders his Honour had made on 3 July 2008 and for leave to appeal from those orders: *Garrett v Macks* [2008] FCA 1419. In dismissing those applications, his Honour observed at [27] that it was not appropriate to give Mr Garrett leave to appeal for the purpose of seeking orders from the Full Court for discovery from third parties and then seeking to re-litigate matters before the Full Court on different evidence, some of which had still not yet been identified. Another attempt was made by Mr Garrett to argue that the “Garrett Family Trust” named in the 26 July 2000 deed of settlement was a separate entity in *Garrett, as Trustee of the Garrett Family Trust* [2009] FCA 252, in which Gilmour J dismissed an application by Mr Garrett seeking declaratory orders. In dismissing the proceeding, his Honour observed that the fundamental difficulty confronting Mr Garrett was that the first seven declarations he was seeking concerned the “so-called Garrett family trust” which Lander J had already concluded “[did] not exist and never [had] existed”. Mr Garrett seeks to raise the very same issue in this proceeding. Paragraphs 1.4 and 1.5 of Mr Garrett’s statement of claim dated 28 September 2014 assert the existence of the Garrett Family Trust (the issue decided against Mr Garrett by Lander J), and in paragraph 8.3 of the statement of claim Mr Garrett alleges that he entered into the 26 July 2000 deed of settlement in his capacity as trustee of the Garrett Family Trust. Mortimer J concluded in *Garrett v Make Wine Pty Ltd* [2014] FCA 1258 that Mr Garrett had made yet another attempt to re-litigate matters relating to the 26 July 2000 deed that had previously decided, saying at [197]-[201]:

- 197 There is no doubt that what Mr Garrett seeks to do in this proceeding is to revisit yet again the bargain struck by the 2000 Deed, and his complaints about the performance of that bargain. It should not be overlooked that the 2000 Deed itself was a compromise of proceedings brought by Mr Garrett in No 2244 of 1996 in the Supreme Court of South Australia. He appears never to have accepted the terms of that compromise as binding upon him in any realistic sense.
- 198 The consequences of the performance (or alleged non-performance) of the parties’ obligations under the 2000 Deed have been worked out in many of the subsequent proceedings brought by Mr Garrett. The interpleader proceedings transferred from the Victorian Supreme Court to the South Australian Registry of the Federal Court and which became SAD 5 of 2006 concerned payments under the 2000 Deed.
- 199 The interpleader proceeding was settled by consent orders, to which

Mr Garrett was a party. Notwithstanding that fact, Mr Garrett has this year sought to reopen those proceedings. In the Victorian Registry, Mr Garrett now has proceedings which seek directly to interfere with the consent orders made by Lander J in Mr Garrett's proceeding against Mr Macks, in circumstances where Mr Garrett was party to a deed of settlement with Mr Macks (and others) in respect of that proceeding (VID 304 of 2014).

200 The proceedings before Layton J in *Mildara Blass* [2009] SASC 19 concerned, amongst other things, the first attempt by Mr Garrett to reopen the proceedings in No 2244 of 1996, which had resulted in the 2000 Deed. The basis on which Mr Garrett sought to reopen those proceedings was first, that the 2000 Deed had been breached and, second, that he had terminated it. He relied on several affidavits sworn by him and, as Layton J noted at [62] of her Honour's judgment, six volumes of annexures. I note of course (as Layton J did at [64] in the context of the application before her), that the second allegation made by Mr Garrett (of termination) is wholly inconsistent with his subsequent conduct in seeking to issue proceedings to enforce payments made under the 2000 Deed, including in this proceeding. The extract of Layton J's judgment at [119] above clearly indicates that Mr Garrett's determination to re-agitate and re-litigate many aspects of the 2000 Deed and its consequences for him (which have included his bankruptcy, the loss of assets and the sale of properties with which he was connected directly or indirectly) is not, and never has been, accompanied by any substantive legal arguments which can be said to have sufficient force for his numerous proceedings to survive even preliminary examination by a variety of judges in a variety of courts.

201 The subject matter of these proceedings — the 2000 Deed and its consequences — has been directly or indirectly the subject now of several proceedings brought by Mr Garrett. Since Mr Garrett seems incapable of exercising any self-discipline in relation to drawing a line under his wholly unsuccessful attempts to litigate his complaints about the 2000 Deed and its consequences, the Court must take action itself to prevent any further abuse of its processes by Mr Garrett.

18 The present proceeding against the respondents contains other examples of both direct and indirect attempts to re-agitate matters previously litigated. The relief sought by Mr Garrett in paragraphs 8.1.2 and 8.1.3 of the originating application seeks directly to re-litigate or re-open matters previously determined in the District Court of South Australia. Those paragraphs of the originating application seek a writ of mandamus that:

8.1.2 The Respondent reinstate the Amending Activity Statement GST Corrections entered on the Running Balance Account of the Andrew Garrett Family Trust on the 6th and 7th of October 2008.

8.1.3 The Respondent immediately commences proceedings in the District Court of South Australia in DCC1V-1666-2003; *Commissioner of Taxation v Andrew Garrett* to apply to:

8.1.3.1 set aside the default judgment dated 11th February 2004 given against [Mr Garrett] in Favour of the Respondent; and

8.1.3.2 set aside the Judgment of the Honourable Master Norman given on the 16th January 2010.

The relief sought in paragraph 8.1.3 expressly seeks to reopen the matters previously determined by the District Court of South Australia. Paragraph 8.1.3 asks this court to order a party to commence proceedings in another court to bring about a different outcome from that which was reached by that other court in the regular exercise of its jurisdiction. On 11 February 2004, judgment was entered in default by the District Court of South Australia in Action No 1666 of 2003. A sequestration order was made in connection with that default judgment by Registrar Christie of the Federal Magistrates Court in proceeding number ADG 90 of 2004 on 24 September 2004. Mr Garrett subsequently sought to have the default judgment set aside, but his application was dismissed on 16 January 2010 by District Court Master Norman. In dismissing the application, Master Norman concluded that Mr Garrett did not have standing to bring the application to set aside the default judgment, on the basis that the right to challenge the debt which had been the subject of the default judgment had vested in the official trustee upon Mr Garrett having become bankrupt. The District Master also concluded that Mr Garrett had not established that he had standing to bring the application as the sole trustee of the Andrew Garrett Family Trust and that, in any event, Mr Garrett did not have a meritorious defence such as would enable the default judgment to be set aside. In other words, Mr Garrett now seeks not only to re-agitate the outcome of the proceeding in the District Court of South Australia, but necessarily seeks in this proceeding to re-agitate questions of his standing which have been decided against him by other courts.

19 Paragraph 8.1.2 of Mr Garrett's originating application refers to the 'Amending Activity Statement GST Corrections', which formed part of the defence that Master Norman found to lack merit. Mr Garrett had sought to argue before the Master that he had made some self-assessed amendments of GST on behalf of the Andrew Garrett Family Trust in respect of tax periods that occurred between 1 July 2002 and 30 June 2004, which resulted in there being no tax debt owed by Mr Garrett in connection with the Andrew Garrett Family Trust as at 24 October 2008. It was plain to Master Norman, as was the fact, that the self-assessed amendments of GST involved a claim for input tax credits made on behalf of the Andrew Garrett Family Trust more than four years after the tax period to which they were attributable and, therefore, that the Andrew Garrett Family Trust was no longer entitled to the credits (if it ever was entitled) pursuant to s 105-55 of Schedule 1 to the *Taxation Administration Act 1953* (Cth). The evidence before Master Norman was that the credits claimed in the

self-assessed GST amendments had initially been processed in error, but that they were reversed once it was realised that the Business Activity Statements which contained the claimed credits were lodged outside the four year time limit. The “corrections” sought to be reinstated by the writ of mandamus sought in paragraph 8.1.2 of the originating application refers to those corrections which were in issue and considered and determined by the District Court of South Australia.

20 Other parts of the statement of claim in the present proceeding concern less direct, but no less actual, attempts to re-litigate matters. This can be seen in the more generalised allegations made by Mr Garrett against the respondents which would necessarily involve a reventilation of matters decided against him. Paragraph 8.3.9, for example, alleges that the conduct and decisions of the respondents in the present proceeding have “frustrated” the pursuit of Mr Garrett’s rights under a deed of settlement dated 26 July 2006. Mr Garrett’s rights under that deed were considered and dealt with in *Garrett v Make Wine Pty Ltd* [2014] FCA 1258. Mr Garrett also makes a number of allegations in the statement of claim against the respondents that they “knowingly and capriciously” assisted in rendering Mr Garrett impecunious to prevent him from ventilating his rights against the National Australia Bank and Mr Shu Mu Tseng as well as the respondents: see paragraphs 8.4.1, 8.4.2, 9.2.1, 9.2.2, 10.2.1, 10.2.2, 11.2.1, 11.2.2, 12.4.1, 12.4.2, 13.12.1, 13.12.2, 14.7.1, 14.7.2, 14.7.3, 15.15.1, 15.15.2, 15.15.3, 15.20.1, 15.20.2 and 15.20.3. Mr Garrett’s claims against the National Australia Bank and Mr Tseng were considered in the proceedings in which they were parties: see *Universal Holidays Pty Ltd v Tseng* [2008] FCA 1011; *Andrew Garrett Wines Resorts Pty Ltd v National Australia Bank Ltd* [2007] SASC 173. Mr Garrett’s claim in paragraph 1.9 of the statement of claim that he ceased to be a trustee of the Andrew Garrett Family Trust No 3 on 30 September 2009 is inconsistent with the position he took in the Administrative Appeals Tribunal in *Re The Trustee for the Andrew Garrett Family Trust (No 3) and the Commissioner of Taxation* [2013] AATA 395 in which, contrary to Mr Garrett’s claim in paragraph 1.9 of the statement of the claim in the present proceedings, he represented himself as a trustee of the Andrew Garrett Family Trust No 3 until at least January 2013. Similarly, his asserted status of being “managing controller” to give him standing to act on behalf of various companies (see paragraphs 1.16 and 1.17 of the statement of claim) was considered in previous proceedings: see *Garrett v Australian Trade Commission* [2014] FCA 575; *The Trustee for Oenoviva (Australia & New Zealand) Plant and Equipment Trust v Commissioner of Taxation* [2014] AATA 614; *Garrett v Deputy Commissioner of Taxation* [2014] FCA 576.

21 Mr Garrett has also instituted proceedings or taken steps in various proceedings based upon inconsistent pleadings in a way that could bring the administration of justice into disrepute. In *Sea Culture International v Scoles* (1991) 32 FCR 275, French J said (at 279):

Underlying the power that courts have assumed to stay or dismiss proceedings for abuse of process is a policy of preventing waste of judicial resources and their use for purposes unrelated to the determination of genuine disputes. There is, in my opinion, another element to be considered and that is the necessity to maintain confidence in and respect for the authority of the courts. If a party in litigation in this Court makes a formal and public allegation by way of its pleading which is inconsistent with a formal and public allegation in another forum, then such an issue may arise.

Mr Garrett has prepared inconsistent pleadings and made inconsistent statements contrary to the policy considered by his Honour. Mr Garrett has, for instance, prepared inconsistent positions in proceedings involving taxation disputes as to whether or not he was a trustee of particular trusts. Mr Garrett's defence in the debt recovery proceeding in the Supreme Court of Victoria numbered SCI 2013 02968 was that he was not, at the relevant times, a trustee of the Andrew Garrett Family Trust or of the Oenoviva (Australia & New Zealand) Plant & Equipment Trust No 2 and was therefore not a proper party to the proceeding. However, at a hearing before Mukhtar AsJ on 4 August 2014, Mr Garrett conceded that he had been a trustee of the Andrew Garrett Family Trust up to 8 June 2013. Summary judgment was entered against Mr Garrett upon his making that concession. The wasteful use of judicial time and resources could have been avoided had Mr Garrett not made the unsustainable denial in his defence. Mr Garrett's claim in the debt recovery proceeding that he was not a trustee of the Oenoviva (Australia & New Zealand) Plant & Equipment Trust No 2 is also inconsistent with applications made to the Administrative Appeals Tribunal and to this court. On 19 May 2013, Mr Garrett commenced a proceeding in the Administrative Appeals Tribunal said to have been made in his "capacity as trustee of the OenoViva (Australia & New Zealand) Plant & Equipment Trust No 2". On 16 June 2013, he commenced another proceeding in the Administrative Appeals Tribunal said to be brought by him in the same capacity. In this court, in proceeding number SAD 368 of 2013 brought by the Deputy Commissioner of Taxation against OenoViva (Australia & New Zealand) Pty Ltd (in liquidation), Mr Garrett applied to be joined in the action claiming to be the managing controller of the trustee of the OenoViva (Australia & New Zealand) Plant & Equipment Trust No 2.

22 Mr Garrett has also adopted inconsistent positions in the current proceeding. For instance, he has pleaded that he ceased to be the trustee of the Andrew Garrett Family Trust No 3 on 30 September 2009. Paragraph 1.9 of his statement of claim pleads that he:

[w]as a trustee of the [Andrew Garrett Family Trust No 3] at settlement on the 7th November 2005 until the 30th September 2009 and remains possessed of a lien over the assets of [the Andrew Garrett Family Trust No 3] as a Prior Trustee, ...

The date from which Mr Garrett in this matter has pleaded to have ceased being the trustee of the Andrew Garrett Family Trust No 3, namely, 30 September 2009, is inconsistent with the position he adopted in his previous application for review before the Administrative Appeals Tribunal. In *Re The Trustee for Andrew Garrett Family Trust No 3 and the Commissioner of Taxation* [2013] AATA 395, the Tribunal recorded Mr Garrett's contention to be the trustee of the Andrew Garrett Family Trust No 3 in a proceeding issued in the Administrative Appeals Tribunal in 2013 on objections lodged on behalf of the trustee during the course of 2013.

23 The institution or pursuit of proceedings without reasonable ground is another of the categories in the definition of "vexatious proceeding" in s 37AM(1). Many different circumstances may justify the conclusion that a proceeding has been instituted or pursued without reasonable ground. In *Soden v Kowalski* [2011] FCA 318, Stone J said at [53]:

In the case of a single proceeding it is necessary to consider if the absence of reasonable grounds arises, for instance, from a defect in pleading that might be cured. In the absence of a cure the proceeding remains vexatious and an application to dismiss it...should be given serious consideration.

Mr Garrett's attempts to re-litigate matters previously considered or decided also fall within this category of vexatious proceeding, namely of being instituted or pursued without reasonable ground (in addition to them being an abuse of the process of the court or tribunal in which they were instituted or pursued).

24 In the many decided cases which Mr Garrett has initiated, it has frequently been concluded that Mr Garrett instituted or pursued claims without reasonable ground. In *IML Pty Ltd v International Vineyards Pty Ltd* [2005] SASC 396 Judge Burley granted perpetual injunctions against Mr Garrett because "the way in which Garrett had conducted himself" made it "necessary for the proper protection of the legitimate commercial interests of the plaintiffs" to grant the permanent injunctions which had been sought. The effect of the injunctions was referred to by his Honour at [95] as avoiding "the mischief created by the conduct" of Mr Garrett. In *Garrett v Macks* [2006] FCA 601, Lander J described the proceeding before him, which had been instituted by Mr Garrett, as "hopelessly inadequate and hopelessly misconceived". His Honour went on to observe at [23]:

In my opinion, there is no prospect at all, let alone a reasonable prospect of the applicant prosecuting the proceeding against the third to ninth respondents for the reasons already advanced. There is no reasonable prospect of the applicant prosecuting the proceedings against the second respondent, who is not the trustee of the applicant's bankrupt estate but the trustee of his wife's bankrupt estate. As I have already mentioned, his wife sought that her application for an annulment be dismissed this morning. I am also satisfied that there is no reasonable prospect that the applicant could prosecute an application for an annulment against the first respondent in the absence of any proper particulars. For all of those reasons, the proceeding is dismissed.

In *Andrew Garrett Wines Resorts Pty Ltd v National Australia Bank Ltd* [2006] SASC 381, Anderson J dismissed Mr Garrett's appeal, saying at [71]-[72]:

71 Mr Garrett has, in my view, been somewhat disingenuous in the way he has persisted in his attempts to do something for which he was given the clearest warnings and suggestions by Gray J as to why the court would not and could not negotiate the Bill. He has chosen to make his grievance about the Bill one of the lynchpins of his continual assertion that he has been denied justice. The arguments he has put forward are without merit and appear to me to be an attempt to delay and generally re-litigate matters which have been finalised in earlier decisions.

CONCLUSION

72 As I have said, many of Mr Garrett's complaints and assertions are not appropriate grounds for an appeal. They do not set out appealable errors of law. The assertions by Mr Garrett relate to his perceived mistreatment by the court and include allegations of misconduct on behalf of various judicial officers. These allegations do not attempt to detail any error of law but merely assert broad propositions and misstatements of law. Mr Garrett's continued assertion of standing and "fundamental miscarriages of justice" do not add any strength to his submissions. All they do is show his relentless crusade to demonstrate a perceived injustice. The perceived injustice results from his businesses and business assets being lost because persons and entities owed money by him have exercised their legal rights. They have taken various enforcement proceedings against both Mr Garrett and his various legal entities, because of defaults by Mr Garrett and the entities with which he is associated.

In *Garrett v Tseng* [2007] FCA 93, Lander J concluded at [43] that Mr Garrett's proceeding did not disclose any reasonable cause of action and, indeed, that Mr Garrett could not "articulate any coherent pleading to support the proceeding". In *Garrett v Fosters Wine Estates Ltd* [2007] FCA 253, Finn J set aside the originating process on the basis that Mr Garrett did not have standing to seek the relief sought in the proceeding and stated at [17] that Mr Garrett's statement of claim was otherwise objectionable as "an embarrassing document replete with grave assertions against persons and entities whether or not parties to the proceedings". Subsequently, in *Garrett v Westpac Banking Corporation* [2007] FCA 439, Finn J described a claim made by Mr Garrett against Westpac that he was in a position

to negotiate genuine banking instruments with a value in the order of US\$11.35 billion as “so fantastic as to amount, of itself, to an absurdity” (at [19]). His Honour gave summary judgment in favour of the respondents in that proceeding, concluding at [25] that Mr Garrett’s statement of claim disclosed no cause of action that had any reasonable prospects of success.

25 In *Garrett v Bransbury* [2007] FCA 529, Mansfield J dismissed the proceeding before him as “obviously incompetent”. At [16], his Honour described the grounds relied upon for the orders sought as “obviously entirely misconceived, discursive and inappropriate”. In *Garrett v National Australia Bank* [2007] FCA 530, his Honour subsequently struck out Mr Garrett’s statement of claim describing it as impossible to comprehend or respond to. In *Garrett v Rann* [2007] FCA 528, his Honour dismissed another application instituted by Mr Garrett, and in *Garrett v Westpac Banking Corporation* [2007] FCA 525, his Honour described Mr Garrett’s claim in that proceeding as having an air of unreality, concluding at [21] that the application was “simply not sustainable” as it disclosed no cause of action that had any reasonable prospect of successful prosecution.

26 In *Garrett v National Australia Bank Ltd* [2009] FCA 191, Lander J struck out a statement of claim filed by Mr Garrett. At [16] his Honour said:

The statement of claim...contains a number of irrelevancies relating to parties for whom Mr Garrett has no power to bring a proceeding and relating to transactions which do not concern Mr Garrett in his sole capacity as a trustee of any trust.

In *Garrett v Australian Trade Commission* [2014] FCA 575, Davies J dismissed as incompetent an application made by Mr Garrett in his personal capacity and made by him also in his purported capacity as “managing controller”. In *Garrett v Deputy Commissioner of Taxation* [2014] FCA 576, her Honour dismissed an application by Mr Garrett to terminate the winding up of a company on the basis that he did not have standing to make the application. In proceeding number VID 197 of 2014 in this court, her Honour struck out another originating application and statement of claim filed by Mr Garrett against the Commissioner of Taxation. In an exchange with Mr Garrett in a hearing on 4 April 2014, her Honour said:

I don’t know what you’re seeking to achieve by these proceedings as against the respondents other than the Commissioner of Taxation. There is no foundation identified either in fact or in law for the various orders that you seek.

Her Honour went on to observe to Mr Garrett that the statement of claim he had prepared did “not disclose any cause of action against any of the respondents including the Commissioner