IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE

COMMON LAW DIVISION

S ECI 2025 02829

BETWEEN:
Plaintiffs

CROWN ATTORNEY GENERAL

2025.07.29 13:07:09 +09'30

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

Defendants

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

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

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

Date of Document: 29th July 2025 Solicitors Code:

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

Prepared by: Dorota-Donata Borkowski Telephone: 0405 107 365

Ref:

Email: dorisborkowski@bigpond.com

To: MINTER ELLISON LIMITED ABN 77 478 593 704; ABN 91 556 716 819; ABN 46 001 549 480; ABN 99 009 717 391 (LIQUIDATOR AND MANAGING CONTROLLER APPOINTED) ABN 92 236 032 942
Alleged Solicitors for the Second Defendant (Westpac Banking Corporation)
Waterfront Place, 1 Eagle Street, Brisbane QLD 4000
Email brisbanelitigation@minterellison.com
Proposed Third Defendant

To: SUSHEILA VIJENDRAN, REGISTRAR OF TITLES, For and on behalf of the Department of Transport and Planning
1 Spring St, Melbourne, VIC 3000
Email: advice.enquiries@victorianlrs.com.au; Lv.Warrants@transport.vic.gov.au

Proposed Fourth Defendant

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

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

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

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

TO: MCDONALD J as trustee for DEPARTMENT OF JUSTICE AND COMMUNITY SAFETY trading as THE SUPREME COURT OF VICTORIA (ABN 32 790 228 959)
210 William St, Melbourne VIC 3000, Australia
Email: requests@fundsincourt.vic.gov.au ; mcdonald.chambers@supcourt.vic.gov.au
Proposed Ninth Defendant.

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

Email: amg@betterworldfutirefund.org
Proposed Tenth Defendant.
TO: ANTHONY LEONARD DICKMAN, ACTING SECRETARY OF THE RESERVE BANK OF AUSTRALIA, ABN 50 008 559 486 (LIQUIDATOR AND MANAGING CONTROLLER APPOINTED) ABN 78 837 313 084
65 Martin Place Sydney, NSW, 2000
Email: secretary@rba.gov.au
Proposed Eleventh Defendant.

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

Showing 1 to 6 of 6

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

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

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

1. **COUNTY COURT No. CI-23-01883**

1) Brenda Jones Affidavit of Service dated 6th May 2023 relating to service on the 4th of May 2023 of:

a) Originating Writ of Summons dated 27th April 2023

b) Statement of Claim dated 26th April 2023

2) Minters Affidavit sworn by Samantha Gee-Clark on 22 May 2023, no annexures. Seeking recovery of land.

3) Ben Gordon De Silva (Legalstream) Affidavit of Service dated 23rd May 2023 Default Notice dated 2nd August 2022

4) Brenda Jones Affidavit of Service dated 6th June 2023 relating to service on 1st June 2023 of Letter from Minter Ellison dated 26th May 2023 annexing Default Judgment for "Recovery of Land" dated 24th May 2023 in:

a) default of filing a defence,

b) the amount of costs of $3,926.40

c) Westpac Affidavit sworn by Alex Manoel dated 28th April 2025 annexing Bundle Exhibits of 548 pages marked as AM-1.
(SERVED ONE DAY BEFORE THE SUPREME COURT HEARING SET DOWN FOR 4th JULY 2025)

2. **SUPREME COURT: S ECI 2025 02829**

1) Shufei Qu Affidavit on behalf of the Proposed Third Defendant sworn 2July2025 (SERVED ONE DAY BEFORE THE SUPREME COURT HEARING SET DOWN FOR 4th JULY 2025)

AND The Evidence relied upon by the Plaintiffs filed in:

3. **COUNTY COURT No. CI-23-01883**

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

"A" Purported Default Judgement of Minter Ellison not executed or acknowledged by Registrar as exercise of discretionary public powers other than filing.
"B" Purported Warrant of Possession of Minter Ellison not executed or acknowledged by Registrar as exercise of discretionary public powers other than filing.
"F" Purported Mortgage of Land Instrument
"G" Better Particulars Request
"H" Certificate of Title
"J" Purported Westpac loan account Statement

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

"A" Copy of the Default Judgment dated 24 May 2023
"B" Copy of the purported Warrant of Possession dated 26 June 2024
"C" Photographs documenting property damage from enforcement
"D" Correspondence with the Sheriff of Victoria
"E" Extracts from Westpac internal memos, AFCA file
"F" Written notices and formal communications with parties
"G" Personal hearing notes from 30 April 2025 and County Court transcript request
"H" Timeline of Events and FOI confirmation

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

"I" County Court transcript dated 30 April 2025
"J" Timeline of Title and Enforcement Events (confirming post-eviction eCT registration of interest of Minter Ellison)

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

"K" Internal Westpac memo extracts confirming enforcement was pre-authorised
"L" Order made by Judge Burchell on 30 April 2025 in CI-23-01883

4. **SUPREME COURT: S ECI 2025 02829**

1) Dorota- Donata Borkowski Affidavit dated 24th June 2025 annexing exhibits marked as:

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

2) Dorota- Donata Borkowski Affidavit dated 30th June 2025 annexing exhibits marked as:

"A" Copy of Unsigned and Unstamped Warrant of Possession solicitor upload pages 9-11
"B" Copy of Sherriff's FOI release claiming MMB was shown Warrant of Possession in person pages 12-13
"C" Letter from Registrar of Titles confirming Administrative Hold pages 14-17
"D" Internal Westpac Memos confirming missing foundation loan documents pages 18-20
"E" LMI Westpac memos conforming LMI activation and payout pages 21-22

3) Dorota- Donata Borkowski Affidavit dated 9th July 2025 annexing exhibits marked as:

DDB 13" Second release of Internal Westpac Memos from AFCA

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

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

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

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

1) The failure of the Originating Writ dated 27th April 2023 annexing a Statement of Claim dated 26th April 2023 authored by the proposed Third Defendant acting for the Second Defendant to enliven the jurisdiction of the County Court as a "Competent Court" within the meaning of *the County Court Act* 1958 (Vic), *the Supreme Court of Victoria Act* 1989 (Vic) and *the Transfer of Land Act* 1958 (Vic) because:

   a. The Statement of Claim fails at paragraph 1 of the Statement of Claim [1], the Second Defendant is a Constitutional Corporation within the meaning of s51(xx) of *the Commonwealth of Australia Constitution Act* 1900 (AU) ("The Constitution").

   b. The First Defendant [2], the Second Defendant, the proposed Third Defendant, the proposed Fifth Defendant and the proposed Ninth Defendant know this to be fact from the correct interpretation of s143 and s144 of *the Evidence Act* 1995 (AU) within the meaning of the Intention of the Australian Parliament.[3]

   c. There is no evidence of a Loan Offer or related credit contract in respect to either:

      i. The alleged First Loan account[4]

      ii. The alleged Second Loan account[5]

   d. Mortgage No. AF820083F was not then, never has been, and cannot be in the future, security for any money that the Plaintiffs acknowledge was advanced by the Second Defendant to the Plaintiffs, on an unsecured basis, without any personal guarantees in the amount of AUD$300,000.00 on the 28th of April 2025 [6]

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

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

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

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

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

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

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

e. At the time of filing the alleged originating writ in the court below, The First Defendant, the Second Defendant, the proposed Third Defendant, the proposed Fifth Defendant and the proposed Ninth Defendant knew that Loan Mortgage Insurance ("LMI") Fees had been paid by the Plaintiffs to the Second Defendant from the AUD$300,000 on the 30th of April 2025[7]

30 Apr WITHDRAWAL 0000055 ST
ALBANS VIC 21216.05 67639.09

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

f. The alleged Mortgage dated 24th March 2008 cannot exist at law because no consideration passed in relation to the Mortgage [9]

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

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

i. the Standard "You and Your Loan" Standard booklet of conditions [10] dated 2007 prior to the findings of the Hayne Royal Commission into the Financial Services Sector published on the 1st March 2019 and subsequent Legislation enacted by the Australian Parliament cannot be held to apply to the unsecured loan advance AND there is no evidence that this booklet of provisions was disclosed at any time to the Plaintiffs.

ii. Memorandum of Common Provisions [11] registered 6th October 1999 prior to the findings of the Hayne Royal Commission into the Financial Services Sector published on the 1st March 2019 and subsequent Legislation enacted by the Australian Parliament cannot be held to apply to the unsecured loan advance AND there is no evidence that this booklet of provisions was disclosed at any time to the Plaintiffs.

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

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

[8] The Plaintiffs have attempted to obtain further and better particulars see Exhibit "G" of the affidavit of the Plaintiffs dated 23rd April 2025 including the relevant settlement statement at the transfer of title to the Plaintiff's from the previous owners under the contract note shown as Annexure to the Outline of Submissions of the Plaintiffs dated 4th July 2025 served in these proceedings.
Page 7 of the Un-indexed bundle of exhibits marked "AM-1" to the affidavit of Alexander Manoel dated 28th April 2025 filed in the Court below

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

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

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

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

i. The proposed Third Defendant applied for orders for Recovery of Possession of Land in the Court below and did not name the power invoked to grant that proposed order [12] because that Court does not have power to hear proceedings under the Transfer of Land Act 1958 (VIC) which in respect to Orders of Possession by the Mortgagee is the exclusive Domain of the Supreme Court of Victoria under Division 4 of the Supreme Court of Victoria Act 1989 (Vic)

AND THE PLAINTIFF CLAIMS AGAINST THE DEFENDANTS:

A. Possession of the Land.

B. Costs.

DATED: **26 April 2023**

MinterEllison
Solicitors for the plaintiff

j. The proposed Third Defendant did NOT seek Judgment Debt because there was no enforceable Debt even though it was pleaded[13]:

Loan Accounts

5. On or about 24 March 2008, the plaintiff advanced to the defendant the sum of $300,000.00 pursuant to Loan Account No. 037149390747 (**First Loan Account**).

6. The First Loan Account was subsequently split as follows:

   (a) a portion of the debt was transferred to Loan Account No. 037186655046, which loan account was a non-interest bearing account (**Second Loan Account**); and

   (b) the balance debt remained in the First Loan Account, with the terms and conditions of that account unchanged,

   (together referred to as the **Loan Accounts**).

7. It was a term of the Loan Accounts that the defendants would make repayments of moneys owing on the Loan Accounts on a monthly basis.

ME_208876300_1

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

[12] Page 9 of the Brenda Jones Affidavit of Service dated 6th May 2023 relating to service 04.05.2023
[13] Page 7 and 8 of the Brenda Jones Affidavit of Service dated 6th May 2023 relating to service 04.05.2023

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

   (a) upon failure to rectify the default, all amounts owing under the First Loan Account and under the Mortgage would be immediately due and payable; and

   (b) if the default was not rectified within 31 days the plaintiff would take possession of and sell the Land.

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

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

   (a) upon failure to rectify the default, all amounts owing under the Second Loan Account and under the Mortgage would be immediately due and payable; and

   (b) if the default was not rectified within 31 days the plaintiff would take possession of and sell the Land.

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

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

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

FILED: 27 April 2023

Registrar

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

AND [15]

Judgment in default of Appearance

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

CASE DETAILS

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

COUNTY COURT OF VICTORIA
eFiled
REGISTRAR

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

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

28.11 Registrar may accept a document for filing

(1) If satisfied that a copy of a document sought to be filed electronically in the Court by an authorised provider complies with the requirements of the Rules, the Registrar must—

(a) retain a copy of the document; and

(b) record the date and time the document was received and entered in CITEC Confirm; and

(c) in the case of a document which, if filed personally would be required to be sealed and dated by the Registrar—

(i) authorise the affixing by CITEC Confirm of an electronic watermark or electronic stamp containing a facsimile of the seal of the Court to the document; or

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

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

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

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

Order 53—Summary proceeding for recovery of land

53.01 Application of Order

(1) Subject to paragraph (2), this Order applies where the plaintiff claims the recovery of land which is occupied solely by a person or persons who entered into occupation or, having been a licensee or licensees, remained in occupation without the plaintiff's licence or consent or that of any predecessor in title of the plaintiff.

(2) This Order does not apply where the land is occupied by a mortgagor or successor in title and the claim is made by the mortgagee or successor in title.

53.02 Originating process

(1) The plaintiff may make the claim in a proceeding in accordance with this Order.

(2) The proceeding shall be commenced by originating motion.

(3) The originating motion shall be in Form 5E.

53.03 Who to be defendant

(1) Each person in occupation of the land whose name the plaintiff knows shall be a defendant.

(2) If the plaintiff does not know the name of any person in occupation the proceeding may be commenced without naming any person as defendant.

53.04 Affidavit in support

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

(a) the interest of the plaintiff in the land;

(b) the circumstances in which the land has been occupied without licence or consent and in which the claim for recovery of the land arises; and

(c) that the plaintiff does not know the name of any person occupying the land who is not a defendant.

53.05 Service

(1) The originating motion and a copy of the affidavit and of any exhibit referred to therein shall be served—

(a) on each defendant, if any; and

(b) on any person occupying the land who is not a defendant.

(2) Service on a defendant shall be personal.

(3) Service on a person occupying the land who is not a defendant shall be effected—

(a) by—

(i) affixing a copy of the originating motion and a copy of the affidavit to some conspicuous part of the land; and

(ii) if practicable, leaving in the letter box or other receptacle for mail on the land a copy of the originating motion and a copy of the affidavit enclosed in a sealed envelope addressed to

"The Occupiers"; or

(b) in such other manner as the Court directs.

53.06 Occupier made a party

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

53.07 Judgment for possession

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

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

53.08 Warrant of possession

(1) A warrant of possession to enforce a judgment for possession in a proceeding under this Order shall not be issued without the leave of a Judge where three months have elapsed since the judgment took effect.

(2) An application for leave under paragraph (1) may be made without notice to any person, unless the Court otherwise orders.

(3) A warrant of possession to enforce a judgment for possession in a proceeding under this Order shall be in Form 53B.

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

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

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

V.

FREEDOM OF EXPRESSION

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

VI.

SEPARATION OF POWERS

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

VII.

RULE OF LAW

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

VIII.

GOOD GOVERNANCE

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

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

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

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

Your Excellency

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

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

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

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

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

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

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

Yours sincerely,

OVERARCHING PURPOSE COMPLIANCE[16]

q. *The purpose of this outline of submissions is to identify the nature of the controversies as "All of the Matters arising in the Proceedings" between the Plaintiffs and the current defendants and the proposed 3rd-8th Defendants* [17] *to assist the Judicial Officer presiding in this proceeding with some relevant law and evidence to make orders in Prohibition/ Injunctive Relief as a matter of urgency in respect to unlawful eviction and possession of Land, and given more time such further:*

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

[16] Page 2 of the Outline of Submissions of the Plaintiffs dated 4th July 2025
[17] **DDB 7** Amended Defence, Counterclaim and Cross Claim dated 23rd June 2025 AND **DDB 6** Form 46A Summons and Notice of Indictment DECISION MAKER COUNTY COURT, and ors 23.06.2025

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

"The High Court is the final appellate court for all Australian jurisdictions"[19]

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

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

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

The Constitution reflects the broad principle that, subject to the Westminster system of responsible government, the powers in each category – whose character is determined according to traditional British conceptions – are vested in and are to be exercised by separate organs of government. The functions of government are not separated because the powers of one branch could not be exercised effectively by the repository of the powers of another branch. To the contrary, the separation of functions is designed to provide checks and balances on the exercise of power by the respective organs of government in which the powers are reposed[21]

THE EXECUTIVE POWER OF THE COMMONWEALTH

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

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

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

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

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[18] *Public Law Public Law - An Australian Perspective* (Scottish Public Law Group, 6 July 2012, Edinburgh);
[19] Constitution, s 71.
[20] *Attorney-General for the Commonwealth v The Queen; Ex parte Boilermakers' Society of Australia* (1957) 95 CLR 529, 540.
[21] *Wilson v Minister for Aboriginal and Torres Strait Islander Affairs* (1996) 189 CLR 1, 10-11.

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

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

The executive power has had only limited consideration in the High Court. There have been two decisions made on it recently, one in 2009 – Pape v Federal Commissioner of Taxation[27] *and Williams v Commonwealth*[28] *delivered on 20 June 2012.* [29]

CONTINUOUS FULL DISCLOSURE MODEL LITIGANT OBLIGATIONS AND THE PUBLIC INTEREST

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

The Committee also said that the:

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

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

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

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

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

[27] (2009) 238 CLR 1.

[28] (2012) 86 ALJR 713; 288 ALR 410.

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

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

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

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

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

In another case the Federal Court of Australia said:

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

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

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

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[31] @ 5.28

[32] Appeal Division of the Supreme Court of Victoria in *Director of Public Prosecutions v Smith* [1991] 1 VR 63
(at 75), per Kaye, Fullagar and Ormiston JJ.

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

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

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

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

FREEDOM OF INFORMATION[36]

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

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

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

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

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

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

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

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

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

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

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

[40] L Stirling Submission 3.

[41] See further at para 4.10.

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

THE DEFENDANTS AS TRIBUNALS DETERMINING THIRD PARTY RIGHTS

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

> ***tribunal*** *means a person or body of persons who, in arriving at the decision in question, is or are by law required, whether by express direction or not, to act in a judicial manner to the extent of observing one or more of the rules of natural justice, but does not include—*
> *(a) a court of law or a tribunal constituted or presided over by a Judge of the Supreme Court; or*
> *(b) a Royal Commission, Board of Inquiry or Formal Review within the meaning of the Inquiries Act 2014*
> ***decision*** *means a decision operating in law to determine a question affecting the rights of any person or to grant, deny, terminate, suspend or alter a privilege or licence and includes a refusal or failure to perform a duty or to exercise a power to make such a decision;*
>
> Under *the Administrative Decisions Judicial Review* Act 1975 (Cth)
>
> ***decision*** *to which this Act applies means a decision of an administrative character made, proposed to be made, or required to be made (whether in the exercise of a discretion or not and whether before or after the commencement of this definition):*
> *(a) under an enactment referred to in paragraph (a), (b), (c) or (d) of the definition of enactment; or*
> *(b) by a Commonwealth authority or an officer of the Commonwealth under an enactment referred to in paragraph (ca) or (cb) of the definition of enactment; other than:*
> *(c) a decision by the Governor-General; or*
> *(d) a decision included in any of the classes of decisions set out in Schedule 1.*
> ***duty*** *includes a duty imposed on a person in his or her capacity as a official of the Crown.*
> ***Tribunal;*** *a special court or group of people who are officially chosen, especially by the government, to examine (legal) problems of a particular type.*

JUDICIAL REVIEW IS A COMMON LAW RIGHT [42]

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

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

of discretionary public powers is a Common Law Right.[43]

FIDICUARY DUTY NOTICE; RE SELF REGULATION IS MIS-REGULATION [44]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

y. The proposed Fifth Defendant has abdicated office of "Guardian/ Champion of the Public Interest" as a Public Trustee and has failed toe stablish a Parliamentary Committee as a Standing Committee or otherwise in the last 15 years despite the acknowledgement of the CEOs of Australia as a Commonwealth Entity in successive CHOGM Communiques of 2013, 2018 and 2023 of the bunding nature of the Charter of the Commonwealth

z. Fiduciary duty as a public official you encompass a range of ethical and legal responsibilities to perform in the best interests of the public you serve. These duties include:

1. Fiduciary Duty of Loyalty: as a public official you must prioritize the public interest above personal or private interests. You should avoid any conflicts of interest and perform in a manner that benefits the public and upholds trust in public institutions.

2. Fiduciary Duty of Care: as a public official you are expected to perform your duties with diligence, competence, and prudence. This includes making well-informed decisions based on careful consideration of all relevant information and potential impacts.

3. Fiduciary Duty of Integrity: as a public official you must conduct yourself with honesty and integrity, avoiding any behaviour that might undermine public confidence in government. This includes refraining from corrupt practices, fraud, and any form of unethical conduct.

4. Fiduciary Duty of Confidentiality: as a public official you must maintain the confidentiality of sensitive information obtained in the course of your duties. You should not disclose or misuse such information for personal gain or to the detriment of the public interest.

5. Fiduciary Duty to Perform Within Authority: as a public official you must perform within the scope of your authority as defined by laws, regulations, and organizational

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

6. Fiduciary Duty of Fairness: as a public official you are obligated to perform fairly and impartially in your interactions with the public and colleagues. This includes ensuring equal treatment and avoiding discrimination or favouritism.

7. Fiduciary Duty to Uphold the Law: as a public official you must comply with all applicable laws, regulations, and ethical standards. You should ensure that your actions and decisions are lawful and promote the rule of law.

8. Fiduciary Duty to be Transparent and Accountable: as a public official you should be transparent in your actions and decisions, providing clear and accurate information to the public and relevant authorities. You must be accountable for your actions, decisions, and the use of public resources.

9. Fiduciary Duty to Promote Public Trust: as a public official you should perform in a manner that enhances public trust in government and public institutions. This includes being responsive to public needs and concerns and demonstrating a commitment to serving the public good.

10. Fiduciary Duty to Avoid Conflicts of Interest: as a public official you must avoid any personal, financial, or other interests that could conflict with your official duties. You should disclose any potential conflicts and take appropriate steps to mitigate or eliminate them.

11. Fiduciary Duty to be Ethical: as a public official you should adhere to high ethical standards in all aspects of your work. This includes promoting integrity, honesty, and ethical behaviour within your organizations and in your interactions with the public.

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

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

PERSONAL STAKE STANDING IN PUBLIC INTEREST PROCEEDINGS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. s84 of the Supreme Court of Victoria Act 1986 (Vic) has not yet been made by you at any time

84 Proceeding for recovery of land by mortgagee

(1) If—

(a) a proceeding is brought by a mortgagee or the heir, executor, administrator or assignee of a mortgagee for the recovery of any mortgaged land; and

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

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

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

(a) discharge the mortgagor of and from the mortgage; and

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

(4) Nothing in this section—

(a) applies if the person against whom the redemption is sought insists, by writing signed by that person or by that person's legal practitioner or agent and delivered to the legal practitioner or agent for the other side before the amount is brought into the Court—

(i) that the party seeking the redemption does not have the right to redeem; or

(ii) that the land is chargeable with other or different principal sums than what appear on the face of the mortgage or are admitted by the other side; or

(b) applies if the right of redemption is controverted or questioned by or between different defendants in the same proceeding; or

(c) prejudices any subsequent mortgage or encumbrance.

UNITARY EXECUTIVE, INTERNATIONAL CROWN ATTORNEY GENERAL, LIQUIDATOR, AND MANAGING CONTROLLER[45]

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

Respectfully Submitted on Tuesday, 29 July 2025

DOROTA-DONATA BORKOWSKI
and
MICHAEL-MARK BORKOWSKI

Plaintiffs

ANDREW MORTON GARRETT

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

[45] AMG 8565 NSD 741 2023 TENDER BUNDLES No1 to No 25 SUMMARY INDEX ("ANNEXURE 5")

ANNEXURE 1

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

Subject: S ECI 2025 02829 – Confirmation of Supplementary Filings for 30 July Hearing
Date: Monday, 28 July 2025 at 1:10:41 pm Australian Eastern Standard Time
From: DORIS <dorisborkowski@bigpond.com>
To: judicialreview@supcourt.vic.gov.au <judicialreview@supcourt.vic.gov.au>
Attachments: image001.png

Dear Registry,

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

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

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

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

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

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

Attachment: RedCrest_Filing_Screenshot_28Jul2025.png

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE

COMMON LAW DIVISION

S ECI 2025 02829

BETWEEN:

DOROTA-DONATA BORKOWSKI
and
MICHAEL-MARK BORKOWSKI

Plaintiffs

v

WESTPAC BANKING CORPORATION (ACN 007 457 141)
First Defendant

Defendants

OUTLINE OF SUBMISSIONS

Date of Document: 4th July 2025	Solicitors Code:
Filed on behalf of: Dorota-Donata Borkowski	DX:
Prepared by: Dorota-Donata Borkowski	Telephone: 0405 107 365
	Ref:
	Email: dorisborkowski@bigpond.com

EXECUTIVE SUMMARY

1. The Primary "Matter arising in the Proceeding" [1] as a foundational matter of Federation is the failure of Public Officials [2] as employees, officers, agents, servants, contractors, delegates, licensees or otherwise related to the Crown [3] and/or employees, officers, agents, servants, contractors, delegates, licensees of "Constitutional Corporations"[4] licensed by the Crown in right of Australia, in their capacity as Trustees of the Public Trust to exercise discretionary public powers conferred under enactments in a manner that is exclusively in the Public Interest.

[1] *Re Wakim; Ex parte McNally* [1999] HCA 27
[2] within the meaning of *the United Nations Convention Against Corruption* 2003 (AU) a.k.a. *Australian Treaty Series No 2* ("ATS 2")
[3] *Sue v Hill* [1999] HCA 30 (23 June 1999)
[4] S51(xx) of *the Commonwealth of Australia Constitution Act* 1900 (AU)

2. At all relevant times since the Plaintiffs executed the Contract Note for purchase of the Land [5] for a purchase price of AUD$340,000 on the 21st of February 2008 and accepted by the Vendor 22nd February 2008[6] the Plaintiffs have acted personally in their capacities as Joint Trustees of the Michael and Dorota Borkowski Family Irrevocable Living Trust ("**The Trust**") established in equity by sharing of equity and assets as follows:

    a) Commenced cohabiting when the Plaintiffs moved in together on the 18th of September 2005
    b) Became engaged to be married on "Guy Fawkes Day/ Bonfire Night" on 5th November 2006
    c) Became married on 11th March 2007
    d) The Primary Beneficiaries of the are the Plaintiffs and their children including those from prior marriage.
        a) Jessica Polanski born 29 May 1991
        b) Adam Polanski born 5 March 1993
        c) Casper Borkowski 14 July 2010
        d) Hannah Borkowski 25 November 2011
    e) General Beneficiaries of the Trust include relatives of the plaintiffs, related corporations and related trusts
    f) A Formal Deed of Settlement is currently being prepared for effect from the 18th of September 2005

3. The Loan Offer made to the Plaintiffs/ Trustees by the Second Defendant referred to later in these submissions was dated 28th February 2008 for an amount of AUD$300,000 being a loan to value ratio (LTV) of 88% triggering the pre-condition in the Loan Offer and Terms and Conditions that the Plaintiffs as Mortgagors accept Loan Mortgage Insurance.

OVERARCHING PURPOSE COMPLIANCE

The purpose of this outline of submissions is to identify the nature of the controversies as "All of the Matters arising in the Proceedings" between the Plaintiffs and the current defendants and the proposed 3rd-8th Defendants[7] to assist the Judicial Officer presiding in this proceeding with some relevant law and evidence to make orders in Prohibition/ Injunctive Relief as a matter of urgency in respect to unlawful eviction and possession of Land, and given more time such further:

1. Constitutional Writs of Prohibition/ Mandamus/ Certiorari/ Habeus Corpus/ Quo Warranto and/or.

2. Orders in the nature of Prohibition/ Mandamus/ Certiorari/ Habeus Corpus/ Quo Warranto.

PREMINARY INJUNCTION PRINCIPLES

[5] Page 1-2 of Joint Affidavit of Plaintiffs dated 24th June 2025
[6] Annexure 1
[7] **DDB 7** Amended Defence, Counterclaim and Cross Claim dated 23rd June 2025 AND **DDB 6** Form 46A Summons and Notice of Indictment DECISION MAKER COUNTY COURT, and ors 23.06.2025

4. An interlocutory injunction is a discretionary and extraordinary remedy which may be granted by a judge.

5. The Plaintiffs submit that

   a) in this case the grant ought to be made by the court as an absolute right to an effective remedy.
   b) in order to grant an interlocutory injunction, the court will need to be satisfied of:

      a) Whether the plaintiff has made out a prima facie case, in the sense that if the evidence remains as it is there is a probability that at the trial of the action the plaintiff will be entitled to relief (often referred to as a "serious question to be tried").
      b) Whether the inconvenience or injury as irreparable harm which the plaintiff would be likely to suffer if an injunction were refused outweighs or is outweighed by the injury which the defendant would suffer if an injunction were granted (often referred to as the "balance of convenience").
      c) The urgency of injunction under the circumstances.
      d) Maintenance of the Status Quo

      c) That damages are an insufficient remedy in circumstances where the land is the matrimonial Family home of the Plaintiffs and Casper and Hannah Borkowski.

6. The interlocutory injunction is sought with the other party's knowledge,

7. The plaintiffs must ordinarily give an undertaking as to damages in which regard the Plaintiffs:

   a) have received an unconditional compensation offer dated 1st May 2025 from the Trustees of the Australian People Future Fund trading as the Better World Future Fund ABN 26 317 275 322, for and on behalf of the Trustees of The Oenoviva (Australia: National Redress Scheme) Public Interest Working Capital Hybrid Trust ABN 84 136 965 953 declared on the 4th October 2020, Accounted for in the Year Ending 30th June 2021 Income Tax Return and Settlement Sum paid on the 30th of August 2021 in the amount of AUD$4,350,000.00 ("The Moneys") which has resulted in the subrogation of the Trustees as Payers to the Rights of the Plaintiffs as against the Defendants.

   b) submit that it would be just and convenient to pay the Moneys into court and

      a) return possession of the Land to the Plaintiffs to recommence occupancy
      b) for the Second and Proposed Third Defendants to unconditionally endorse MORTGAGE AF820083F 05/05/2008 to the Plaintiffs as registered Forst Mortgagee and as Registered Proprietors.
      c) Grant leave to rehear the proceedings in the Court below as an application *de novo* and file and serve the exhibits marked as:

         - **DDB 7** Amended Defence, Counterclaim and Cross Claim dated 23rd June 2025 AND

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

THE PARAMOUNT DUTY[8]

8. Amongst the myriads of questions of law arising in these proceedings is whether:

   a) the Defendants and the proposed 3rd-8th Defendants have conspired against the rights of the Plaintiffs under Color of Law within th meaning of the International Declaration on Human Rights and the Common Law.

   b) The Legal Practioners involved have breached the Paramount Duty owed by officers of the Court to the Court

9. The Plaintiffs submit that on the grounds of s64 of *the Judiciary Act* 1903 (AU), other applicable law referred to in the Exhibit marked as **AMG 8836** [9] and US Title 241 it is our respectful view that this case is an appropriate vehicle for the redetermination of Judicial immunity[10] and Advocates' immunity[11] from prosecution made by the High Court.

> *CIVIL RIGHTS CONSPIRACY: 18 U.S.C. § 241: Conspiracy Against Rights*
>
> *Section 241 makes it unlawful for two or more persons to agree to injure, threaten, or intimidate a person in the United States in the free exercise or enjoyment of any right or privilege secured by the Constitution or laws of the United States or because of his or her having exercised such a right.*
>
> *Unlike most conspiracy statutes, §241 does not require, as an element, the commission of an overt act.*
>
> *The offense is always a felony, even if the underlying conduct would not, on its own, establish a felony violation of another criminal civil rights statute. It is punishable by up to ten years imprisonment unless the government proves an aggravating factor (such as that the offense involved kidnapping aggravated sexual abuse, or resulted in death) in which case it may be punished by up to life imprisonment and, if death results, may be eligible for the death penalty.*
>
> *Section 241 is used in Law Enforcement Misconduct and Hate Crime Prosecutions. It was historically used, before conspiracy-specific trafficking statutes were adopted, in Human Trafficking prosecutions.*
>
> *MISCONDUCT BY LAW ENFORCEMENT & OTHER GOVERNMENT ACTORS: 18 U.S.C. § 242: Deprivation of Rights Under Color of Law*
>
> *This provision makes it a crime for someone acting under color of law to willfully deprive a person of a right or privilege protected by the Constitution*

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

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

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

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

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

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

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

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

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

a. *Formally viewed as non-criminal measures, targeted sanctions are normally imposed based on permissive evidential standards, such as that of 'credible evidence' (**US Global Magnitsky Act 2016, s 1263(a)**) or 'reasonable grounds to suspect' **(Sanctions and Anti-Money Laundering Act 2018 (UK), ss 11(2) and 12(5)),** which are far lower than either the criminal or civil standard of proof.*

b. *Australia's current sanctions framework does not provide for any particular evidential standard but, as described below, vests virtually unlimited discretion in the government.*

c. *In doing so, these sanctions edge close to the domain of criminal justice, with its established legal safeguards (e.g. the presumption of innocence) and policy expectations (e.g. the prioritization of serious misconduct and minimisation of political interference with law enforcement work).*

d. *Surprisingly, governments worldwide have invested little thought into these issues. The UK appears to be the only country to have published a (very concise) statement of principles articulating the role of corruption sanctions in its overall law enforcement efforts. The typical approach, and one taken up by the Australian government in its response to the JSCFADT's report, is to utter the magic words*

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

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

e. *As the Parliamentary Joint Committee on Human Rights notes, this extraordinary amount of discretion renders judicial review nugatory because there is no standard to measure the government's decision against.*

f. *Australia's current sanctions regime is therefore even less friendly to sanctions challenges than the US system, which has been rightly described as affording 'minimal' opportunities for judicial review.*

g. *A more appropriate conception of corruption and human rights sanctions is as a tool to address egregious wrongdoing that would not ordinarily be within Australian criminal jurisdiction, as well as ensure that Australian individuals and companies do not do business with some of the worst 'bad actors'. This is precisely the vision of sanctions that the JSCFADT's report evinces. This vision manifests itself, for instance, in the recommendation that sanctions, be limited to non-Australian citizens, consistent with near-universal state practice. This, too, was met in the government's response with a 'noted', accompanied by the obligatory reference to the Minister for Foreign Affairs' discretion.*

h. *The prevailing view among policymakers and sanctions experts has been that sanctions are a priori a foreign policy tool aimed at inducing 'behavioral change' by the target. To speak of other objectives of sanctions, such as punishing the perpetrators of horrible crimes, is on that view an intellectual faux pas.*

i. *The upcoming overhaul of Australia's sanctions framework offers an opportunity to take stock of the international experience and develop a world-leading sanctions policy, especially in relation to corruption and human rights sanctions. Doing so will require a degree of clarity about what such sanctions are intended to achieve and how they will be wielded. Openness about what one will do in the future equals commitment, and so far this seems in tension with the government's eagerness to preserve room for maneuver.*

j. *In the end, though, a credible and effective application of sanctions will require a clarity of purpose and consistency in application, which can only be attained by determining how sanctions can best serve legitimate criminal justice objectives, including the punishment of perpetrators and disruption of criminal networks. Formulaic references to sanctions as a 'foreign policy tool' are, on the other hand, of limited utility.*

11. The Commonwealth and the States and Territories of Australia have perpetuated a system of equity abuse as money laundering that is at odds with the International Covenant of Civil and Political Rights whereby Officers, Employees, Servants, Agents, Licensees, Contractors and otherwise related to the three arms of government believe

they are licensed to lie[13] and steal equity[14,15,16] from individual and corporate citizens subject to payment of tax on Ill Gotten Gains as Ill Gotten Tax Revenues.

12. The Honorable Justice John Dixon in Judgment[17] dated 11th October 2021 has today found that a litigation funder and five lawyers ('contraveners') engaged in egregious conduct in connection with a fraudulent scheme, intending to claim more than $19 million in purported legal costs and funding commission from the settlement sum in a group proceeding. Justice John Dixon noted that the contravener's conduct had shattered confidence in, and expectations of, lawyers as an honorable profession, and corrupted the proper administration of justice.

13. His Honour concluded that the contraveners' actions were appalling breaches of their respective duties to the court, particularly the paramount duty and overarching obligations imposed on them by the Civil Procedure Act 2010 (Vic). Justice John Dixon ordered that they pay damages of $11,700,128 to approximately 16,000 group members, plus the costs of the remitter on an indemnity basis.

14. His Honour further ordered that:

    k. Mr Norman O'Bryan SC and Mr Michael Symons (barristers) be removed from the roll of persons admitted to the legal profession;
    l. Mr Anthony Zita and Mr Alex Elliott (solicitors) each show cause as to whether they are fit and proper to remain on the roll of persons admitted to the legal profession; and
    m. the reasons for judgment and the record of the trial be referred to the Director of Public Prosecutions for any further investigation and action thought appropriate.

S67 APPLICATION FOR RESTRAINING ORDER

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

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

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

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

[13] Licensed to Lie by Sydney Powell; 23 October 2018
[14] License To Steal: The Secret World of Wall Street Brokers and the Systematic Plundering of the American Investor by Anonymous, Timothy Harper
[15] A License to Steal; The Untold Story of Michael Milken and the Conspiracy to Bilk the Nation By Benjamin Stein
[16] A License to Steal; The Forfeiture of Property By Leonard W. Levy
[17] *Bolitho v Banksia Securities Ltd* (No 18) (remitter) [2021] VSC 666

the conviction was obtained and whether an appeal has been lodged against the conviction;

(b) where the defendant has not been convicted of a serious offence, the serious offence for which he or she is charged or about to be charged and the grounds for believing that the defendant committed the offence;

(c) a description of the property in respect of which the restraining order is sought;

(d) the name and address of the person who is believed to be in possession of the property;

(e) the grounds for the belief that the property is tainted property in relation to the offence or that the defendant derived a benefit directly or indirectly from the commission of the offence;

(f) where the application seeks a restraining order against property of a person other than the defendant, the grounds for the belief that the property is tainted property in relation to the offence and is subject to the effective control of the defendant; and

(g) the grounds for the belief that a confiscation order may be or is likely to be made under this Act in respect of the property

TEOH's CASE; THE DOCTRINE OF LEGITIMATE EXPECTATIONS

15. A "matter arising in these proceedings" is the primacy of treaty law over laws enacted under *the Commonwealth of Australia Constitution Act* 1900 (AU) as domestic laws which was the subject of assessment by the High Court in Teoh's case [18] and whether the High Court fell into error in failing to refer to:

    a) s64 of *the Judiciary Act* 1903 (AU) and
    b) s20 and/or s21 *the Charter of the United Nations Act* (1945) (AU) ("**COTUNA**") Australian Treaty Series No 1 (ATS-1)
    c) Boilermaker's Case. [19]
    d) *the Vienna International Convention on the Law of* Treaties 1969 (UN)
    e) *The Foreign Corrupt Practices Act* 1977 (US)
    f) *The Insolvency Act* 1986 (UK)
    g) *United Nations Convention Against Corruption* 2003 (UN) / Australian Treaty Series No 2 ("**UNCAC**")

16. A failure to do so is not jurisdictional error; those omissions are deliberate treason against the laws of the King as terrorist acts [20] punishable in accordance with law.

THE CASE FOR REFERRAL

17. The case centers on the unlawful repossession of residential property at 15 Jacaranda Drive, Taylors Hill, VIC, involving:

    a) Execution of eviction without a valid Warrant of Possession,

    b) Unlicensed security agents enforcing actions in breach of Victorian law,

    c) Forgery, false affidavits, and fraudulent mortgage registration,

---

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

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

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

d) Suppression of judicial remedies and retroactive document creation,

e) Breach of human rights, including denial of a fair hearing and violation of privacy and home protections.

18. These findings are confirmed by:

a) Freedom of Information (FOI) responses from public authorities,

b) Internal memos from Westpac Banking Corporation,

c) Formal statements by Victoria Police Licensing & Regulation Division,

d) Statutory violations under both civil and criminal Victorian law.

19. Legal Characterization under the Rome Statute; The pattern of conduct appears to meet the threshold of crimes against humanity, particularly:

a) Persecution (Article 7(1)(h)) – Targeting individuals via misuse of state legal systems and banking institutions to deprive them of property and legal redress;

b) Other inhumane acts (Article 7(1)(k)) – Illegal evictions, enforced surveillance, and deprivation of lawful ownership and dignity;

c) Enforced evictions without due process, constituting a severe denial of fundamental rights.

These acts, conducted by or with the complicity of state actors, legal officers, and corporate agents, form part of a broader practice of judicial impunity and abuse of process.

20. The Plaintiffs respectfully request the State Party in the person of the Commonwealth Attorney General acting in his capacity as Champion of the Public Interest refer to the Foreign Minister to request that the Prosecutor of the International Criminal Coirt:

a) Initiate a preliminary examination into the situation,

b) Determine whether an investigation under Article 53 is warranted,

c) Consider issuing Article 15 notifications to affected individuals and victims' counsel,

d) If applicable, coordinate with UN human rights mechanisms and national authorities.

THE EVIDENCE SO FAR ADDUCED

The evidence will show that:

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

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

EVIDENCE ACT 1995 - SECT 143

Matters of law

(1) Proof is ~~not~~ required about the provisions and coming into operation (in whole or in part) of:

(a) an Act, a State Act, an Act or Ordinance of a Territory or an Imperial Act in force in Australia; or

(b) a regulation, rule or by - law made, or purporting to be made, under such an Act or Ordinance; or

(c) a Proclamation or order of the Governor - General, the Governor of a State or the Administrator or Executive of a Territory made, or purporting to be made, under such an Act or Ordinance; or

(d) an instrument of a legislative character (for example, a rule of court) made, or purporting to be made, under such an Act or Ordinance, being an instrument that is required by or under a law to be published, or the making of which is required by or under a law to be notified, in any government or official gazette (by whatever name called).

(2) A judge ~~may~~ must inform himself or herself about those matters in any way that ~~the judge thinks fit~~ is exclusively in the Public Interest as a public Trust.

(3) A reference in this section to an Act, being an Act of an Australian Parliament, includes a reference to a private Act passed by that Parliament.

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

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

23. The Second Defendant:

a) did not countersign the loan offer at that time, nor was the loan offer countersigned by any person representing the Second Defendant at any other time.

b) Refers to the Loan Offer as the combination of "The Loan Offer" and "the General Terms and Conditions".[22]

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

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

The Loan

5. On or about 25 March 2008, Westpac entered into a loan agreement in writing with the first and second defendants (**Loan Agreement**), pursuant to which Westpac advanced to the defendants the sum of $300,000.00 (**Loan**) on the terms set out in the Loan Agreement.

6. The Loan Agreement consisted of:

   (a) a loan offer setting out the details of the Rocket Repay Home Loan provided by Westpac to the first and second defendants and accepted by the defendants (**Loan Offer**); and

   (b) a Booklet of Standard Terms and Conditions version wpac.029 dated December 2007 (**General Terms and Conditions**).

7. At pages 1 to 16 of the Exhibit is a copy of the Loan Offer executed by the first and second defendants. This is a true copy of the original Loan Offer in the possession of Westpac and is one of Westpac's Business Records.

8. At pages 17 to 46 of the Exhibit is a copy of the General Terms and Conditions, which is one of Westpac's Business Records.

Alexander Manoel
Deponent

Witness

ME_952364808_7

24. At no time in the Court below or these proceedings to date have the Plaintiffs been permitted to cross examine the deponents employed by the Second Defendant and the proposed Third Defendant.

25. The Plaintiffs seek an order from the court that the Deponents referred to above be made available for cross examination.

26. The Plaintiffs respectfully submits, and asks this Honourable Court to find as a fact, that:

    a) the interpretation of the term **"The Loan Agreement"** sworn into evidence by the Second Defendant as referred to be the Deponent in paragraph 4 above is perjury and an offence under s20 of COTUNA.

    b) In support of that request the Plaintiffs refer to "The Information Statement" [23] deposed by the Second Defendant and notes the requirement for a proposed credit contract as follows:

[23] Pages 12 of Bundle Exhibits marked as AM-1 annexed to the affidavit of Alex Manoel dated 28th April 2025

INFORMATION STATEMENT

THINGS YOU SHOULD KNOW ABOUT YOUR PROPOSED CREDIT CONTRACT

This statement tells you about some of the rights and obligations of yourself and your credit provider. It does not state the terms and conditions of your contract.

If you have any concerns about your contract, contact your credit provider and, if you still have concerns, your Government Consumer Agency, or get legal advice.

THE CONTRACT

1. How can I get details of my proposed credit contract?

Your credit provider must give you a pre-contractual statement containing certain information about your contract. The pre-contractual statement, and this document, must be given to you before:

- your contract is entered into; or
- you make an offer to enter into the contract,

whichever happens first.

2. How can I get a copy of the final contract?

If the contract document is to be signed by you and returned to your credit provider, you must be given a copy to keep.

Also, the credit provider must give you a copy of the final contract within 14 days after it is made. This rule does not, however, apply, if the credit provider has previously given you a copy of the contract document to keep.

If you want another copy of your contract write to your credit provider and ask for one. Your credit provider may charge you a fee. Your credit provider has to give you a copy:

- within 14 days of your written request if the original contract came into existence 1 year or less before your request; or
- otherwise within 30 days of your written request.

27. It was acknowledged by the Plaintiffs on those dates that it was a term and condition of the Second Defendant pursuant to the Loan Offer that Westpac Lenders Mortgage Insurance ("LMI") was compulsory and accepted that term and condition.

Initial fees and charges.

You must pay these before you draw your loan. However, any fees and charges which the Lender agrees to finance from your loan can be paid when you first draw your loan.

- **lenders mortgage insurance charge** $3,135.00
- **bank cheque issuance fee** $10.00

  per bank cheque. Payable if you request the Bank to issue more than one bank cheque during settlement. The first bank cheque issued is free. The actual amount of this fee will only be known at the time of settlement. By accepting this Loan Offer you agree to pay the actual amount of this fee;

- **loan establishment fee** Nil

24

[24] Page 2 ibid

Any mortgage listed above which mortgages to the Lender an interest in real property also mortgages to the Lender any proceeds of insurance policies related to the real property.

.....

TO WHOM WILL THE AMOUNT OF YOUR LOAN BE PAID?

You authorise the Lender to disburse (pay out) your loan in accordance with instructions received from you or your solicitor / agent / conveyancer.

.....

You'll need to instruct the Lender, if you haven't already, how to pay the following amounts. If you don't instruct the Lender, these amounts will be deducted from your loan proceeds.

.....

- The following amounts payable to:

Westpac Lenders Mortgage Insurance Limited:	$3,135.00
Registration Charges Account:	$1,133.80
Stamping Charges Account:	$16,060.00
Bank Cheque Issuance Fee:	$10.00

25

28. **The Plaintiffs:**

a) Do not have any record of a credit contract executed by them and certified in accordance with law.

b) Do not know and cannot say if a Credit Contract was entered into with the Second Defendant because there is no evidence in the proposed Third Defendant's OR Second Defendant's affidavit materials filed thus far ……of the existence of any credit contract.

c) Did not provide personal guarantees at any time in support of the Loan Offer as evidenced by the absence of any registration of Personal Property Security Interest on the Personal Property Security Register [26]against them by the Second Defendant

d) do not know or understand the nature of the Stamping Charges referred to above in which regard the website of Westpac refers to Stamp Duty Payable calculated on the purchase price of the land and the cost of LMI insurance:

https://www.westpac.com.au/personal-banking/home-loans/calculator/stamp-duty-calculator/

[25] Page 7 ibid
[26] ANNEXURE 2

29. concede that the evidence of the Second Defendant deposed on the 28th April 2025 (ONE DAY BEFORE THE COUNTY COURT HEARING ON 30TH APRIL2025) evidence AUD$300,000 was advanced on the 28th of April 20028

Rocket Repay Home Loan Account Transaction Details
037-149 39-0747
Account details for the period from 27 APR 2008 to 28 MAY 2008

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

[27]

30. The above disclosed web site refers to Loan Mortgage Insurance as follows:

What is LMI?

Lender's mortgage insurance (LMI) is a one-off premium paid by the borrower, that protects the bank against any loss if you're unable to repay your loan, and the proceeds of the sale are not enough to pay your loan in full. You're likely to need to pay LMI if your loan-to-value ratio (LVR+) is more than 80% i.e. you're borrowing more than 80% of the property's purchase price. LMI can be paid upfront or spread across the term of the loan.

How do you calculate Lenders Mortgage Insurance (LMI)?

The Lender's Mortgage Insurance calculation is based on the size of your deposit and your loan amount. If you borrow over 80% of the purchase price of the property, you are likely to need to pay an LMI premium.

Is LMI an upfront cost?

You can pay LMI immediately, as an upfront cost. Or you may be able to choose to add it to your loan repayments, so the cost is spread across the term of the home loan. Keep in mind that adding an LMI premium to your loan balance will mean you pay interest on it over the life of the loan.

How do I avoid LMI with less than 20% deposit?

With Westpac's Family Security Guarantee, a member of your family may be able to act as guarantor, using the equity in their home to help you buy your home.

If you're a registered midwife or nurse earning at least $90k a year, you could get a home loan with a 10% deposit, without paying lenders mortgage insurance. Credit criteria, T&Cs and charges apply.*

[27] Page 67 Ibid.

How much is LMI usually?

The amount of LMI you pay will depend on the size of your deposit and how much your borrow. Use the calculator on this page to see whether you may need to pay LMI and, if so, an estimate of how much.

What does LMI stand for?

LMI stands for Lender's Mortgage Insurance.

What's the difference between LMI and loan protection insurance?

Lender's Mortgage Insurance is paid by the borrower, and it protects the bank against any loss if you're unable to repay your loan. Loan protection insurance is also paid by the borrower and may pay off your mortgage in the event of terminal illness or death.

When does LMI usually apply?

Lender's Mortgage Insurance is a premium that usually applies if you need to borrow over 80% of the purchase price of the property you want to buy.

Evidence relied upon by the Second Defendant filed in

31. **COUNTY COURT No. CI-23-01883**

a) Brenda Jones Affidavit of Service dated 6th May 2023 relating to service on the 4th of May 2023 of:

a) Originating Writ of Summons dated 27th April 2023

b) Statement of Claim dated 26th April 2023

b) Minters Affidavit sworn by Samantha Gee-Clark on 22 May 2023, no annexures.

c) Ben Gordon De Silva (Legalstream) Affidavit of Service dated 23rd May 2023 Default Notice dated 2nd August 2022

d) Brenda Jones Affidavit of Service dated 6th June 2023 relating to service on 1st June 2023 of Letter from Minter Ellison dated 26th May 2023 annexing Default Judgment for "Recovery of Land" dated 24th May 2023 in:

a) default of filing a defence,

b) the amount of costs of $3,926.40

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

32. **SUPREME COURT: S ECI 2025 02829**

a) Shufei Qu Affidavit on behalf of the Proposed Third Defendant sworn 2July2025 (ONE DAY BEFORE THE SUPREME COURT HEARING SET DOWN FOR 4th JULY 2025)

Evidence relied upon by the Plaintiffs filed in:

33. **COUNTY COURT No. CI-23-01883**

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

"A" Copy of the Default Judgment dated 24 May 2023
"B" Copy of the purported Warrant of Possession dated 26 June 2024
"C" Photographs documenting property damage from enforcement
"D" Correspondence with the Sheriff of Victoria
"E" Extracts from Westpac internal memos, AFCA file
"F" Written notices and formal communications with parties
"G" Personal hearing notes from 30 April 2025 and County Court transcript request
"H" Timeline of Events and FOI confirmation

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

"I" County Court transcript dated 30 April 2025
"J" Timeline of Title and Enforcement Events (confirming post-eviction eCT registration of interest of Minter Ellison)

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

"K" Internal Westpac memo extracts confirming enforcement was pre-authorised
"L" Order made by Judge Burchell on 30 April 2025 in CI-23-01883

34. **SUPREME COURT: S ECI 2025 02829**

a) Dorota- Donata Borkowski Affidavit dated 24th June 2025 annexing exhibits marked as:

"DDB 1" Search of the Title dated 4th April 2025
"DDB 2" Form 5G Originating Process as finalised with Registry and the Originating Summons
"DDB 3" Instructions Registry Review Public Officials confined the nature of the Application on 14th May 2025
"DDB 4" Instructions Registry Review Public Officials confined the nature of the Application on 19th May 2025
"DDB 5" Copy of internal processes of the Second Defendant marked as ANNEXURE 5 by the proposed Fifth Defendant
"DDB 6" Notice of Summons and Notice of Indictment dated 23rd June 2025 seeking leave and/or abridge time to file a Defence Statement of Counter Claim/ Indictment Information in the Court below and/or file a Statement of Claim/ Indictment Information seeking leave to amend the Claim
"DDB 7" Amended Statement of Claim (*Defence and Counterclaim in Ci-23-01883*) and Cross Claim / Indictment Information dated Monday, 23 June 2025

"DDB 8" Decision of the proposed Fifth Defendant dated 7th April 2025
"DDB 9" County Court 23June2025 "HARDIMAN LETTER" Borkowski v CCV & Westpac.
"DDB 10" Service on the Court registry by email with an Interlocutory application dated 23rd June 2025

b) Dorota- Donata Borkowski Affidavit dated 30th June 2025 annexing exhibits marked as:

"A" Copy of the purported Warrant of Possession dated 26 June 2024
"B" FOI Documents from Sherriff's Office
"C" Letter from Registrar of Titles confirming Administrative Hold on title dated 4th June 2025
"D" Extracts from Westpac internal memos, AFCA file confirming foundational Loan and Mortgage Documents are missing from Westpac Files
"E" Documentary evidence of Activation and Payout of Lenders Mortgage Insurance to the Second Defendant

THE MATTERS ARISING IN THE PROCEEEDINGS

35. The Plaintiffs rely on the following definitions a being applicable to the Mortgage and/or the Certificate of Title amongst all the possessions previously located on the Land:

- ***"asset"*** *means:*[28]

  (a) an asset of any kind or property of any kind, whether tangible or intangible, movable or immovable, however acquired; and

  (b) a legal document or instrument in any form, including electronic or digital, evidencing title to, or interest in, such an asset or such property, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, debt instruments, drafts and letters of credit.

- ***"funds"*** *means:*[29]

  (a) property and assets of every kind, whether tangible or intangible, movable or immovable, however acquired; and

  (b) legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such property or assets, including, but not limited to, bank credits, travellers' cheques, bank cheques, money orders, shares, securities, bonds, debt instruments, drafts and letters of credit.

- *"**Public official**" shall mean:* [30]

[28] COTUNA
[29] *the Suppression of Terrorism Financing Act* 2002 (AU)
[30] UNCAC

(i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority;

(ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party;

(iii) any other person defined as a "public official" in the domestic law of a State Party. However, for the purpose of some specific measures contained in chapter II of this Convention, "public official" may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party;

- *"**Property**"[31] shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets;*

- *"**Proceeds of crime**"[32] shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;*

- *"**Freezing**" or "**seizure**"[33] shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;*

- *"**Confiscation**"[34], which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;*

- *"**Predicate offence**"[35] shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 23 of this Convention;*

36. The Plaintiffs seek orders arranging for the cross- examination of:

a) The Decision Maker acting for the First Defendant

b) The Deponents for the Proposed Third Defendant and the Second Defendant.

37. No. CI-23-01883 Minter Ellison Affidavit dated 22 May 2023

a) Samantha Gee-Clerk, paralegal in the employ of Minter Ellison swore this affidavit in the County Court Commercial Division Banking and Finance in proceeding No. CI-23-01883 deposing in words to the following effect:

[31] UNCAC
[32] UNCAC
[33] UNCAC
[34] UNCAC
[35] UNCAC

b) No appearance had been entered by the Defendants in those Proceedings/ The Plaintiffs in these proceedings.

c) Peter Scalzi of that firm instructed her that:

ii. the whole of the secured moneys due under the default notices had not been repaid.

iii. Possession be sought for recovery of land under **s78** of *the Transfer of Land Act* 1958 (Vic).

d) Peter Scalzi and the Deponent breached their paramount duty owed to the court to confirm with the Second Defendant if:

a) There was any debt whatsoever payable by the Plaintiffs in any exact amount.

b) The Mortgage and the Debt had been securitised by the Second Defendant such that the Second Defendant was not owed any money.

c) The terms and conditions of the Loan Mortgage Insurance with subsequent proceeds could be used to pay the Loan Mortgage in full

e) The Plaintiffs respectfully submit that the failure to undertake the steps referred to above is defined as "Organised Crime" and "Terrorist Acts" within the meaning of:

a) *COTUNA*
b) *The Common Law*
c) *Combatting Serious Organised Crime Act 2001 (AU)*
d) *the COTUNA Amendment Act* 2002 (AU),
e) *the Suppression of Terrorism Financing Act* 2002 (AU)

being corrupt conduct within the meaning of UNCAC

38. The Deponent:

a) sought orders to be made for Default Judgment in the amount of $3,926.40 for costs and

b) did not make a claim to outstanding money or

c) make any reference to any default notices required by law to be served on the Plaintiffs by the Second Defendant in order to apply for orders of possession and/or warrant of possession

d) did not refer to the affidavit of service of Ben Gordon De Silva (Legalstream) Affidavit of Service dated 23rd May 2023 evidencing service of

a) the First Default Notice dated 2nd August 2022

b) the Second Default Notice dated 1st December 2022 pursuant to Section **76** of the Transfer of Land Act /1958 (VIC) and Section 88 of Schedule 1 of

the National Credit Code in the amount of $2,096.34 alleging principal debt of $50,489.05 excluding enforcement expenses.

39. The Plaintiffs note that the above-mentioned affidavit:

    a) has not been served on the plaintiffs at any time, and

    b) is not the subject of an affidavit of service, and

    c) was obtained by me from the County Court File, and

    d) does not disclose ant exhibits annexed to the above-described affidavit, and

    e) does not make any claim for any alleged outstanding money or refer to the Statement of Claim annexed to the affidavit of service, and

40. The Plaintiffs agree there was no money owed at that time nor was there any money that could become payable at any other or subsequent time.

LEDGER TRANSFER TIMELINE

Date	From	To	Loan
14 Sep 2010	3SL22	MSLCP	0747
29 Sep 2010	MSLCP	MSLDP	0747
1 Oct 2010	MSLDP	MSLD1	0747
30 Aug 2018	MSLCP	MCMMP	0747
30 Aug 2018	MCMMP	MSLCP	0747
30 Apr 2014	MSL31	MSLA1	0747
2 Jun 2022	FSL21	FSL22	5046
17 Jun 2022	FSL22	MSL31	5046
9 Dec 2018	FSL13	FSL21	5046
27 Apr 2020	HOLD	FSL11	5046
30 Jan 2016	DFLT	DLMM	0747

41. **Full Ledger Transfer Interpretations (Loan Accounts 0747 & 5046)**

    a) **Date:** 14 Sep 2010 **From:** 3SL22 **To:** MSLCP **Loan:** 0747 **Interpretation:** Loan 0747: Transferred from 3SL22 to MSLCP. Reclassified within master servicing ledgers—MSL entries often denote internal ledger segments for trust servicing.

    b) **Date:** 29 Sep 2010 **From:** MSLCP **To:** MSLDP **Loan:** 0747 **Interpretation:** Loan 0747: Transferred from MSLCP to MSLDP. Reclassified within master servicing ledgers—MSL entries often denote internal ledger segments for trust servicing.

    c) **Date:** 01 Oct 2010 **From:** MSLDP **To:** MSLD1 **Loan:** 0747 **Interpretation:** Loan 0747: Transferred from MSLDP to MSLD1. Reclassified within master servicing ledgers—MSL entries often denote internal ledger segments for trust servicing.

d) **Date:** 30 Aug 2018 **From:** MSLCP **To:** MCMMP **Loan:** 0747 **Interpretation:** Loan 0747: Transferred from MSLCP to MCMMP. Movement between master cash management or pooling modules—indicates internal restructuring or batching.

e) **Date:** 30 Aug 2018 **From:** MCMMP **To:** MSLCP **Loan:** 0747 **Interpretation:** Loan 0747: Transferred from MCMMP to MSLCP. Movement between master cash management or pooling modules—indicates internal restructuring or batching.

f) **Date:** 30 Apr 2014 **From:** MSL31 **To:** MSLA1 **Loan:** 0747 **Interpretation:** Loan 0747: Transferred from MSL31 to MSLA1. Assigned to a securitisation ledger—MSLA codes typically designate tranches or trust pools (e.g., A1, B2).

g) **Date:** 02 Jun 2022 **From:** FSL21 **To:** FSL22 **Loan:** 5046 **Interpretation:** Loan 5046: Transferred from FSL21 to FSL22. Transferred between financial structure ledgers—commonly tied to RMBS warehouse or funding pool adjustments.

h) **Date:** 17 Jun 2022 **From:** FSL22 **To:** MSL31 **Loan:** 5046 **Interpretation:** Loan 5046: Transferred from FSL22 to MSL31. Reclassified within master servicing ledgers—MSL entries often denote internal ledger segments for trust servicing.

i) **Date:** 09 Dec 2018 **From:** FSL13 **To:** FSL21 **Loan:** 5046 **Interpretation:** Loan 5046: Transferred from FSL13 to FSL21. Transferred between financial structure ledgers—commonly tied to RMBS warehouse or funding pool adjustments.

j) **Date:** 27 Apr 2020 **From:** HOLD **To:** FSL11 **Loan:** 5046 **Interpretation:** Loan 5046: Transferred from HOLD to FSL11. Transferred from a holding ledger—this is consistent with temporary staging before active ledger or trust assignment.

k) **Date:** 30 Jan 2016 **From:** DFLT **To:** DLMM **Loan:** 0747 **Interpretation:** Loan 0747: Transferred from DFLT to DLMM. Moved from default to delinquency monitoring—may represent pre-securitisation mitigation or investor repurchase protection.

Date	Code	From	To	Type
24 Apr 2010	ARCLS	3SL23	MSL31	Ledger Reassignment
30 Apr 2010	ARCLS	MSL31	MSLD1	Ledger Reassignment
17 Jun 2011	ARCLS	3SL12	MSLCP	Ledger Reassignment
19 Nov 2010	ARCLS	3SL23	MSLCP	Ledger Reassignment
30 Mar 2022	ARCLS	MSLA7	3HOLC	Ledger Reassignment

30 Mar 2022	CXFR	MSLA7	DHLD	Cross-Account Transfer
11 Feb 2023	MEMO	037149390747	MSLA7MTMA	Primary Loan Allocation
11 Feb 2023	MEMO	037186655046	MSLA7MTMA	Non-Interest Split Allocation

42. **Ledger Prefix Decoding Legend (Westpac Internal)**

Prefix / Code	Likely Meaning	Context / Function
ARCLS	Account Reclassification	Automated reallocation between internal ledger pools or servicing structures
CXFR	Customer Cross-Reference Transfer	Transfer between associated accounts (e.g., main to split loan)
3SLxx	Structured Loan Ledger (Batch ID xx)	Likely represents loans grouped for pooling or warehousing pre-securitisation
MSLxx	Master Servicing Ledger (xx = category or trust ledger)	Internal ledger for managing loans across investor portfolios or trust segments
MSLDx	Master Servicing Ledger – Default or Delinquent	Likely subledger tracking loans in hardship or arrears during pool reclassification
MSLAx	Mortgage Securitisation Ledger Allocation (e.g., MSLA1)	Allocation into RMBS tranches (e.g., A1 = senior tranche in trust pool)
MSLA7MTMA	Specialised internal tag (MTMA = Mortgage Trust Management Account)	Indicates pooled loan assignment to a managed trust or investor ledger
3HOLC	Holding Control Pool (inferred)	Temporary ledger used to stage or exit loans from poolable structures
DHLD	Default/Hardship Ledger Destination (inferred)	Indicates the loan was flagged for enforcement risk or hardship monitoring
FSLxx	Funding Structure Ledger (e.g., FSL11, FSL21, FSL22)	RMBS-related warehouse or funding conduit identifiers
MCMMP	Master Cash Management Mortgage Pool	Backend cash flow or remittance pool for securitised loans
DLMM	Delinquency Loss Mitigation Module	Internal system used to monitor or recover loss-prone loans

IMPUNITY

43. Impunity (like the words pain, penal, and punish) traces to the Latin noun poena, meaning "punishment." The Latin word, in turn, came from Greek poinē, meaning "payment" or "penalty." People acting with impunity have prompted use of the word since the 1500s. An illustrative example from 1660 penned by Englishman Roger Coke reads:

"This unlimited power of doing anything with impunity, will only beget a confidence in kings of doing what they [desire]."

44. While royals may act with impunity more easily than others, the word impunity can be applied to the lowliest of beings as well as the loftiest:

"The local hollies seem to have lots of berries this year.... A single one won't harm you, but eating a handful would surely make you pretty sick, and might kill you. Birds such as robins, mockingbirds, and cedar waxwings eat them with impunity."[36]

45. The Plaintiffs respectfully submit the Defendants, and the proposed Defendants and related Public Officials act with impunity [37] without fear of prosecution because:

a) the Quintet of Attorney Generals have abdicated the Common Law/ Statutory role of Champion of the Public Interest

b) the Law societies of Australia act as secret societies. [38]

Mr McRAE: *This is the one clause on which the Opposition will divide. It is a new clause. We have heard the incredible doctrine this evening that no amendment, no matter how logical , reasonable or sensible, will be accepted. Taking into account the realities of that comment, we must draw the line when it comes to total secrecy. The Law Society is now assuming Mafia proportions. It has written the Bill and the amendments, it has appointed the members, it controls the whole of the discipline, and the money, and now it even keeps the accounts. If Government back-benchers are not disturbed about that, I am absolutely stunned.*

Mr McRAE: *I am trying to indicate to the Government back-benchers that, if they want to get some respectability into this whole farce, the circumstances that we have had tonight, they should at least make the society produce the accounts in Parliament. If everything else is to be secret , Parliament has no function at all.*

Mr Crafter: *It is a secret society.*

Mr McRAE: *It is a totally secret society. I indicated earlier that in many ways I support the Law Society, but in other respects I am critical of it.*

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[36] (Karl Anderson, The Gloucester County Times, 22 Dec. 2002).
[37] *Minister for Immigration and Multicultural Affairs v Bhardwaj* (2002) HCA 11
[38] Hansard of the House of Assembly of South Australian Parliament on the 10th June 1981 at p 4180

OUR CORRUPT LEGAL SYSTEM;

46. The Plaintiffs rely on the works of Evan Whitton was Editor of The National Times, Chief Reporter at The Sydney Morning Herald, and Reader in Journalism at Queensland University. He received the Walkley Award for National Journalism five times and was Journalist of the Year 1983 for '*courage and innovation'* in reporting an inquiry into judicial corruption. He began researching the West's two legal systems in 1991 after observing how each system dealt with the same criminal, police chief Sir Terence Lewis. He was then a columnist on a legal journal, Justinian This is his eighth non-fiction book

Whitton's work noticed

'*A dazzling writer, incisive and addictive'*. – Dr George Miller, director Babe, Happy Feet.

a) Trial by Voodoo (1994)

'*The only book in the language that critically examines the law as a whole.*' – Professor Alex Ziegert, Sydney University.

The Cartel (1998)

'*Evan Whitton has said, with I think consummate wisdom: "Truth and justice require ... the abolition of rules for concealing evidence.*' – Sir Laurence Street, former Chief Justice, NSW.

'*Whitton has a remarkably extensive knowledge of the legal system and the way it works ... rich in anecdote ... a wealth of historical knowledge and research ... His insights are always valuable...*' – Justice Ian Callinan, High Court of Australia.

Serial Liars (2005)

' *... confronts all the major lawyer arguments and disposes of them.*' – Brett Dawson, former Crown Prosecutor.

Other books by Evan Whitton

Can of Worms (1986)

Amazing Scenes (1987)

*Can of Worms II (1987)

*The Hillbilly Dictator (1989, *updated edition 1993)

*Trial by Voodoo: Why the Law Defeats Truth and Democracy (1994)

*The Cartel: Lawyers and Their Nine Magic Tricks (1998)

*Serial Liars (2005)

The books marked * are available online at www.netk.net.au/WhittonHome.asp

WOE UNTO YOU YE LAWYERS

47. The Plaintiffs also rely on the work of FRED RODELL, Professor of Law, Yale University written in 1939 [39] quoting:

> "*Woe unto you, lawyers! For ye have taken away*
> *the key of knowledge: ye entered not in yourselves,*
> *and them that were entering in ye hindered*." — Luke. XI, 52

48. Since at least 100 A.D.

    a) the legal system represented in Australia by over 90,000 lawyers has been unregulated; self-regulation is mis-regulation [40]
    b) the judiciary have been unregulated. [41]

> *"Explored by Jacques Derrida when he patiently deconstructed - we must acknowledge that justice, in any situation, depends upon a full and fair accounting of the facts of that situation. If, instead of facts, fictions are introduced that are contrary to the facts, then any claimed "just solution" based on such fictions cannot [42] achieve justice in the real world. [43] The proposition is so elementary that it usually achieves justice goes without saying."*

49. The Hayne Royal Commission found that Fake Regulation in Australia has reached system wide pandemic proportions. [44]

50. The Evidence will show that nothing has changed since the Letters Patent establishing that Royal Commission in 2017.

"***UNCOVERING THE SECRET THATCHER FILES: WHAT BRITAIN THOUGHT ABOUT AUSTRALIA***" [45]

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[39] https://1drv.ms/w/c/13ebd865c7415cd4/EdRcQcdl2OsggBNgzglAAAABqN-UUNJXWJMdcVSAs4sHKA?e=ijkhad

[40] D'Amato, Anthony, "Self-Regulation of Judicial Misconduct Could Be Mis-Regulation" (2010). Faculty Working Papers. Paper 69. http://scholarlycommons.law.northwestern.edu/facultyworkingpapers/69

[41] The Ultimate Injustice: When A Court Misstates the Facts, 11 Cardozo L. Rev. 1313 (1990) July/August, 1990, by Anthony D'Amato FNA

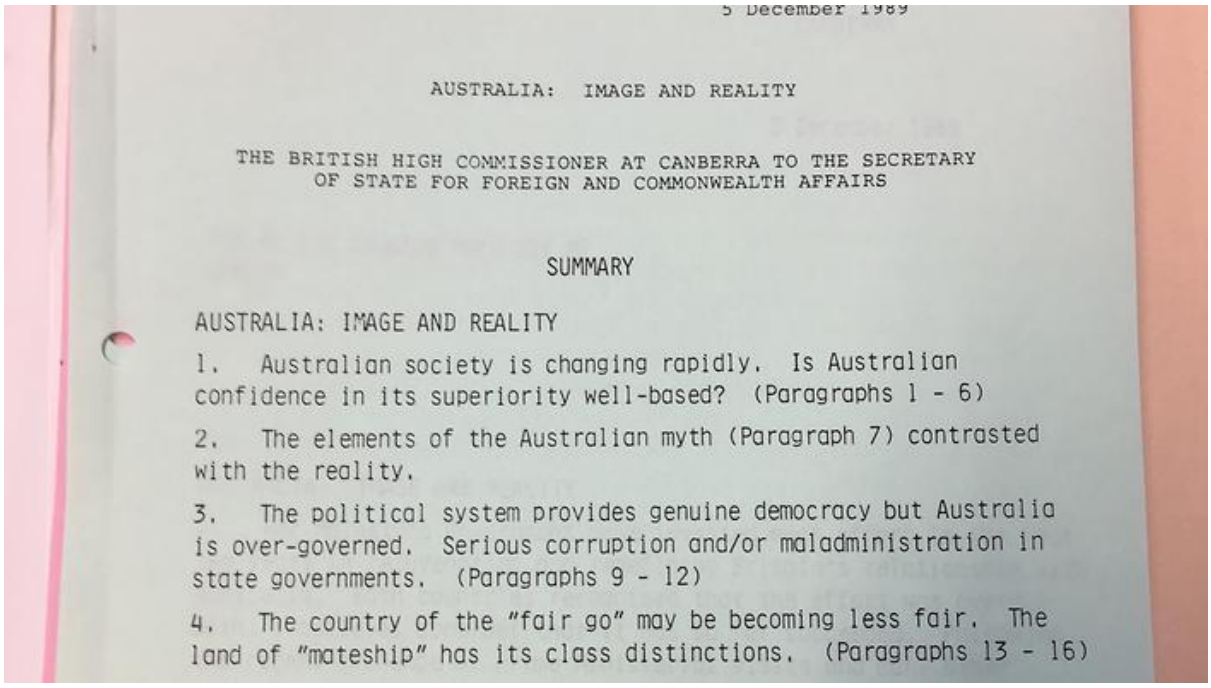
[42] Any "just solution" can only be achieved by sheer coincidence—for example, if the fictions happen to cancel themselves out

[43] A contrary-to-fact statement is not, I suggest, an "interpretation" of the underlying fact. It may be that all law must be interpreted; some of the more radical deconstructionists among us believe that law is nothing more than interpretation. We assert that the words of law have no independent existence. Our interpretations of the law constitute the law; there is nothing "behind" the interpretation. But it is quite otherwise, we believe, when we come to facts. To be sure, facts have to be interpreted; they are *not ding an sich* (Kant's term for things-in-themselves).
No matter how generous and loose the interpretation of a fact may be, we cling to the bedrock belief that we cannot simultaneously assert the existence and nonexistence of a fact. We believe that interpretation as a term is misused if it is cited as an operation that can turn a fact into a non-fact. My belief on this score is more ontological than epistemological; it has to do with a conviction that the real world, unlike texts, does not allow for the assertion of the opposite of a fact. If A killed B, an impermissible "interpretation" of this statement is that A did not kill B. Conversely, if A did not kill B, an impermissible "interpretation" of this statement is that A killed B. This is not so much epistemological as it is ontological because it turns more on what we know about the real world than what we know about language and texts

[44] The Farce of Fake Regulation: Royal Commission Exposed Australia: Wilson Sy, 29 March 2019. Investment Analytics Research.

[45] SBS News; 30th December 2016 by Brett Mason

51. relevantly sets out details of a report from the British High Commissioner dated 10th December 1986;



5 December 1986

AUSTRALIA: IMAGE AND REALITY

THE BRITISH HIGH COMMISSIONER AT CANBERRA TO THE SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS

SUMMARY

AUSTRALIA: IMAGE AND REALITY

1. Australian society is changing rapidly. Is Australian confidence in its superiority well-based? (Paragraphs 1 - 6)

2. The elements of the Australian myth (Paragraph 7) contrasted with the reality.

3. The political system provides genuine democracy but Australia is over-governed. Serious corruption and/or maladministration in state governments. (Paragraphs 9 - 12)

4. The country of the "fair go" may be becoming less fair. The land of "mateship" has its class distinctions. (Paragraphs 13 - 16)

*"Sir John Coles, who concluded that "**redefining Britain's relationship with Australia**" was "**long overdue**";*

In a confidential and colourful 15-page dispatch titled 'Australia: Image and Reality', Sir John attempts to help bureaucrats in London better understand the "rapidly changing Australian society".

"In order to protect and advance our substantial interests we need to be as aware of the nature of that society as we are of the societies of our European, North American and other allies", his dossier begins.

> *"But somehow that knowledge does not come so easily in the case of Australia.*
>
> *"The British media show little interest in the real problems of this country.*
>
> *"The Australian myth is that this is the land of opportunity, the land where the class system of Britain and elsewhere does not exist, where no person is better than the next, where everyone is entitled to 'a fair go', where the 'battler', given a modicum of luck, can achieve the good life and rise to whatever position his talents entitle him.*
>
> *"This land of 'mate ship' and democracy has more private schools than Britain.*
>
> *"And the 'battler'? The people of this country have become 'soft'.*
>
> *"The effects of easy living on the majority of Australians are all too apparent in the relative absence of the work ethic and in denigrating attitudes towards achievement and productivity.*
>
> *"The soap-opera 'Neighbours' is a more accurate picture of Australia than the 'Flying Doctors'.*

> *"The confidence that Australia is the best is a constant in the daily scene here.*
>
> *"The Australian audience loves to be told that this or that Australian achievement has no equal. "Much of the impetus which drives Australia to its excellence in sport is fired by a national determination to assert Australianness against the rest of the World.*

The High Commissioner went on to make a devastating assessment of Australia's three tiers of government – local, state and federal.

"Despite the much expressed contempt for governments this is in some ways the greatest nanny-state of all.

"The major charge which can be fairly levelled against public administration in Australia is that of corruption.

"Some of the states are notorious," he noted, adding that earlier in 1989 "many heads rolled" in Queensland.

"The New South Wales Minister for Police told me some time ago that if there was ever an enquiry into corruption in his own police force it would make the Queensland affair look like a children's tea-party.

"The long-established corruption and maladministration in the States are a bad blemish on the country's political system.

"The quality of government at State level is generally poor.

"Yet I do not find that surprising.

"The population base of 16 million is too small to provide politicians of high quality to man political parties in nine separate political units."

The High Commissioner observed, "the Australian media are notorious for their low standards of journalism, their scurrilousness, triviality and bias", and their reporting of the Prime Minister's visit was largely "snide comment, half-baked and out-of-date ideas about Britain and grudging admiration of the Prime Minister"

There was, however, one topic on which the pair did agree: Australia receiving one of two original copies of the Australian Constitution.

A directive sent from Downing Street reveals that, despite refusals from the Lord Chancellor and Civil Service, Mrs Thatcher was "sympathetic to the request" and pushed ahead with her instructions for one of the documents to be sent to Canberra.

The memo read: "(T)he Prime Minister said that the birth of a nation was a remarkable event and not to have it legitimized by a birth certificate must be galling, especially when the foster parents had two. She wondered how people in this country would feel if somebody else had two copies of the Magna Carta and we had none. She thought we were being selfish in refusing the Australians."

Mr Hawke had made four formal requests that had been politely declined, refusing to accept the offer of a replica, noting, "permanent possession of the original document containing the Australian Constitution is a matter of great consequence for all Australians".

The Foreign Minister, Gareth Evans, didn't appear, however, to share the Prime Minister's determination. When Britain's Foreign Secretary raised the issue with him directly during a meeting at CHOGM in Kuala Lumpur in 1989, the minutes noted,

"Senator Evans reacted with surprise… saying that 'he didn't give a stuff about the Constitution Act'".

THE ROME STATUTE

52. Under article 13 of the Rome Statute, there are three ways the exercise of the Court's jurisdiction can be triggered where crimes under the Court's jurisdiction appear to have been committed. In all three instances, the Prosecutor must carry out an independent and impartial evaluation before deciding to proceed:

    a) Any State Party of the Rome Statute may refer a situation requesting the Prosecutor to carry out an investigation. The Prosecutor will open an investigation if the legal criteria are met. *This happened in the situations of the Democratic Republic of the Congo, Uganda, Central African Republic (on two occasions), Mali, Palestine, Venezuela and Ukraine;*

    b) The United Nations Security Council (UNSC) may also refer a situation to the Prosecutor, who will open an investigation if the legal criteria are met. *To date, this happened in the situations of Darfur (Sudan) and Libya.*

    c) Finally, the Prosecutor may open an investigation on his own initiative. The Prosecutor may decide to open an investigation – if the Prosecutor decides to proceed, he must seek legal authorization from the judges. *This happened in the situations in Kenya, Côte d'Ivoire, Georgia, Burundi, Afghanistan, Bangladesh/Myanmar, and the Philippines.*

53. A State not Party to the Statute may also accept the exercise of jurisdiction on an ad hoc basis, by submitting a declaration pursuant to article 12(3) of the Rome Statute. An ad hoc declaration is not the same as a referral and still requires the triggering of the Court's jurisdiction – which can happen by one or more States Parties referring the situation or by the Prosecutor seeking authorization from the judges.

54. The Court's jurisdiction may be exercised with respect to any Rome Statute crime committed on the territory or by the nationals of a State Party. The same applies where a State not Party to the Statute lodges a declaration with the Court.

55. The only exception to the above is where the UNSC refers a situation under Chapter VII of the UN Charter, which can relate to any situations involving any UN Member State (including with respect to the territory of a State not Party to the Rome Statute).

56. Any State Party of the Rome Statute may refer a situation requesting the Prosecutor to carry out an investigation. The Prosecutor will open an investigation if the legal criteria are met.

57. This happened in the situations of the Democratic Republic of the Congo, Uganda, Central African Republic (on two occasions), Mali, Palestine, Venezuela and Ukraine;

58. The United Nations Security Council (UNSC) may also refer a situation to the Prosecutor, who will open an investigation if the legal criteria are met.

59. Pursuant to Article 14 of the Rome Statute, Australia MUST, as the relevant State Party, refer to the Prosecutor the situation arising in the State of Victoria, Australia, concerning systemic and coordinated acts of unlawful property seizure, fraudulent judicial conduct, and suppression of legal remedies. These acts demonstrate patterns consistent with crimes against humanity under Article 7 of the Statute, notably persecution, inhumane acts, and other abuses committed under color of law.

Respectfully Submitted on Thursday, 3 July 2025

DOROTA-DONATA BORKOWSKI
and
MICHAEL-MARK BORKOWSKI

Plaintiffs

ANNEXURE 1

REIV
The Real Estate Institute of Victoria Ltd

Approved by The Real Estate Institute of Victoria Ltd.
and approved by the Victorian Lawyers RPA
under S.53A of the Estate Agents Act 1980

Law Institute Victoria

CONTRACT NOTE

Cooling-off period

IMPORTANT NOTICE TO PURCHASERS

Section 31 Sale of Land Act 1962

If none of the exceptions listed below applies to you, you may end this contract within 3 clear business days of the day that **you** sign the contract. To end this contract within this time, you must either give the vendor or the vendor's agent written notice that you are ending the contract or leave the notice at the address of the vendor or the vendor's agent.
If you end the contract in this way, you are entitled to a refund of all the money you paid EXCEPT for $100 or 0.2% of the purchase price (whichever is more).

EXCEPTIONS - The 3-day cooling-off period does not apply if -
- The property exceeds 20 hectares in size and is used mainly for farming.
- The property is used mainly for industrial or commercial purposes.
- You received independent advice from a solicitor before signing the contract.
- You previously signed a similar contract for the same property.
- You bought the property at or within 3 clear business days **before or after** a publicly advertised auction.
- You are an estate agent or a corporate body.

THE ESTATE AGENT BORG NOMINEES PTY LTD TRADING AS JOHN KONTEK REAL ESTATE TAYLORS LAKES · SHOP 28 WATERGARDENS SHOPPING CENTRE TAYLORS LAKES

Phone: 94491666 Fax 94491777 Mobile 0405816183 Refer John BUSUTTIL for

THE VENDOR ANTHONIE'S CONSTRUCTIONS PTY LTD OF 1 FERGUS COURT SYDENHAM has obtained from

THE PURCHASER DOROTA BORKOWSKI & MICHAEL BORKOWSKI 7 SILVERDENE AVENUE Sydenham this offer to purchase

THE PROPERTY 15 JACARANDA DRIVE Taylors Hill and

THE CHATTELS All existing window/floor coverings, light fittings and fixtures of a permanent nature for

THE PRICE of $ ~~330,000~~ 340,000 *Plus any GST* which includes any GST, payable by a

DEPOSIT $340 of $ ~~33,000~~ by 6/3/2008 (of which $ _____ has been paid) and

THE BALANCE of $ ~~297,000~~ 306,000 plus any GST (unless the price includes any GST)
(a) on 8/5/2008 or earlier by agreement or
(b) as described in the Special Conditions overleaf.

SUBJECT TO

1.† _____

† insert any tenancies or licences affecting this property

2. The vendor providing the purchaser with *vacant possession OR *~~receipt of the rents and profits~~ of the property upon acceptance of title by the purchaser and receipt of the consideration then due to the vendor under terms of this contract.

3*. Finance - The lender (if any) approving the loan on the security of the property by the approval date or any later approval date allowed by the vendor. The purchaser may end the contract if the loan is not approved by the relevant approval date only if the purchaser -
(a) has made immediate application for the loan
(b) has done everything reasonably required to obtain approval of the loan
(c) serves written notice ending the contract on the vendor on or before 2 business days after the approval date, and
(d) is not in default under any other condition of this contract when the notice is given.
All money must be immediately refunded to the purchaser if the contract is ended.

PURCHASER'S FINANCE Lender _____
Loan being not less than $_____ Approval Date ___/___/___

4. The general conditions of sale, other than GC 3, contained in the Contract of Sale of Real Estate, prescribed under section 99 of the Estate Agents Act 1980.

5. Any special conditions on the back of, or attached to, this Contract Note.

*delete as appropriate whenever asterisk (*) appears

Code 120 11/05

THE VENDOR'S STATEMENT required by Section 32(1) of the Sale of Land Act 1962 is attached to, and included in, this Contract Note and discloses details of any easements and covenants affecting the property.

This offer is made by the purchaser on 21/2/2008 and will lapse at midnight on / /2

Signature/s of the *purchaser _____ *Director of the purchaser

BY SIGNING THIS DOCUMENT YOU WILL BE LEGALLY BOUND BY IT

This offer is accepted by the vendor on 22/2/2008

Signature/s of the vendor _____ *Director of the vendor

The parties acknowledge being given a copy of this Contract Note by the agent at the time of signature.

VENDOR'S SOLICITOR

VANTAGE Bay PTY LTD Conveyancing Attention _____

Services. 6 PEDERSEN Avenue RESERVOIR

Phone: 94608955 Fax: 94608277 DX: _____

PURCHASER'S SOLICITOR

GENERAL Conveyancing Company Attention DIANNE FARRELL

313 KEILOR ROAD ESSENDON NORTH

Phone: 93741877 Fax: _____ DX: _____

SPECIAL CONDITIONS ("SC")

†1. GST -

1.1 Purchaser to reimburse GST

1.1.1 If the price is expressed as a dollar amount "plus any GST", and a supply made under this contract is a taxable supply, the purchaser must pay to the vendor at settlement, in addition to the dollar amount specified as the price of the supply, an amount equal to the GST payable by the vendor in respect of the supply.

1.1.2 Except in respect of a supply of real property to which the margin scheme is to apply, the purchaser is not required to pay an amount on account of GST until provided with a tax invoice.

***1.2 Margin Scheme** *[*Delete if not applicable]*

The vendor and purchaser agree that the margin scheme is to apply to the supply of real property made under this contract. *[Note that, if the margin scheme is to apply, the parties need to consider whether the supply is eligible, the means of working out the margin and who is to pay for any valuation.]*

***1.3 Supply of going concern** *[*Delete if not applicable]*

1.3.1 The parties agree that the supply made under this contract is the supply of a going concern.

1.3.2 The purchaser warrants that it is registered for GST.

1.3.3 The price specified does not include GST but, if any supply under this contract is a taxable supply, SC1.1 applies to that supply.

***1.4 Farming business** *[*Delete if not applicable]*

1.4.1 The vendor warrants that the property is land on which a farming business has been carried on for at least the five (5) years preceding the date of supply. [Note that, with cash contracts, supply occurs at settlement but, with terms contracts, supply will generally occur when any part of the consideration, other than the deposit, is paid]

1.4.2 The purchaser warrants that it intends that a farming business will be carried on, on the land.

1.4.3 The price specified does not include GST but, if any supply under this contract is a taxable supply, SC1.1 applies to that supply.

1.5 No merger

This special condition will not merge upon settlement.

1.6 Definitions

In this contract:

"farming business" has the meaning given to it by the GST law.

"GST" has the meaning given to it in the GST law, but includes penalties and interest imposed under the GST law.

"GST law" has the meaning given to it in A New Tax System (Goods and Services Tax) Act 1999 (as amended).

This is subject to the sale of 45 Eumarella street Tullamarine 3043. To be done by Monday 25th FEBRUARY 2008.

* Delete or insert as appropriate wherever the asterisk(*) appears.
† If the GST will not apply to the sale, and no part of SC 1 is otherwise relevant, SC 1 may be deleted.
Note: In this Contract, "GST" means the goods and services tax imposed by the A New Tax System (Goods and Services Tax) Act 1999 (as amended)

Code 120 11/05

ANNEXURE 2

Australian Government
Australian Financial Security Authority

PPSR
Personal Property Securities Register

20/06/2025

Grantor Search Certificate

This is a grantor search certificate for a grantor search

This Search certificate is provided under section 174 of the *Personal Property Securities Act 2009*

Search certificate number:	8228734059720001
Search number:	822873405972

This search certificate reflects the data contained in the PPSR at 20/06/2025 14:57:12 (Canberra Time).

Search Criteria Details

Grantor type:	Individual
Given names:	Michael Mark
Family name:	Borkowski
Date of birth:	08/05/1972
PPSR registration state searched:	Current
Collateral class:	All collateral classes
PMSI:	Registrations that are either a PMSI or not a PMSI
Transitional:	Not Transitional Transitional - non migrated Transitional - migrated
Registration Kind:	All registration kinds
Sort registrations by number:	Ascending

PPSR Registration Details

There is no security interest or other registration kind registered on the PPSR against the individual grantor in the search criteria details.

How to verify this certificate on the PPSR

You can use the search number from an original search (as shown on this certificate) to retrieve the original search results and to issue a copy of the search certificate at https://transact.ppsr.gov.au/ppsr/Home.
There is no fee, however this process will not provide any update to the information in the original search.

Privacy and Terms and Conditions

The Australian Financial Security Authority is subject to the *Privacy Act 1988* which requires that we comply with the Australian Privacy Principles (APPs) set out in the Act. The APPs set out how Australian Government agencies should collect, use, store and disclose personal information and how individuals can access records containing their personal information.

Access to and use of the PPSR is subject to the General Conditions of Use, as well as other relevant terms and conditions. All relevant terms and conditions can be found at www.ppsr.gov.au.

End of search certificate

Australian Government
Australian Financial Security Authority

PPSR
Personal Property Securities Register

20/06/2025

Grantor Search Certificate

This is a grantor search certificate for a grantor search

This Search certificate is provided under section 174 of the *Personal Property Securities Act 2009*

Search certificate number: 7971105909210001
Search number: 797110590921

This search certificate reflects the data contained in the PPSR at 20/06/2025 14:52:55 (Canberra Time).

Search Criteria Details

Grantor type:	Individual
Given names:	Dorota
Family name:	Borowski
Date of birth:	07/04/1971
PPSR registration state searched:	Current
Collateral class:	All collateral classes
PMSI:	Registrations that are either a PMSI or not a PMSI
Transitional:	Not Transitional Transitional - non migrated Transitional - migrated
Registration Kind:	All registration kinds
Sort registrations by number:	Ascending

PPSR Registration Details

There is no security interest or other registration kind registered on the PPSR against the individual grantor in the search criteria details.

How to verify this certificate on the PPSR

You can use the search number from an original search (as shown on this certificate) to retrieve the original search results and to issue a copy of the search certificate at https://transact.ppsr.gov.au/ppsr/Home.
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Access to and use of the PPSR is subject to the General Conditions of Use, as well as other relevant terms and conditions. All relevant terms and conditions can be found at www.ppsr.gov.au.

End of search certificate

Letter to the Governor-General

Letter to the Governor-General

Australian Monarchist League
Roots in our past, growing for our future.

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

Your Excellency

We write with deep concern regarding remarks attributed to you in *The Sydney Morning Herald* of 24 June 2025, in which you are reported as stating: *"But the King doesn't direct me and I don't seek his advice. It's the prime minister and the ministry I take my counsel from, and that I work with."*

Such a statement, if accurately reported, appears to depart from the conventions that have long guided the office of Governor-General. While it is understood that the Governor-General acts on ministerial advice in most matters, the office is held as the representative of the Sovereign, not as a delegate of the Prime Minister. The distinction is not merely symbolic; it is foundational to the integrity of our constitutional system.

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

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

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

Yours sincerely,

3,755 signatures

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That comment is a disgrace

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Mostyn Letter

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FAQ

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Symbols

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Please Support our Campaign to Defend our Australian Way of Life under the Crown

Please Donate to our Fighting Fund.

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Please help us so we can hold the government to account

Help Fund the AML Campaign to bring the ABC to Account

Paying for an AML Event

Support our Campaign to Defend our Australian Way of Life under the Crown

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Judicial Review of the Exercise of Discretionary Public Power[1]

This address is concerned with two topics.

Part 1 concerns the constitutional implications of the phrases "the Supreme Court of any State" and "or of any other court of any State" as those terms are used in s 73 of Chapter III of the Constitution, and the limitations upon State executive and legislative power according to the *Kable*[2] and *Kirk*[3] principles. **Part 2** concerns the notion of "unreasonableness" and the implications of the High Court decision in *Minister for Immigration and Citizenship v Li*[4] in the review of the exercise of discretionary power and whether the decision-maker has exceeded the limits of the power.

Part 1

The impressive London statue of Winston Churchill by Ivor Roberts-Jones has Churchill looking across to the Westminster Parliament and particularly the House of Commons to where the statue of Oliver Cromwell stands outside the House.

That gaze seems appropriate because Churchill looked upon and described Cromwell as "our greatest man"[5], bound up in the assertion of the "supremacy of Parliament" which would, over time, ultimately be regarded as the expression of the will of a sovereign people.

The point of Churchill's observation really is that the great English constitutional struggles which took many forms were concerned with the *supremacy of Parliament* and not with any notion of the *separation of powers*.

The colonial legislatures reflected that Westminster model.

As Chief Justice French has observed in *Totani*[6] there was, at Federation, no doctrine of separation of powers entrenched in the Constitutions of the States although unsuccessful

---

1 An address given on 27 April 2017 to the Queensland Chapter of the Australian Institute of Administrative Law

2 *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51

3 *Kirk v Industrial Court (NSW)* (2010) 239 CLR 531

4 (2013) 249 CLR 332. As to a brief outline of the context of the discretionary decision of the Tribunal under challenge in *Li*, see footnote 123

5 This is a remark made by Churchill in a BBC interview with Malcolm Muggeridge. The source of the title of Antonia Fraser's biography of Cromwell, "Cromwell, Our Chief of Men", 1973, may have been influenced by this remark but the title seems, clearly enough, to be drawn from John Milton's Sonnet 16 "Cromwell, our chief of men, who through a cloud …".

6 *South Australia v Totani* (2010) 242 CLR 1, French CJ at [66]

attempts were made in New South Wales, Western Australia and South Australia in the 1960s and 1970s and in Victoria in 1993 to persuade courts of the existence of such a doctrine[7].

The Commonwealth Constitution, of course, provides for a distribution of Commonwealth executive, legislative and judicial power.

Of present relevance to the supervisory jurisdiction of administrative decision-making at the Federal and State level is Chapter III of the Constitution and the way in which it vests the judicial power of the Commonwealth by s 71 of the Constitution. I will return to this aspect of the matter shortly because of its centrality to the constitutionalisation of the supervisory jurisdiction exercised by the State Supreme Courts, of administrative decision-making. One of the limitations on Commonwealth legislative power, of course, is the well-known *Boilermakers'* doctrine[8].

The Constitution also reflects at least three other features of present importance. The *first feature* is the conception on which the Constitution is framed which has come to be known as the *Melbourne Corporation* principle, put this way by Sir Owen Dixon in 1947[9]:

> The foundation of the Constitution is the *conception of a central government* and a number of *State governments separately organized.* The Constitution *predicates their continued existence as independent entities*. Among them it distributes powers of governing the country. The framers of the Constitution do not appear to have considered that power itself forms part of the conception of a government. They appear rather to have conceived the States as bodies politic whose existence and nature are independent of the powers allocated to them. The Constitution on this footing proceeds to distribute the power between State and Commonwealth and to provide for their inter-relation, tasks performed with reference to the legislative powers chiefly by ss 51, 52, 107, 108 and 109.

The *second feature* is the notion discussed by Mason CJ in 1992 in *Australian Capital Television Pty Ltd v The Commonwealth*[10] that the *very concept* of representative government and representative democracy signifies government by the people through their representatives and, translated into constitutional terms, the Constitution brought into existence a system of representative government in Australia in which elected representatives

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7 See footnotes 223 to 227, ibid at [66]; *Condon v Pompano Pty Ltd* (2013) 252 CLR 38, French CJ at [22]

8 *R v Kirby; Ex parte Boilermakers' Society of Australia* (1956) 94 CLR 254; the *Boilermakers'* doctrine prevents the Commonwealth Parliament from conferring judicial power on bodies other than courts and prevents it from conferring any power that is not judicial power (or power incidental to judicial power) on courts specified in s 71 of the Constitution.

9 *Melbourne Corporation v The Commonwealth* (1947) 74 CLR 31 at 82; emphasis added

10 (1992) 177 CLR 106 at 137 and 138

exercise sovereign power on behalf of the Australian people[11]. Thus, in 1997 in *Lange v Australian Broadcasting Corporation*[12], the High Court held that the Constitution provides for an "implied freedom" of political communication as "an indispensable incident of that [constitutional] system of representative government"[13]. The freedom is not absolute. As Gummow and Hayne JJ observe in *Mulholland v Australian Electoral Commission*[14], the High Court had, put anecdotally, had enough of the "great difficulties" created by the phrase "absolutely free" in s 92, to give rise to another "incompletely stated 'freedom' … discerned in the Constitution"[15]. Thus the freedom is limited. It gives rise to invalidity in the exercise of legislative or executive power which burdens the freedom in a way which is "not reasonably appropriate and adapted" to secure a legitimate end compatible with the constitutionally prescribed system of government.

I mention this matter of the implied freedom because of its potential role of invalidating exercises of legislative and executive power as the source of a discretion.

If a Federal or State Act confers a power upon a decision-maker, a question might arise whether, *first*, the terms of the conferral burden the freedom and *second*, if so, whether the burden is "reasonably adapted" as described. The terms of the Act might, however, confer a discretionary power in terms which do not burden the freedom as a matter of construction of the Act, yet, the exercise of the discretion conferred in *unconfined* terms may *operate* in a way that burdens the freedom. The discretion might be exercised consistent with the Constitutional limitation or it might not.

A number of modern statutes confer broad discretionary powers which might, when exercised by the repository of the power, impose conditions on a citizen that burden the freedom. That was the unsuccessful contention in 2012 in *Wotton v State of Queensland*[16] concerning the exercise of powers by the Parole Board to impose particular conditions on Wotton's release on parole. As to the relationship between the statute and the exercise of the discretionary powers conferred by it, the majority[17] accepted these propositions[18]:

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11 ibid at 138
12 (1997) 189 CLR 520
13 ibid at 559
14 (2004) 220 CLR 181 at [179]
15 ibid at [179]
16 (2012) 246 CLR 1
17 I prefer to use the term "majority" rather than "plurality"; French CJ, Gummow, Hayne, Crennan and Bell JJ.
18 *Wotton v State of Queensland* (2012) 246 CLR 1 at [22], submissions put by S J Gageler SC, Solicitor-General for the Commonwealth; emphasis added

> … (i) where a putative burden on political communication has its *source* in *statute*, the issue presented is one of a limitation upon legislative power; (ii) whether *a particular application* of the statute, by the exercise or refusal to exercise *a power* or *discretion* conferred by the statute, is valid is not a question of constitutional law; (iii) rather, the question is whether the repository of the power has complied with the statutory limits; (iv) if, on its proper construction, the statute complies with the constitutional limitation, without any need to read it down to save its validity, any complaint respecting the *exercise of power* thereunder in a given case, such as that in this litigation concerning the conditions attaching to the Parole Order, does not raise a constitutional question, as distinct from a *question* of the *exercise of the statutory power*.

There is a continuing debate about the constitutionality of the exercise of such a discretion and about aspects of these observations in *Wotton* in the literature[19]. I do not propose to examine that debate any further here. I simply wish to draw your attention to it.

The *third feature* is that s 106 of the Constitution preserves and continues the Constitution of each State, subject to the Commonwealth Constitution.

Section 71 *vests* the judicial power of the Commonwealth in the High Court and in such other Federal Courts as the Parliament creates and in such other courts as it *invests* with federal jurisdiction.

Section 73 places the High Court at the appellate apex of the Australian courts system conferring jurisdiction to hear appeals from all judgments, decrees, orders and sentences of any federal court or court exercising federal jurisdiction or of "the Supreme Court of any State" or of "any other court of any State" (apart from any Justices of the High Court exercising original jurisdiction).

Section 75(iii) provides that the High Court has original jurisdiction in all matters in which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party.

Critically, s 75(v) provides that the High Court has original jurisdiction in all matters in which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth.

Section 76 provides for the conferral, by Parliament, upon the High Court of original jurisdiction in any "matter" arising under the Constitution or involving its interpretation

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[19] Professor James Stellios, 'Marbury v Madison: Constitutional Limitations and Statutory Discretions' (2016) 42 *Australian Bar Review* 324

(s 76(i)); or arising under any laws made by the Parliament (s 76(ii)); and otherwise by s 76(iii) and s 76(iv).

Section 77 provides that, with respect to any of the matters mentioned in ss 75 or 76, the Parliament may make laws defining the jurisdiction of any federal court; defining the extent to which the jurisdiction of any federal court shall be exclusive of that which belongs to "or is invested in the courts of the States"; and *investing* any "court of a State" with federal jurisdiction.

Certiorari is not referred to in Chapter III but lies as ancillary to the effective exercise of the jurisdiction conferred by s 75(v)[20].

Although the term "prohibition" was thought to import the law relating to the grant of prohibition by King's Bench[21], the terms "prohibition" and "jurisdiction" are regarded as "constitutional expressions". Thus, prohibition lies in circumstances not contemplated by the Court of King's Bench including conduct undertaken under an invalid law of the Parliament or conduct beyond the executive power of the Commonwealth. Importantly, prohibition will go under s 75(v) in respect of a *denial of procedural fairness* by an officer of the Commonwealth resulting in a decision made in *excess* of jurisdiction[22]. In other words, such a decision engages "jurisdictional error".

The underlying principle here has relevance for contemporary *Wednesbury*[23] unreasonableness and the observations on that topic in *Li*[24]. The background context is this. In 1985, in *Kioa v West*[25], Mason J observed that the law had developed to a point where it could be accepted that there is a *common law* duty to act *fairly*, in the sense of according procedural fairness in the making of administrative decisions which affect rights, interests and legitimate expectations subject only to the clear manifestation of a contrary statutory intention. Brennan J, on the other hand, took a different view in the same case, regarding the *jurisdiction* of a court to review judicially, on the ground of a denial of procedural fairness, a decision made in the exercise of a statutory power, as dependent upon the "legislature's

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20 *Re Refugee Review Tribunal; Ex parte Aala* (2000) 204 CLR 82, Gaudron and Gummow JJ at [14]

21 *R v The Judges of the Federal Court of Australia; Ex parte The Western Australian National Football League (Incorporated)* (1979) 143 CLR 190 at 201, Barwick CJ

22 *Re Refugee Review Tribunal; Ex parte Aala* (2000) 204 CLR 82, Gaudron and Gummow JJ at [14]

23 *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223

24 *Minister for Immigration v Li* (2013) 249 CLR 332

25 (1985) 159 CLR 550 at 584

intention" that observance of the principles of natural justice "is a condition of the valid exercise of the power"[26]. Ultimately, it is a question of statutory construction.

Brennan J said this[27]:

> … the *statute* determines whether the exercise of the power is conditioned on the observance of the principles of natural justice. The statute is construed, as all statutes are construed, against a *background* of common law notions of justice and fairness and, when the statute does not expressly require that the principles of natural justice be observed, the court construes the statute on the footing that "the justice of the common law will supply the omission of the legislature" … The true intention of the legislature is thus ascertained. When the legislature creates certain powers, the courts *presume* that the legislature *intends* the principles of natural justice to be observed in their exercise in the absence of a clear contrary intention.

Brennan J put the matter in more emphatic terms in this way[28]:

> Observance of the principles of natural justice is *a condition* attached to the power whose exercise it governs. There is *no free-standing common law right* to be accorded natural justice by the repository of a statutory power. There is no right to be accorded natural justice which exists independently of statute and which, in the event of a contravention, can be invoked to invalidate executive action taken in due exercise of a statutory power.

The *content* of the principles to be applied may be another matter, as a question of statutory construction.

Brennan J put the dynamic in this way[29]:

> … [T]he intention to be implied when the statute is silent is that observance of the principles of natural justice *conditions* the exercise of the power although in some circumstances the *content* of those principles may be diminished (even to nothingness) to avoid frustrating the purpose for which the power was conferred. Accepting that the content of the principles of natural justice can be reduced to nothingness by the circumstances in which a power is exercised, a presumption that observance of those principles conditions the exercise of the power is not necessarily excluded at least where, in the generality of cases in which the power is to be exercised, those principles would have a substantial content.

In *Saeed v Minister for Immigration and Citizenship*[30], the majority[31] re-shaped the basis of the principle distilled by Mason CJ, Deane and McHugh JJ in *Annetts v McCann*[32]. In *Annetts*, their Honours said that it could be treated as settled that when a statute confers

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[26] ibid at 609
[27] ibid at 609; emphasis added
[28] ibid at 610; emphasis added
[29] ibid at 615 and 616; emphasis added
[30] (2010) 241 CLR 252
[31] French CJ, Gummow, Hayne, Crennan and Kiefel JJ
[32] (1990) 170 CLR 596 at 598

power upon a public official to destroy, defeat or prejudice a person's rights, interests or legitimate expectations, the rules of natural justice *regulate* the *exercise* of that power unless those principles are excluded by plain words of necessary intendment. The support cited and quoted for that view included Mason J's observations in *Kioa v West*[33].

In *Saeed*[34], the statement of principle is adopted but firmly anchored to the views of Brennan J.

A failure to fulfil the condition governing the exercise of the power means that the decision is not "authorised" by the statute and is thus invalid[35], as an *excess* of power.

In 1997, in *Kruger v The Commonwealth*[36], Brennan CJ continued this theme of searching, as a matter of construction of the statute, for the legislature's intention and added, in the context of a discretionary power conferred by statute this:

> Moreover, when a discretionary power is statutorily conferred on a repository, the power must be exercised *reasonably*, for the legislature is taken to intend that the discretion be so exercised.

Wednesbury was cited as authority for that proposition.

Gummow J adopted that view in *Eshetu*[37]. The reasoning in *Kruger* was expressly relied upon by Gaudron and Gummow JJ in *Aala*[38] to support the reach of *prohibition* on the footing that a failure to accord procedural fairness where the statute has not "relevantly (and validly) limited or extinguished any obligation to accord procedural fairness" results in an *excess* of jurisdiction.

Apart from statute, where an officer of the Commonwealth exercises executive power, a question will arise of whether the relevant aspect of Commonwealth executive power in Chapter II includes a requirement of procedural fairness.

The provisions of Chapter III and particularly ss 71, 73, 75(iii), 75(v) and 77(ii) and 77(iii) contain very significant implications for the supervisory review jurisdiction of the Supreme Court of each State.

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33 (1985) 159 CLR 550 at 584

34 *Saeed v Minister for Immigration and Citizenship* (2010) 241 CLR 252, the majority at [13]; see also Brennan J, *Annetts v McCann* at 604-605

35 *Saeed v Minister for Immigration and Citizenship* (2010) 241 CLR 252 at [13]

36 (1997) 190 CLR 1 at 36; emphasis added

37 *Minister for Immigration and Multicultural Affairs v Eshetu* (1999) 197 CLR 611 at [126]

38 *Re Refugee Review Tribunal; Ex parte Aala* (2000) 204 CLR 82 at [40] to [42]

The Federal Parliament may not by legislation deny the High Court its entrenched original jurisdiction in s 75(v). The constitutional writs of mandamus and prohibition go for jurisdictional error and so too certiorari as *ancillary* to that relief. Certiorari, however, is not confined to the review of administrative action for jurisdictional error[39]. It may lie, subject to the existence of a "matter" in the exercise of jurisdiction under s 75(iii)[40] or s 76(i)[41] and because no constitutional provision confers jurisdiction with respect to certiorari, it is open to the Parliament to legislate to prevent the grant of such relief (except as ancillary to prohibition and mandamus)[42]. Thus, certiorari might validly be removed for non-jurisdictional error of law on the face of the record.

It is uncontroversial since the decision in 2003 in *Plaintiff S157/2002*[43] that federal legislation that purports, by privative clause or otherwise, to remove the High Court's supervisory jurisdiction of ensuring that Commonwealth officers stay within the limits of legislative and executive authority (that is, review for jurisdictional error) cannot be removed. An administrative decision which involves jurisdictional error is regarded, in law, as no decision at all[44].

As to State decision-makers, the prevailing view for a long time was that a privative clause appropriately framed in State legislation could remove, from the Supreme Court of a State, review for errors of any kind whether amounting to jurisdictional errors or non-jurisdictional errors[45]. That seemed to be consistent with the views of Gaudron and Gummow JJ in *Darling Casino* in 1997[46].

In 2010, in *Kirk*[47], the Court recognised that since the important decision in *Kable*[48] in 1996, the term "the Supreme Court of any State" in s 73 is a "constitutional term" and thus there must be as Gummow, Hayne and Crennan JJ said in *Forge*[49] "a body fitting [that] description" with the result that it is beyond the legislative power of a State to alter the

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39 *Plaintiff S157/2002 v The Commonwealth* (2003) 211 CLR 476

40 All matters in which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party

41 In any matter arising under the Constitution or involving its interpretation

42 *Plaintiff S157/2002 v The Commonwealth*, Gaudron, McHugh, Gummow, Kirby and Hayne JJ at [80] and [81]

43 (2003) 211 CLR 476

44 *Plaintiff S157/2002 v The Commonwealth*, Gaudron, McHugh, Gummow, Kirby and Hayne JJ at [76]

45 Provided that the principles described in *R v Hickman; Ex parte Fox and Clinton* (1945) 70 CLR 598 are satisfied.

46 *Darling Casino Ltd v NSW Casino Control Authority* (1997) 191 CLR 602, Gaudron and Gummow JJ at 634

47 *Kirk v Industrial Court (NSW)* (2010) 239 CLR 531

48 *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51

49 *Forge v Australian Securities and Investments Commission* (2006) 228 CLR 45 at [63]

character or constitution of its Supreme Court such that it ceases to meet the Constitutional description.

In *Forge*, Gummow, Hayne and Crennan JJ explained the principle in this way[50]:

> 63 … The legislation under consideration in *Kable* was found to be repugnant to, or incompatible with, "that institutional integrity of the State courts which bespeaks their constitutionally mandated position in the Australian Legal System. The legislation in *Kable* was held to be repugnant to, or incompatible with, the institutional integrity of the Supreme Court of New South Wales because of the nature of the task the relevant legislation required the Court to perform. *At the risk of undue abbreviation, and consequent inaccuracy*, the task given to the Supreme Court was identified as a task where the Court acted as *an instrument of the Executive*. The consequence was that the Court, if required to perform the task, would not be an appropriate recipient of invested federal jurisdiction. But as is recognised in *Kable, Fardon v Attorney-General (Qld)* [(2004) 223 CLR 575] and *North Australian Aboriginal Legal Aid Service Inc v Bradley* [(2004) 218 CLR 146 at 164 [32]], the relevant principle is one which hinges upon maintenance of the defining characteristics of a "court", or in cases concerning a Supreme Court, the defining characteristics of a State Supreme Court. It is to those characteristics that the reference to "institutional integrity" alludes. That is, if the institutional integrity of a court is distorted, it is because the body no longer exhibits in some relevant respect those defining characteristics which mark a court apart from other decision-making bodies.
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> 64 It is neither possible nor profitable to attempt to make some single all-embracing statement of the defining characteristics of a court. …

In *Kirk*, the majority[51] also accepted that, at federation, the Supreme Court of each State had jurisdiction that included such jurisdiction as the Court of Queen's Bench had in England and the jurisdiction included, having regard to the Privy Council decision in *Colonial Bank of Australasia v Willan*[52] in 1874, jurisdiction to grant certiorari for jurisdictional error *notwithstanding* a privative clause in a statute[53]. It followed that the supervisory jurisdiction of each State Supreme Court was, at federation, and remains, the "mechanism" for the determination and enforcement of the *limits* of the exercise of State executive and judicial power by persons and bodies other than the Supreme Court. It is the path to legality.

The majority put the principles in these terms[54]:

> 98 … [The] supervisory role of the Supreme Courts exercised through the grant of prohibition, certiorari and mandamus (and habeas corpus) was, and is, a defining

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50 ibid at [63] and [64]; emphasis added
51 French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ
52 (1874) LR 5 PC 417 at 422
53 *Kirk v Industrial Court (NSW)* (2010) 239 CLR 531 at [97]
54 ibid at [98] to [100]; emphasis added

> characteristic of those courts. And because, "with such exceptions and subject to such regulations as the Parliament prescribes", s 73 of the Constitution gives this Court appellate jurisdiction to hear and determine appeals from all judgments, decrees, orders and sentences of the Supreme Courts, the exercise of *that* supervisory jurisdiction is ultimately subject to the superintendence of *this* Court … in which s 71 of the Constitution vests the judicial power of the Commonwealth.
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> 99 … [Thus] the supervisory jurisdiction exercised by the State Supreme Courts is exercised according to principles that in the end are *set* by this Court. To deprive a State Supreme Court of its supervisory jurisdiction enforcing the limits of the exercise of State executive and judicial power by persons and bodies other than that Court would be to create *islands of power* immune from supervision and restraint. It would permit what *Jaffe* described as the development of "distorted positions". And as already demonstrated, it would remove from the relevant State Supreme Court *one* of its defining characteristics.
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> 100 [That] is not to say that there can be no legislation affecting the availability of judicial review in the State Supreme Courts. It is not to say that no privative provision is valid. Rather, the observations made about the constitutional significance of the supervisory jurisdiction of the State Supreme Courts point to the *continued need* for, and *utility* of, the distinction between jurisdictional and non-jurisdictional error in the Australian constitutional context. The distinction marks the relevant limit on State legislative power. Legislation which would take from a State Supreme Court power to grant relief on account of jurisdictional error is *beyond* State legislative power. Legislation which denies the availability of relief for non-jurisdictional error of law appearing on the face of the record is *not beyond power*.

The above reference to *Jaffe* is a reference to the writings of Professor Jaffe of Harvard University who was writing on the role of judicial review of administrative action throughout much of the same period as Professor Davis of Chicago University. Both of these authors were very influential upon United States jurisprudence in this area and also influential in Australia. As to that, see the observations of the Hon Justice Stephen Gageler in 2015 in the University of New South Wales Law Journal[55].

In the later High Court decision in 2013 of *New South Wales v Kable*[56] when Mr Kable, who had been imprisoned under the impugned order, unsuccessfully sued the State for damages, the Court explained that the New South Wales Act was beyond the legislative power of the New South Wales Parliament because its enactment was contrary to the requirements of Chapter III. That was so because the exercise of jurisdiction which the Act purported to give to the Supreme Court was held to be incompatible with the institutional integrity of that

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[55] The Hon Justice Stephen Gageler, 'Whitmore and the Americans: Some American Influences on the Development of Australian Administrative Law' 38(4) *University of New South Wales Law Journal* 1316

[56] (2013) 252 CLR 118

Court[57], as a suitable repository for the exercise of federal jurisdiction as contemplated by s 77(iii) of the Constitution because it rendered the Court an *instrument* of the *executive*.

Mr Stephen McLeish SC, writing as the Solicitor-General for Victoria[58], has expressed concern that the *Kable* doctrine may have lost its constitutional moorings because the emphasis now seems to be upon whether the jurisdiction, purportedly conferred upon the relevant State Court, is incompatible with the institutional integrity of that court *without* measuring that incompatibility against the notion of whether it remains "a suitable repository for the exercise of federal jurisdiction". The State legislation, he contends, is only invalid to the *extent* that it confers a jurisdiction which *exceeds* the boundaries of compatibility with the institutional integrity of the State court having regard to whether or not it is or remains a "suitable repository for the exercise of federal jurisdiction".

For my own part, I am not so sure that, in the more recent authorities, the ship of principle has lost its moorings.

The 1996 *Kable* decision was almost a perfect storm (vehicle) for the development of the principle, fundamentally developed, it seems to me, by Gaudron J and particularly Gummow J in their respective judgments. The legislation involved was the *Community Protection Act 1994* (NSW). It was an Act exclusively directed at Mr Gregory Wayne Kable who had been convicted of the manslaughter of his wife and other offences. He had been sentenced to imprisonment for a minimum term of four years with an additional term of one year and four months. The Act authorised the making of an order by the Supreme Court for the continued detention of Mr Kable beyond the period of what would otherwise have been the date of his release. The legislation operated to bring about the imprisonment of Mr Kable not consequent upon any "adjudgment by the Court of criminal guilt".

In *Kable*, Gummow J said this[59]:

> Plainly, in my view, such an authority could not be conferred by a law of the Commonwealth upon this Court, any other federal court, or a State court exercising federal jurisdiction. Moreover, not only is such an authority non-judicial in nature, it is repugnant to the judicial process in a **fundamental degree**.

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[57] ibid at [15] to [17]

[58] Stephen McLeish SC, 'The Nationalisation of the State Court System' (2013) 24 *Public Law Review* 252. Mr McLeish is now a Judge of Appeal, Court of Appeal, Victoria.

[59] *Kable v Director of Public Prosecutions (NSW)* at (1996) 189 CLR 51 at 132; original emphasis

The function to be fulfilled was not *judicial*. Nor was the power properly characterised as a *judicial function*. Gummow J described it in *Fardon*[60] as engaging a "legislative plan" to conscript the New South Wales Supreme Court.

The *Kable* principle was applied by the High Court in 2009 in *International Finance Trust*[61] to invalidate s 10 of the *Criminal Assets Recovery Act 1990* (NSW) which enabled a law enforcement authority to seek, ex parte, from the New South Wales Supreme Court, an order preventing any dealing with specified property. Section 10 required the making of the order if the law enforcement officer *suspected* the relevant person had committed any of a broad range of crimes or the officer *suspected* that the property was derived from criminal activity and the Court considered that there were reasonable grounds for the suspicion. The majority construed s 10 as excluding any power in the Supreme Court to review and reconsider the continuation of the ex parte order which amounted to, in effect, sequestration of the property upon "suspicion of wrongdoing" for an indefinite period with no effective curial enforcement of the duty of full disclosure on an ex parte application *where* the only possibility of release from sequestration was upon proof of a "complex of negative propositions".

It was also applied in *Totani*[62] in 2009 to invalidate s 14(1) of the *Serious and Organised Crime Control Act 2008* (SA). The Act's aim was to disrupt and restrict the activities of organisations involved in serious crime and it conferred powers on the Attorney-General, on the application of the Commissioner of Police, to make a declaration in relation to an organisation if satisfied that members of it associated for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity. Section 14(1) required the Magistrates Court to make a "control order" against a person if satisfied that the person is a member of a declared organisation. Whether and why an organisation should be declared was entirely a matter for the Executive. The only question left to the Court was whether a person was a member of a declared organisation. Section 14(1) was invalid because it authorised the Executive to enlist the Court to implement the decisions of the Executive in a manner repugnant to, or incompatible with, its institutional integrity or, put another way, it had the effect of reducing the Court to "an instrument of the Executive"[63].

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60 *Fardon v Attorney-General (Qld)* (2004) 223 CLR 575 at [100]
61 *International Finance Trust Co Ltd v NSW Crime Commission* (2009) 240 CLR 319
62 *Totani v South Australia* (2010) 242 CLR 1
63 ibid, Crennan and Bell JJ at [436]

It was applied in *Wainohu*[64] to invalidate the *Crimes (Criminal Organisations Control) Act 2009* (NSW). The Act recited that it was enacted to provide for the making of declarations and orders for the purpose of disrupting and restricting the activities of criminal organisations and their members. It made provision for Judges of the Supreme Court of New South Wales to give their consent to be declared "eligible judges" for the purposes of Part 2 of the Act. It empowered the Commissioner of Police to apply to an eligible Judge for an order declaring an organisation to be a "declared organisation" for the purposes of the Act. A majority held the Act invalid because it exempted eligible Judges from any duty to give reasons in connection with the making or revocation of a declaration of an organisation as a declared organisation. This feature of the Act was critical to the conclusion that the Act was repugnant to or incompatible with the continued institutional integrity of the Supreme Court of New South Wales. The question was not whether the task to be performed by an eligible Judge would be performed as *persona designata*, or whether the task of the eligible Judge was to be characterised as judicial or administrative. The critical matter was the exemption from an obligation to give reasons for the making of a declaration or the revocation of a declaration order.

As to examples of statutory instruments which were held to be valid, see *K-Generation*[65] in which s 28A of the *Liquor Licensing Act 1997* (SA) was held not repugnant to or incompatible with the continued institutional integrity of the relevant South Australian State courts because those courts could determine "for themselves" both whether the relevant information (classified by the Commissioner of Police as criminal intelligence) met the definition of criminal intelligence in the Act and left those courts free to determine what steps were to be taken to maintain the confidentiality of the information.

In *Condon*[66], Gageler J held the relevant sections of the *Criminal Organisation Act 2009* (Qld) valid on the footing that although the use by the Commissioner of the Police Service of declared criminal intelligence could, in some circumstances, amount to an abuse of process, there was a procedural solution to that problem. The solution lay in the capacity of the Supreme Court of Queensland to stay a substantive application made by the Commissioner (for a declaration that a particular organisation was a "criminal organisation") in the exercise of its *inherent jurisdiction* in any case in which practical unfairness to a respondent became

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64 *Wainohu v New South Wales* (2011) 243 CLR 181
65 *K-Generation Pty Ltd v Liquor Licensing Court* (2009) 237 CLR 501
66 *Condon v Pompano Pty Ltd* (2013) 252 CLR 38

manifest. Thus, the criminal intelligence provisions of the Act were saved from incompatibility with Chapter III of the Constitution *but only* by reason of the preservation of "that capacity"[67]. The majority[68] held that although the procedure might be novel and thus said to amount to a denial of procedural fairness, "attention must be directed to questions of fairness and impartiality"[69]. The majority also said this: "*Observing that the Supreme Court can and will be expected to act fairly and impartially, points firmly against invalidity"*[70]. Thus, the provisions were not repugnant to or inconsistent with the institutional integrity of the Supreme Court.

In *Kable*, Gaudron J observed[71] that a matter of significance emerging from a consideration of the provisions of Chapter III is that the Constitution does not permit of *different grades or qualities of justice* depending upon whether judicial power is exercised by State courts or federal courts created by the Parliament. That being so, State courts have a role and existence *transcending* their status as State courts which directs the conclusion that Chapter III requires that the Parliaments of the States cannot legislate to confer powers on State courts which are repugnant to or incompatible with "their exercise of the judicial power of the Commonwealth"[72].

Gaudron J also observed that the prohibition on State legislative power which derives from Chapter III is *not at all* comparable with the limitation on the legislative power of the Commonwealth derived from the *Boilermakers'* doctrine.

That follows because the Chapter III limitation on State legislative power is "more closely confined" and relates to "powers or functions imposed on a State court" which are "repugnant to or incompatible with the exercise of the judicial power of the Commonwealth".

Mr McLeish SC, for example, contends that *Wainohu* is an emblematic example of the *Kable* principle being reformulated based upon "impairment of institutional integrity" *unconditioned* by any consideration of whether the power conferred under the State Act renders the State court unfit as a repository for the vesting of federal jurisdiction. That is said to follow because the majority in *Wainohu* regarded the "touchstone" of the "constitutional principle" to be protection against "legislative or executive intrusion upon the institutional

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67 ibid Gageler J at [212]
68 Hayne, Crennan, Kiefel and Bell JJ
69 *Condon v Pompano Pty Ltd* (2013) 252 CLR 38 at [169]
70 ibid at [169]; emphasis added
71 (1996) 189 CLR 51 at 103
72 ibid at 103

integrity of the courts, whether federal or State"[73] without any reference to the relationship between such intrusion and the capacity of the relevant court to be or remain a fit repository for the vesting of federal jurisdiction.

Although it is true that the various formulations of the *Kable* principle in later decisions of the High Court do not necessarily expressly capture the precise language of the principle as formulated in *Kable*, it seems to me that two things remain.

First, there can be little doubt that the fundamental principle articulated in *Kable* remains constant throughout.

Second, some later reformulations expressly recognise a synthesis of the principle whilst guarding against inaccuracy.

A question remains of whether invalidity by reason of Chapter III gives rise to something in the nature of a *separation of powers* as if that doctrine had been adopted in the Constitution of each State. It is true that in *Kable*, McHugh J observed that "in some situations the effect of Ch III of the Constitution may lead to the same result as if the State had an enforceable doctrine of separation of powers"[74]. Gaudron J thought not. Williams JA, however, in 2004, put the matter in reasonably plain terms in *Re Criminal Proceeds Act 2002*[75] in this way:

> The principle derived from the majority judgments in *Kable* can be stated in the following terms – a State Supreme Court as one of the judicial institutions invested with federal jurisdiction may not act in a manner inconsistent with the requirements of Ch III of the Constitution.

It seems to me, however, that the principle really is this: a State Act, or provisions of a State Act, which intrude or provide for executive intrusion upon the institutional integrity of the courts of a State in a way, and to the extent that, such a court is rendered unfit as a repository for the vesting of the judicial power of the Commonwealth is, to that extent, invalid. To the extent that Chapter III invalidity approximates a separation of powers within the boundaries of such a principle, that description is an appropriate one within the *limitations* of the principle.

Part 2 - Unreasonableness

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73 *Wainohu v New South Wales* (2011) 243 CLR 181 at [105]
74 *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51 at 118
75 *Re Criminal Proceeds Act 2002* [2004] 1 Qd R 40 at 44

As already mentioned, Brennan CJ in *Kruger* observed[76] that when a discretionary power is statutorily conferred on a repository, the power *must* be exercised *reasonably* because the *legislature* is *taken* to *intend* that the discretion be *so exercised*. Thus, the power must, as a matter of construction of the statute conferring the power, be exercised reasonably (unless the plain words of the statute clearly and necessarily convey a different intention).

Normally, the likelihood is that exercise of the power will be *conditioned* by an obligation of reasonableness, as a presumption of law in the construction of the Act conferring the power on the repository. This is unsurprising as it accords with the approach to determining whether the exercise of a power statutorily conferred is conditioned on the observance of the principles of natural justice as earlier mentioned[77].

In *Abebe*[78], Gaudron J put the matter more emphatically by saying that it was difficult to see why, if a statute which confers a decision-making power is silent on the topic of reasonableness, the statute should not be construed so that it is an "essential condition" of the exercise of the power that it be exercised reasonably, adding, however, the qualification "at least in the sense that it not be exercised in a way that no reasonable person could exercise it"[79]. That qualification is not (and is less demanding than) the language of *Wednesbury* unreasonableness but it raises the dilemma of an emphatically expressed statutory *condition* of the *exercise* of the power on the one hand, and how conduct falling short of the condition, legal unreasonableness, might be *measured*, on the other hand.

In 1990, in *Attorney-General (NSW) v Quin*[80], Brennan J also accepted that the legislature is taken, impliedly (unless the Act expressly provides for the matter) to intend that a power be exercised *reasonably* by the repository of the power. That was the view of Hayne, Kiefel and Bell JJ in *Li*[81]. In *Quin*, Brennan J expressed observations which have been described by Gageler J as *canonical* about the true nature of the Court's "duty and jurisdiction" in reviewing administrative action (informed by the well-known observations in 1803 of Marshall CJ in *Marbury v Madison*[82]). Brennan J said this[83]:

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76 (1997) 190 CLR 1 at 36
77 See the discussion related to footnotes 23 to 38
78 *Abebe v The Commonwealth* (1999) 197 CLR 510 at [116]
79 ibid at [116]
80 (1990) 170 CLR 1 at 36
81 *Minister for Immigration v Li* (2013) 249 CLR 332 at [63]
82 (1803) 1 Cranch 137, at p 177 [5 U.S. 87, at p 111]; "It is, emphatically, the province and duty of the judicial branch to say what the law is".
83 *Attorney-General (NSW) v Quin* (1990) 170 CLR 1 at 35 and 36; emphasis added

> The duty and jurisdiction of the court to review administrative action *do not go beyond the declaration* and *enforcing of the law* which determines the limits and governs the exercise of the repository's power. If, in so doing, the court avoids administrative injustice or error, so be it; but the court has no jurisdiction simply to cure administrative injustice or error. The merits of administrative action, *to the extent that they can be distinguished from legality*, are for the repository of the relevant power and, subject to political control, for the repository alone.
>
> The consequence is that the scope of judicial review must be defined not in terms of the protection of individual interests but in terms of the extent of power and the legality of its exercise. In Australia, the modern development and expansion of the law of judicial review of administrative action have been achieved by an increasingly sophisticated exposition of implied limitations on the extent or the exercise of statutory power, but those limitations are not calculated to secure judicial scrutiny of the merits of a particular case.

If the exercise of the power, as a matter of law, is conditioned on its exercise "reasonably", it might be thought that a failure to exercise the power "reasonably", gives rise to an *error of law* and causes the repository of the power to exceed the limits of the power.

However, canonical orthodoxy dictates that because the court's duty and jurisdiction do not engage judicial scrutiny of the merits of administrative action (although Brennan J's qualification quoted above should be carefully noted "to the extent that they can be distinguished from legality") and an examination of the reasonableness of a decision "may appear to open the gate"[84] to "merits review" of an action taken "within power"[85], the *Wednesbury* incarnation of "unreasonableness" was calculated to leave the merits of a decision unaffected *unless* the decision or action was such as to amount to an *abuse of power* and thus go to *legality* and thus an *excess of jurisdiction*.

The balance was this: *even though* the court acts on an implied intention of the legislature that a power be exercised reasonably, the measure of invalidity is that the court will hold, invalid, a purported exercise of the power if it is "so unreasonable" that "no reasonable repository of the power could have taken the impugned decision or action"[86]. Taxonomically, this was understood as "an abuse of power". The limitation on the exercise of the power, however, was said by Brennan J to be "extremely confined"[87]. In other words, the exercise of the discretion would need to travel well beyond the zone or orbit of reasonableness to ensure that the Court's supervisory role was not ensnared in de facto merits review.

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[84] ibid at 36
[85] ibid at 36
[86] ibid at 36
[87] ibid at 36

However, it should not be thought that there is some sort of absolute *binary divide* between the merits of decision-making and the legality of a decision. For example, it may well be that the manner or method of fact-finding falls so short of a proper deliberative process that the power of review or source of authority conferred by an Act has not properly been exercised. Examining that question will involve a comprehensive understanding of the materials and the factual context not with a view to substituting a merits finding for that of the decision-maker but rather to understand the process of fact-finding adopted and whether it was fair and proper. The question of whether inferences properly arise from primary facts found is itself a question of law which necessarily requires an understanding of the materials before the decision-maker and whether the facts found support the contended inferences. There are other examples.

In 1986, in *Minister for Aboriginal Affairs v Peko-Wallsend Ltd*[88], Mason J also expressed observations (also described as canonical) about the court's limited role in reviewing the exercise of an administrative discretion and the role of *Wednesbury* unreasonableness in that context.

Mason J said this[89]:

> The limited role of a court reviewing the exercise of an administrative discretion must constantly be borne in mind. It is not the function of the court to substitute its own decision for that of the administrator by exercising a discretion which the legislature has vested in the administrator. Its role is to set limits on the exercise of that discretion, and a decision made within those boundaries cannot be impugned: *Wednesbury Corporation*.
>
> It follows that, in the absence of any statutory indication of the *weight* to be given to various considerations, it is generally for the decision-maker and not the court to determine the appropriate weight to be given to the matters which are required to be taken into account in exercising the statutory power. … I say "generally" because *both principle* and *authority* indicate that in some circumstances a court may set aside an administrative decision which has *failed to give adequate weight* to a relevant factor of great importance, or *has given excessive weight* to a relevant factor of no great importance. The preferred ground on which this is done, however, is not the failure to take into account relevant considerations or the taking into account of irrelevant considerations, but that the decision is "*manifestly unreasonable*". This ground of review was considered by Lord Greene M.R. in *Wednesbury Corporation*, in which his Lordship said that it would only be made out if it were shown that the decision was so unreasonable that no reasonable person could have come to it. … The test has been embraced in both Australia and England.

For present purposes, two things should be noted about these observations.

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88 (1986) 162 CLR 24

89 ibid at 40 and 41; emphasis added

First, the *Wednesbury* formulation translates into a notion that the decision is "manifestly unreasonable".

Secondly, failures to give adequate weight to a relevant factor of great importance or attributing excessive weight to a relevant factor of no great importance is ultimately reduced to a question of whether the decision is manifestly unreasonable rather than one of whether there is an evident failure to take into account relevant considerations or the taking into account of irrelevant considerations.

In 1995, Brennan, Deane, Toohey, Gaudron and McHugh JJ said in *Craig*[90] that "if an administrative tribunal falls into an error of law which causes it to identify a wrong issue, to ask itself a wrong question, to ignore relevant material, to rely upon irrelevant material or, at least in some circumstances, to make an erroneous finding or to reach a mistaken conclusion, and the tribunal's exercise or purported exercise of power is thereby affected, it exceeds its authority or powers".

Such an error of law amounts to jurisdictional error invalidating any order or decision of the tribunal which reflects it. That position was affirmed in *Yusuf*[91]. Importantly, McHugh, Gummow and Hayne JJ observed in *Yusuf* that jurisdictional error in accordance with the *Craig* formulation embraces "a number of different **kinds of errors**"[92] and the list of errors in *Craig* is "not exhaustive" and the "different kinds of error may well **overlap**"[93].

Moreover, their Honours said this[94]:

> … The circumstances of a particular case may permit *more than one characterisation* of the error identified, for example, as the decision-maker both asking the wrong question and ignoring relevant material. What is important, however, is that identifying a wrong issue, asking a wrong question, ignoring relevant material or relying on irrelevant material in a way that affects the exercise of the power is to make *an error of law*. Further, doing so results in the decision-maker *exceeding* the authority or powers given by the relevant statute. In other words, if an error of those types is made, the decision-maker did *not have authority* to make the decision that was made; he or she did not have *jurisdiction* to make it. Nothing in the Act suggests that the Tribunal [Refugee Review Tribunal] is given authority to authoritatively determine questions of law or to make a decision otherwise than in accordance with the law.

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90 *Craig v South Australia* (1995) 184 CLR 163 at 179
91 *Minister for Immigration and Multicultural Affairs v Yusuf* (2001) 206 CLR 323 at [82]
92 ibid at [82], emphasis added
93 ibid at [82]; emphasis added
94 ibid at [82]; emphasis added

Importantly, the High Court's approach to jurisdictional error in the context of *Craig* is the subject of significant discussion by the majority in *Kirk*[95].

What is the true scope of unreasonableness?

In *Li*[96], Hayne, Kiefel and Bell JJ observed that the "legal standard" of unreasonableness should **not** be considered as "limited to what is in effect an irrational, if not bizarre, decision – which is to say one that is so unreasonable that no reasonable person could have arrived at it". Moreover, Lord Greene MR should not "be taken to have limited unreasonableness in this way" in *Wednesbury*[97]. Lord Greene's formulation "may more *sensibly* be taken to recognise that an *inference* of unreasonableness may in some cases be *objectively drawn* even where a particular error in reasoning *cannot* be identified"[98].

That notion conforms with the principles about which Dixon J spoke in *Avon Downs*[99] concerning a decision of the Federal Commissioner of Taxation:

> [T]he fact that he has not made known the reasons why he was not satisfied will not prevent the review of his decision. The conclusion he has reached may, on a full consideration of the material that was before him, be found to be capable of explanation only on the ground of some misconception. If the result *appears to be unreasonable* on the *supposition* that he addressed himself to the right question, correctly applied the rules of law and took into account all the relevant considerations and no irrelevant considerations, then it may be a *proper inference* that it is a *false supposition*. It is not necessary that you should be *sure* of the precise particular in which he has *gone wrong*. It is *enough* that you can see that in some way he *must* have failed in the discharge of his *exact function according to law*.

Chief Justice French, in *Li*[100], took the view that Lord Greene's formulation enabled the Court to intervene due to the "framework of rationality imposed by the statute"[101] and the formulation, "so unreasonable that no reasonable authority could ever have come to it", reflects a limitation "imputed to the legislature" on the basis of which courts can say that Parliament never intended to authorise that kind of decision. The Chief Justice observed that "[a]fter all the requirements of administrative justice have been met in the process and reasoning leading to the point of decision in the exercise of a discretion [which seems to be a reference to a decision-maker not falling into errors of the kind described in *Craig* and

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95 *Kirk v Industrial Relations Commission (NSW)* (2010) 239 CLR 531, French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ at [60] – [77]
96 (2013) 249 CLR 332 at [68]
97 ibid at [68]
98 ibid at [68]
99 *Avon Downs Pty Ltd v Federal Commissioner of Taxation* (1949) 78 CLR 353 at 360; emphasis added
100 *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332, French CJ at [28]
101 ibid at [28]

Yusuf], there is generally *an area of decisional freedom*". That area of decisional freedom, however, cannot be construed "as attracting a legislative sanction to be *arbitrary* or *capricious* or to *abandon common sense*"[102].

That formulation goes beyond the formulation adopted by Hayne, Kiefel and Bell JJ. Moreover, their Honours sought to adopt a *unifying* underlying rationale in relation to the "more specific errors" in decision-making encompassed by unreasonableness. The views of Hayne, Kiefel and Bell JJ are reminiscent of the observations of Mason J in *Peko-Wallsend Ltd* and the majority in *Yusuf*.

In *Li*, Hayne, Kiefel and Bell JJ said this[103]:

> The more specific errors in decision-making, to which the courts often refer may *also be seen* as encompassed by unreasonableness. This may be consistent with the observations of Lord Greene MR, that some decisions may be considered unreasonable in more than one sense and that "all these things run into one another"[104]. Further, in [*Peko-Wallsend Ltd*] Mason J considered that the preferred ground for setting aside an administrative decision which has failed to give adequate weight to a relevant factor of great importance, or has given excessive weight to an irrelevant factor of no importance, is that the decision is "manifestly unreasonable". Whether a decision-maker be regarded, by reference to the scope and purpose of the statute, as having committed *a particular error in reasoning*, given *disproportionate weight* to some factor or *reasoned illogically* or *irrationally*, the final conclusion will in each case be that the decision-maker has been unreasonable in a legal sense.

As to the question of when inferences might be drawn of legal unreasonableness, Hayne, Kiefel and Bell JJ saw a close analogy with the way in which inferences may be drawn by an appellate court when reviewing the exercise of a discretion by the primary judge identified in the well understood passages in *House v The King*[105]. Their Honours put the matter this way[106]:

> As to the inferences that may be drawn by an appellate court, it was said in *House v The King* that an appellate court may infer that in some way there has been a failure properly to exercise the discretion "if upon the facts [the result] is unreasonable or plainly unjust". The same reasoning might apply to the review of the exercise of a statutory discretion, where unreasonableness is an inference *drawn from the facts* and from the matters falling for consideration *in the exercise of the statutory power*. Even where some reasons have been provided, as is the case here, it may nevertheless not be possible for a court to comprehend how the decision was arrived at. Unreasonableness is a *conclusion* which may be applied to a decision which lacks *an evident and intelligible justification*.

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[102] ibid at [28]
[103] ibid at [72]; emphasis added
[104] *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223 at 229
[105] (1936) 55 CLR 499 at 505
[106] *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332 at [76], emphasis added

Two matters are worthy of note.

The *first* is that where errors in decision-making are identified of the kind described in *Craig* and *Yusuf*, those errors, plainly enough, give rise to jurisdictional error on the footing that the decision-maker has exceeded the limits of the statutory power.

The *second* is that it seems inevitable (although the matter remains open to debate) that in circumstances where a *conclusion* of unreasonableness arises in the exercise of the discretionary decision-making power, because a decision "lacks an evident and intelligible justification", the decision-maker also falls into jurisdictional error and that is so because exercising the power in a way which fails to conform to the "legal standard of reasonableness"[107], recognising that the statute imposes an obligation to exercise the power reasonably, involves an *excess* of jurisdiction.

It may be that more is needed in the sense that unreasonableness in the exercise of the decision-making power in question gives rise to a broader failure to discharge a statutory duty, in the course or performance of which, the decision-making power was exercised.

For example, in *Li*, the decision in question was an exercise of a power of adjournment exercised adversely to Ms Li which carried, with it, the consequence that the Migration Review Tribunal had failed to discharge its "core statutory function" of reviewing, on the merits, the decision of the Minister's delegate to refuse Ms Li the relevant class of visa[108] as the decision to refuse the adjournment prevented Ms Li from placing a critical document before the Tribunal which the Tribunal knew Ms Li was seeking to obtain and was required as a matter of *fairness* in the discharge and performance of the critical review power.

As to the two streams of unreasonableness made up of unreasonableness inherent in a "conclusion" that a decision lacks an "evident and intelligible justification", on the one hand, and unreasonableness as an underlying rationale for "the more specific errors in decision-making to which courts often refer", see also the discussion in the Full Court of the Federal Court in *Minister for Immigration and Border Protection v Singh*[109].

As to the test for unreasonableness, Gageler J said[110] that the label "*Wednesbury* unreasonableness" indicates the *special standard* of unreasonableness which has become *the*

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[107] ibid, Hayne, Kiefel and Bell JJ at [68]

[108] The visa in question was a Skilled-Independent Overseas Student (Residence) (Class DD) visa pursuant to the provisions of the *Migration Act 1958* (Cth) and the *Migration Regulations 1994* (Cth).

[109] (2014) 308 ALR 280 at [44], Allsop CJ, Robertson and Mortimer JJ at [44] to [52]

[110] *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332, Gageler J at [106]

criterion for judicial review of administrative discretion, on this ground. Gageler J observed that expression of the *Wednesbury* unreasonableness *standard* in terms of an action or decision that "no reasonable repository of the power could have taken attempts", albeit imperfectly, to convey the point that judges should not lightly interfere with official decisions on this ground.

In judging unreasonableness, Gageler J put the matter this way in *Li*[111]:

> … Review by a court of the reasonableness of a decision made by another repository of power "is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process" but also with "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" [*Dunsmuir v New Brunswick*].

Thus, the decision for Gageler J is a question of whether the decision falls within the range of acceptable possible "outcomes" which are defensible in respect of the facts and law having regard to the notion that judges should not lightly interfere with administrative decision-making on this ground.

A number of other matters should be noted.

First, where no reasons are given for the exercise of a discretionary power, all a supervisory court can do is focus on the outcome of the exercise of the power, in the factual context presented, and assess for itself, whether there is an evident and intelligible justification for the exercise of the power, keeping in mind, of course, that it is for the repository of the power, and the repository alone, to exercise the power. The repository of the power must do so, however, according to law[112].

Second, where reasons are given for the exercise of the discretionary power, the court will look to the reasoning process of the decision-maker to identify the factors in the reasoning said to make the decision legally unreasonable. In doing so, the court is confined to the reasons given by the decision-maker. The decision cannot be supported on review by the court on the basis of an hypothesis (living outside the actual reasons for decision) about the things that may otherwise accord reasonableness to the decision.

Third, where the exercise of the power is said to be unreasonable on the footing that the decision-maker has fallen into "the more specific errors in decision-making to which courts often refer" (such as the *Craig* and *Yusuf* formulations recognising, of course, that those

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[111] ibid, Gageler J at [105]

[112] *Minister for Immigration and Border Protection v Singh* (2014) 308 ALR 280 at [45]

formulations are not "exhaustive") which may well "overlap", the reasonableness review will concentrate on an examination of the reasoning process reflected in the reasons given by the decision-maker. Where the challenge to the reasonableness of the exercise of the power is based upon the notion that a conclusion arises[113] that the decision lacks an evident and intelligible justification, the court will examine the reasons, however brief, and determine, in light of those reasons, *and* the facts and matters falling for consideration in the exercise of the statutory power, whether an evident and intelligible justification is lacking.

Fourth, although reference is made to the analogue of *House v The King*[114], it must be remembered that on an appeal from the exercise of the discretion by a primary judge, the *court* re-exercises the discretion once it has demonstrated that the exercise of the discretion has miscarried. That is not the role of the supervising court in reviewing an exercise of discretionary power by an administrative decision-maker so as to determine the legality of the exercise of the power.

Fifth, the standard of legal reasonableness determined in accordance with these principles will apply to a range of statutory powers conferred upon decision-makers "but the indicia of *legal unreasonableness* will need to be found in the scope, subject and purpose of the particular statutory provisions in issue in any given case"[115].

Sixth, in reviewing a decision on the ground of legal unreasonableness, the supervising court will be required, inevitably, to closely examine the facts upon which the exercise of the power was dependent. This is done not for the purpose of enabling the court to substitute its own view of the exercise of the discretionary power for that of the decision-maker. The point of the exercise is to recognise that any analysis which engages a question of *whether* there is an **evident** and **intelligible** justification for the exercise of the power will involve "scrutiny of the factual circumstances in which the power comes to be exercised"[116].

Seventh, it is important to recognise the implications of the observations of McHugh, Gummow and Hayne JJ in *Yusuf*[117] that "different kinds of error may well overlap". In examining the exercise of the power and determining whether it is legally unreasonable, there may well be an interaction between the obligations of procedural fairness in the exercise of the power and the standard of legal reasonableness in the exercise of the power. Thus, in

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[113] A conclusion of the kind described in *Li* by Hayne, Kiefel and Bell JJ at [76].
[114] (1936) 55 CLR 499 at 505
[115] *Minister for Immigration and Border Protection v Singh* (2014) 308 ALR 280 at [48]
[116] ibid at [48]
[117] *Minister for Immigration and Multicultural Affairs v Yusuf* (2001) 206 CLR 323 at [82]

some circumstances, "an exercise of power which is said to be legally unreasonable may overlap with alleged denial of procedural fairness *because* the result of the exercise of the power may affect the **fairness** of the decision-making process"[118].

Eighth, as to examples of the application of these principles and the true nature of a factual inquiry which would not engage merits review, see *Singh*[119], *SZRKT*[120] and *Goodwin*[121].

Ninth, in making these observations, two further things should be mentioned. *First*, obviously enough, I have not had regard to any of the State judicial review legislation or the application of the *Administrative Decisions (Judicial Review) Act 1997* (Cth) as any of those Acts can from time to time be rendered inapplicable to particular legislation conferring decision-making powers. *Second*, in *Li*, Hayne, Kiefel and Bell JJ observe[122] that the duty cast on the Tribunal to invite an applicant for review to appear before it is *central* to the conduct of the review and that the statutory purpose is one of providing the applicant with an opportunity to present evidence and argument relating to the issues addressed in the review as an essential element of the statutory review function. Thus, in exercising the discretionary power to adjourn (or not) a review proceeding before it:

> … consideration could be given to whether the Tribunal gave excessive weight – more than was reasonably necessary – to the fact that Ms Li had had an opportunity to present her case[123]. So understood, **an obviously disproportionate response** is **one path** by which a **conclusion** of unreasonableness may be reached. However, the submissions in this case do not draw upon such an analysis.

These observations of the majority raise the spectre of whether a conclusion of unreasonableness might arise in the exercise of a discretion having regard to the law relating to *proportionality analysis*. That topic, however, is a topic for an entirely separate address

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[118] *Minister for Immigration and Border Protection v Singh* (2014) 308 ALR 280 at [50]
[119] ibid at [53] to [77]
[120] *Minister for Immigration & Citizenship v SZRKT* (2013) 212 FCR 99 at [77]
[121] *Goodwin v Commissioner of Police (NSW)* [2012] NSWCA 379
[122] (2013) 249 CLR 332 at [60] and [74]; emphasis added
[123] Ms Li, a Chinese national, had applied for a Skilled-Independent Overseas Student (Residence) (Class DD) visa under the provisions of the *Migration Act 1958* (Cth). A criterion for the grant of the visa under the *Migration Regulations 1994* (Cth) was that Ms Li, at the time of the visa decision (by the Migration Review Tribunal, relevantly, at the time of the review decision) hold a favourable "skills assessment" from a relevant "assessing authority". Ms Li had, in fact, obtained an unfavourable assessment (which was her second assessment) from an assessing authority called Trades Recognition Australia (TRA) and had applied to TRA for a review of that assessment. Ms Li's migration agent had requested the Tribunal not to make a decision on Ms Li's pending review application until the TRA's review of the assessment had been completed and the assessment itself completed. The Tribunal refused to do so and affirmed the decision of the delegate which was adverse to Ms Li. To the extent that the Tribunal gave "reasons" for refusing to withhold consideration of the review decision until the TRA had completed its exercises, the Tribunal said that Ms Li had "had enough time".

both as to the content of such an analysis and the jurisprudence relating to it and its application in the context of the questions I have been discussing. I have kept you too long and I thank you for your attention.

The Hon Justice Andrew Greenwood
Federal Court of Australia
27 April 2017

AMG 8565 **TENDER BUNDLES # 1-# 25; GLOBAL MAGNITSKY ACT SANCTIONS CASE IN THE PUBLIC INTEREST:**

SCHEDULE OF

- s459H STATUTORY LETTERS OF DEMAND (Tender Bundle # 2)
- SECURITIES EXCHANGE COMMISSION (SEC), WHISTLEBLOWER REPORTS (Tender Bundle # 2)
- US TREASURY OFFICE OF FOREIGN ASSET CONTROL (OFAC) APPLICATIONS AND LETTER IN REPLY
- FOI APPLICATIONS US DEPARTMENT OF JUSTICE (DOJ), SEC, US TREASURY/ OFAC
- APPLICATION TO INSPECTOR GENERAL OF NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

(rule 15A.6)

HCMP-1855-2022: IN THE MATTER OF THE CROWN (LIQUIDATOR AND MANAGING CONTROLLER APPOINTED), ABN 50 785 365 455 ("THE CROWN") ("THE MAIN PROCEEDINGS")

NSD-741-2023 and DCCRM-0073-2019 AS MATTERS ARISING IN THE MAIN PROCEEDINGS

AUSTRALIAN PRUDENTIAL REGULATORY AUTHORITY
ABN 79 635 582 658 (LIQUIDATOR AND MANAGING CONTROLLER APPOINTED)
ABN 33 446 145 662

The Plaintiff, Defendant by Counterclaim

&

ANDREW MORTON GARRETT,

- **CROWN ATTORNEY GENERAL ABN 25 582 859 403,**
- **TRUSTEE OF THE OFFICE OF THE CROWN ATTORNEY GENERAL TRUST ABN 33 785 287 219**
- **LIQUIDATOR, AND MANAGING CONTROLLER, BENEFICIARY OF PRIVATE AND PUBLIC TRUSTS, PRIOR TRUSTEE SECURED BY LIEN ABN 70 432 067 434**
- **TRUSTEE OF A LETTER TO MY SONS TRUST ABN 90 243 103 687**
- **SECURED PARTY CREDITOR, REGISTRATION NUMBER 40591602**

The Defendant/Respondent, Plaintiff by Counter Claim and Plaintiff by Cross Claim

&

OTHERS NAMED IN THE EXHIBITS PRODUCED AND MARKED AS;

- **AMG 6776**
- **AMG 6867**
- **AMG 6793**
- **AMG 7015**

Filed on behalf of (name & role of party) The Respondent
Prepared by (name of person/lawyer) Andrew Garrett
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TENDER BUNDLE NO	EXHIBIT DESCRIPTION (Exhibit may be inspected at the hyperlink in blue)	PAGE REFERENCE
# 1	NSD741of2023 SEALED Filed plus index; Letters to Justice Lee, Matthew Mitchell Solicitors and Originating Process of HCMP-1855-2022; IN THE MATTER OF THE CROWN (LIQUIDATOR AND MANAGING CONTROLLER APPOINTED) also sworn into affidavits filed and served in DCCRM-0073-2019. AMG 7287 NSD741OF2023 SEALED FILED TENDER BUNDLE # 1; HCMP-1855-2022 ORIGINATING PROCESS.PDF	Pages 1-370.
# 2	NSD 741_2023 Sealed and Filed plus index 5 X Statutory Letters of Demand served on Reserve Bank of Australia and 3 X SEC Whistleblower Reports also sworn into affidavits filed and served in DCCRM-0073-2019. AMG 7286 NSD 741_2023 SEALED AND FILED TENDER BUNDLE # 2 STATUTORY LETTERS OF DEMAND.PDF	Pages 1-190
# 3	NSD 741 of 2023 SEALED Filed Tender Bundle # 3 AMG 7268, AMG 7270, AMG 7271, AMG 7279 Associate Kudelka; Criminality, corruption and impunity: Should Australia join the Global Magnitsky movement? also sworn into affidavits filed and served in DCCRM-0073-2019. AMG 7358 NSD 741 OF 2023 SEALED FILED TENDER BUNDLE # 3 AMG 7268, AMG 7270, AMG 7271, AMG 7279 ASSOCIATE KUDELKA.PDF	Pages 1-50
# 4	NSD-741-2023 lodged for filing 30th December 2023 rejected by chambers; plus index; Australian People future Fund trading as Better World Future Fund Donations in the Public Interest to Working Capital Trusts also sworn into affidavits filed and served in DCCRM-0073-2019. AMG 8352 NSD 741 OF 2023 TENDER BUNDLE 4 OENOVIVA (AUSTRALIA) PUBLIC INTEREST WORKING CAPITAL TRUSTS LODGED 31.01.2023 REJECTED 02.01.2023.PDF lodged and filed 6th January 2024; NSD-741-2023 SEALED Filed Tora! Tora! Tora! Judicial Review: A Common Law Right Not Heard; High Court Not Licensed to Lie Clandestine role of Attorney General and Solicitor Generals AMG 7970 NSD-741-2023 SEALED Filed TORA! TORA! TORA! TENDER BUNDLE # 4 JUDICIAL REVIEW; A COMMON LAW RIGHT.PDF	Pages 1-555 Pages 1 -1,718

# 5	NSD-741-2023 SEALED Filed: OFFICE OF LEGAL SERVICES CO-IRDINATION; CDPP as a Terrorist Organisation; ATTACKS ON TRANSACTIONS BY DESIGNATED AGENCIES within the meaning of AML/CTF Act 2006 (AU) also sworn into affidavits filed and served in DCCRM-0073-2019. AMG 7356 NSD-741-2023 SEALED FILED TENDER BUNDLE # 5 CDPP AS A TERRORIST ORGANISATION.PDF	Pages 1-341
# 6	NSD-741-2023 SEALED Filed TORA! TORA! TORA! Affidavit of Cross Claimant dated 9th February 2015 PART 1 AMG 7379A NSD-741-2023 SEALED FILED TORA! TORA! TORA! TENDER BUNDLE # 6 AFFIDAVIT OF CROSS CLAIMANT DATED 9TH FEBRUARY 2015 PART 1.PDF NSD-741-2023 SEALED Filed TORA! TORA! TORA! Affidavit of Cross Claimant dated 9th February 2015 PART 2 AMG 7379B NSD-741-2023 SEALED FILED TORA! TORA! TORA! TENDER BUNDLE # 6 AFFIDAVIT OF CROSS CLAIMANT DATED 9TH FEBRUARY 2015 PART 2.PDF	Pages 1-460 Pages 461-661
# 7	NSD-741-2023 Plus Index Inner Temple: Our Corrupt Legal System Observations By Bob Moles And Evan Whitton; Anarchy And Chaos Caused By Fake Regulation; Seizure Of Swift AMG 7962 TENDER BUNDLE # 7 OUR CORRUPT LEGAL SYSTEM; ANARCHY AND CHAOS CAUSED BY FAKE REGULATION; SEIZURE OF SWIFT.pdf	Pages 1-3,162
# 8	NSD-741-2023 SEALED Filed Email and attachments to Kyam Maher re SA Voice in Circumstances where it had been rejected at Referendum Level 04.01.2024 AMG 7361 NSD-741-2023 SEALED FILED TENDER BUNDLE # 8 EMAIL AND ATTACHMENTS TO KYAM MAHER RE SA VOICE 04.01.2024.PDF	Pages 1-313
# 9	NSD-741-2023 Heads of Hereditary Discretionary Public Powers the Personal Property of Andrew Garrett personally and Heirs, Successors and Assigns and Index AMG 7969 TENDER BUNDLE # 9 HEADS OF DISCRETIONARY PUBLIC POWERS AND INDEX FINAL.PDF	Pages 1-3,106

# 10	NSD 741 of 2023 Affidavit dated 26th October 2015 PART 1 AMG 7448A NSD 741 OF 2023 TENDER BUNDLE # 10 AFFIDAVIT DATED 26TH OCTOBER 2015 PART 1.PDF NSD 741 of 2023 Affidavit dated 26th October 2015 PART 2 AMG 7448B NSD 741 OF 2023 TENDER BUNDLE # 10 AFFIDAVIT DATED 26TH OCTOBER 2015 PART 2.PDF	Pages 1-529 Pages 530-967
# 11	NSD-741-2023 SEALED Filed Corruption Complaints Against Gadens and Chief Justice Victoria AMG 7552 NSD-741-2023 SEALED FILED TENDER BUNDLE # 11 CORRUPTION COMPLAINTS AGAINST GADENS AND CHIEF JUSTICE VICTORIA.PDF	Pages 1-42
# 12	NSD-741-2023; plus, index re RBA, ASIC, APRA and Negotiability of stored value of PFTAS accounts 06.04.2024 AMG 7929 NSD-741-2023; TENDER BUNDLE #12 AND INDEX RE RBA, ASIC, APRA AND NEGOTIABILITY OF STORED VALUE E.G. OF PFTAS ACCOUNTS 06.04.2024.PDF	Pages 1-1,682
# 13	NSD 741 of 2023 29.03.2024 FINDINGS OF HIGH TREASON AMG 7968 NSD 741 of 2023 TENDER BUNDLE # 13 29.03.2024 FINDINGS OF HIGH TREASON.pdf	Pages 1-1,609
# 14	NSD-741-2023 Chronology of Value from 1973 plus index AMG 8069 NSD-741-2023 TENDER BUNDLE #14 CHRONOLOGY OF VALUE FROM 1973 PLUS INDEX FINAL 11.06.2024.PDF	Pages 1-6,597
# 15	**AMG 7966** NSD-741-2023 Intellectual Property Protection by International Licensing Methodology AMG 7966 NSD-741-2023 TENDER BUNDLE #15 INTELLECTUAL PROPERTY PROTECTION PLUS INDEX.PDF	Pages 1-2,394
# 16	**AMG 7937** NSD-741-2023 plus index: Change In Tax Jurisdiction 04.08.2023 To Kingdom Of Saudi Arabia Transfer Of Taxpayer Accounts AMG 7937 NSD-741-2023 TENDER BUNDLE # 16 CHANGE IN TAX JURISDICTION 04.08.2023 TO KINGDOM OF SAUDI ARABIA TRANSFER OF TAX PAYER ACCOUNTS.pdf	Pages 1-1,873

# 17	NSD-741-2023 plus index: Automatic Stay and Recommencement of The Main Proceedings AMG 7972 NSD-741-2023 TENDER BUNDLE # 17 AUTOMATIC STAY AND RECOMMENCEMENT OF HK PROCEEDINGS.pdf	Pages 1-141
# 18	NSD-741-2023; plus, index Anarchy and Chaos Created by APRA And ASIC to Facilitate Money Laundering and Terrorism Financing; Equities Are Not Abolished; Maxims Of Equity Apply. AMG 7994 TENDER BUNDLE # 18 AND INDEX V 2 APRA, ASIC, PMC, LAW SOCIETIES V4 COMPLETE.PDF	Pages 1-1,648
# 19	NSD-741-2023 Certificate of Exhibits Affidavit AMG 01.05.2024 AMG 8002 NSD-741-2023 TENDER BUNDLE # 19 CERTIFICATE OF EXHIBITS AFFIDAVIT AMG 01.05.2024.PDF	Pages 1-74
# 20	NSD-741-2023 plus, index AMG 7881 NSD-741-2023; TENDER BUNDLE # 20 Affidavit Andrew Garrett dated 04.30.024 PART 1 pages 1-187.pdf AMG 7881 NSD-741-2023 SEALED Filed Tender Bundle # 20 Affidavit Andrew Garrett dated 04.03.2024 PART 2 pages 188 -416.pdf	Pages 1-416
# 21	NSD-741-2023 plus, index AMG 7971 NSD-741-2023 SEALED FILED TENDER BUNDLE # 21 AFFIDAVIT OF CROSS CLAIMANT DATED 15TH APRIL 2024 PART 1.PDF NSD 721 OF 2023 TENDER BUNDLE # 21 AFFIDAVIT DATED 15TH APRIL 2024 RE VARIOUS INTERLOCUTORY APPLICATIONS IN THE HIGH COURT OF AUSTRALIA PART 2.PDF AMG 8517 108004429_1_2024.04.23 - JOINT COURT BOOK INDEX SETTLED AMG 28.04.2024.PDF	
# 22	USA DEPARTMENT OF TREASURY OFFICE OF FOREIGN ASSET CONTROL and RELATED FREEDOM OF INFORMATION MATTERS. AMG 8125 RE OFAC LICENSE GLOMAG-2024-1236930-1 AND OFAC LICENSE GLOMAG-2024-1237239-1.MSG AMG 8126 OENOVIVA (USA) WORKING CAPITAL TRUST; OFFICE OF FOREIGN ASSET CONTROL LICENSE APPLICATION SUMMARY 14.06.2024.PDF	

AMG 8127 BWFF OFFICE OF FOREIGN ASSET CONTROL LICENSE APPLICATION SUMMARY TO SUPPORT INNOCENTS OF UKRAINE 13.06.2024.PDF

AMG 8128 OVCR OFFICE OF FOREIGN ASSET CONTROL LICENSE APPLICATION SUMMARY INVESTMENT IN NEW YORK PROPERTY 13.06.2024.PDF

AMG 8131 RE OFAC LICENSE GLOMAG-2024-1236930-1 AND OFAC LICENSE GLOMAG-2024-1237239-1 AND APPLICATION TO DECLARE GLOBAL MAGNITSKY ACT SANCTIONS.MSG

AMG 8137 OVCR OFFICE OF FOREIGN ASSET CONTROL SUMMARY STRATEGIC PARTNERSHIP AL NAKHLAHH ISLAND INVESTMENT COMPANY 22.06.2024.PDF

AMG 8138 OVCR LETTER TO OFFICE OF FOREIGN ASSET CONTROL DATED 25TH JUNE 2024 AND ANNEXES.PDF

AMG 8150 OFAC LICENSE APPLICATION RE SINESIS INTERNATIONAL BANK ACCOUNT HELD WITH BBVA BANK TRADING AS PROMINENCE BANK 26.06.2024.PDF

AMG 8464 RE USA FOREIGN CORRUPT PRACTICES ACT.PDF

AMG 8465 RE USA DODD FRANK ACT 2010.PDF

AMG 8512 KEEPING SECRETS ALRC 98 THE PROTECTION OF CLASSIFIED AND SECURITY SENSITIVE INFORMATION.PDF

AMG 8446b SEC ACKNOWLEDGEMENT LETTER FOIA-PA - 25-00059-FOPA.PDF

AMG 8529 SUBMISSION TO THE OFFICE OF GOVERNMENT INFORMATION SERVICES (OGIS).MSG

AMG 8529b RE AMG 8529 SUBMISSION TO THE OFFICE OF GOVERNMENT INFORMATION SERVICES (OGIS).MSG

AMG 8530 AMENDED SUBMISSION TO THE OFFICE OF GOVERNMENT INFORMATION SERVICES (OGIS).MSG

AMG 8530b AMENDED SUBMISSION TO THE OFFICE OF GOVERNMENT INFORMATION SERVICES (OGIS).MSG

AMG 8534f HCMP-1855-2022; BTG PACTUAL DEBT; AUSTRALIA JOINT LIABILITY RE PPSR CORRESPONDENCE - MR ANDREW GARRETT - ENQ-1103953-S8M3T6 PART 6.msg

AMG 8560 NOTICE OF CONCERNS AND NOTICE OF OFFENCE PURSUANT TO s20 OF THE CHARTER OF THE UNITED NATIONS ACT 1945 (AU).msg

AMG 8560 OENOVIVA CAPITAL RESOURCES NOTICE OF CONCERNS TO BTG PACTUAL DATED 24.01.2025.PDF

	AMG 8561 INTERNATIONAL DEFAMATION-STANDARDS AND FREEDOM OF EXPRESSION.PDF AMG 8562 OENOVIVA CAPITAL RESOURCES LETTER TO INSPECTOR GENERAL, NARA DATED 25.01.2025.PDF (National Archives and Records Agency)	
# 23	YED 2024 STATUTORY LETTERS OF DEMAND AND YED 2023 NOTICE TO ADMIT DEBT NOT CONTESTED AMG 6793 ; CAG; DCCRM-0073-2019 CORRIGENDUM TO AMG 6769; NOTICE TO ADMIT FACTS OF DEBT 03.07.2023.pdf AMG 8515D FORM 17 PLAINTIFF_PROSECUTOR_APPLICANT'S REPLY TO CONCISE STATEMENT AND CROSS CLAIM ADDENDUM AND INDICTMENT 08.04.2024.PDF AMG 8515E FORM 17 PLAINTIFF_PROSECUTOR_APPLICANT'S REPLY TO CONCISE STATEMENT AND CROSS CLAIM ADDENDUM AND INDICTMENT 08.04.2024.PDF AMG 8157 STATUTORY LETTER OF DEMAND NEW SOUTH WALES REGISTRAR GENERAL DATED 28.06.2024.PDF AMG 8181 STATUTORY LETTER OF DEMAND AMG ATF OENOVIVA CAPITAL RESOURCES TO SOUTH AUSTRALIA REGISTRAR GENERAL DATED 15.07.2024.PDF AMG 8562 OENOVIVA CAPITAL RESOURCES LETTER TO SENIOR DIRECTOR AT PPSR DATED 26.01.2025.PDF	
# 24	CONSENSUAL PERSONAL PROPERTY SECURITY INTERESTS REGISTERABLE ON PPSR IN ABSENCE OF PAYMENT ***CHARTER OF THE UNITED NATIONS ACT 1945 - SECT 20*** ***Offence--dealing with freezable assets*** *Offence for individuals* *(1) An individual commits an offence if:* *(a) the individual holds an asset; and* *(b) the individual :* *(i) uses or deals with the asset; or* *(ii) allows the asset to be used or dealt with; or* *(iii) facilitates the use of the asset or dealing with the asset; and* *(c) the asset is a freezable asset; and* *(d) the use or dealing is not in accordance with a notice under section 22.* *(2) Strict liability applies to the circumstance that the use or dealing with the asset is not in accordance with a notice under section 22.* *Note: For **strict liability** , see section 6.1 of the Criminal Code .*	

(3) It is a defence if the individual proves that the use or dealing was solely for the purpose of preserving the value of the asset.
Note: The individual bears a legal burden in relation to a matter in subsection (3) (see section 13.4 of the Criminal Code).
Penalty for individuals
(3A) An offence under subsection (1) is punishable on conviction by imprisonment for not more than 10 years or a fine not exceeding the amount worked out under subsection (3B), or both.
(3B) For the purposes of subsection (3A), the amount is:
(a) if the contravention involves a transaction or transactions the value of which the court can determine--whichever is the greater of the following:
(i) 3 times the value of the transaction or transactions;
(ii) 2,500 penalty units; or
(b) otherwise--2,500 penalty units.
Offence for bodies corporate
(3C) A body corporate commits an offence if:
(a) the body corporate holds an asset; and
(b) the body corporate:
(i) uses or deals with the asset; or
(ii) allows the asset to be used or dealt with; or
(iii) facilitates the use of the asset or dealing with the asset; and
(c) the asset is a freezable asset; and
(d) the use or dealing is not in accordance with a notice under section 22.
(3D) An offence under subsection (3C) is an offence of strict liability.
*Note: For **strict liability** , see section 6.1 of the Criminal Code .*
(3E) It is a defence if the body corporate proves that:
(a) the use or dealing was solely for the purpose of preserving the value of the asset; or
(b) the body corporate took reasonable precautions, and exercised due diligence, to avoid contravening subsection (3C).
Note: The body corporate bears a legal burden in relation to a matter in subsection (3E) (see section 13.4 of the Criminal Code).
Penalty for bodies corporate
(3F) An offence under subsection (3C) is punishable on conviction by a fine not exceeding:
(a) if the contravention involves a transaction or transactions the value of which the court can determine--whichever is the greater of the following:
(i) 3 times the value of the transaction or transactions;
(ii) 10,000 penalty units; or
(b) otherwise--10,000 penalty units.
(4) Section 15.1 of the Criminal Code (extended geographical jurisdiction--category A) applies to an offence against subsection (1) or (3C) .

The Payment due is a Freezable asset within the meaning of the beforementioned act in which regard a penalty of 300% now applies to that payment that will continue to Escalate at a rate of 300% multiplied by the anticipated yield from a Private Placement Program of 200% per

day Compounding from the date of the Offence and/or the date of the Act of Insolvency arising from the Failure to set aside the 7 X Statutory Letter of Demand referred to above.

AMG 3; NSD 1848 of 2018 Sealed Notice of Constitutional Matters 21.10.2018 and Annexure.pdf

AMG 4; NSD 1848 of 2018 Sealed Tender Bundle 3 Federal Court Indictments.pdf

AMG 5; Rule 49 Notice First Addendum filed 17th April 2020.pdf

AMG 8534A HCMP-1855-2022; INITIAL DATA TO BE CONSIDERED IN REPLY TO PPSR CORRESPONDENCE - MR ANDREW GARRETT - ENQ-1103953-S8M3T6 PART 1.MSG

AMG 8534B HCMP-1855-2022; INITIAL DATA TO BE CONSIDERED IN REPLY TO PPSR CORRESPONDENCE - MR ANDREW GARRETT - ENQ-1103953-S8M3T6 PART 2.MSG

AMG 8534C HCMP-1855-2022; INITIAL DATA TO BE CONSIDERED IN REPLY TO PPSR CORRESPONDENCE - MR ANDREW GARRETT - ENQ-1103953-S8M3T6 PART 3.MSG

AMG 8534D HCMP-1855-2022; INITIAL DATA TO BE CONSIDERED IN REPLY TO PPSR CORRESPONDENCE - MR ANDREW GARRETT - ENQ-1103953-S8M3T6 PART 4.MSG

AMG 8534E HCMP-1855-2022; INITIAL DATA TO BE CONSIDERED IN REPLY TO PPSR CORRESPONDENCE - MR ANDREW GARRETT - ENQ-1103953-S8M3T6 PART 5.MSG

AMG 8534F HCMP-1855-2022; BTG PACTUAL DEBT; AUSTRALIA JOINT LIABILITY RE PPSR CORRESPONDENCE - MR ANDREW GARRETT - ENQ-1103953-S8M3T6 PART 6.MSG

AMG 6714; FFR; CAG; HCMP-1855-2022; IN THE MATTER OF THE CROWN (LIQUIDATOR AND MANAGING CONTROLLER APPOINTED).pdf

AMG 6770 SANCTION AND CONVICTION RE REFUSAL OF AMG 6750 Order on Review; Freedom of information decision FOI23255 AG Department.msg

AMG 6769 DCCRM-0073-2019 CORRIGENDUM NOTICE TO ADMIT FACTS; 6714 AND CORRIGENDUM 6717 24.06.2023 and Annexures.pdf

AMG 6771 SERVICE OF AMG 6769 DCCRM-0073-2019 CORRIGENDUM NOTICE TO ADMIT FACTS; 6714 18.06.2023 and Annexures.msg

AMG 6772 ATTN; Ms STACEY Mr. DICKMAN RE HCMP-1855-2022; NOTICE OF PROTEST OF DISHONOUR BX 1462023 SECOFFICIAL.msg

AMG 6774; HSMO-1855-2022; IN the Matter of the Crown Indictment of High Treason regarding AMG 6700 AFSA FOI Response.msg

	AMG 6775 Chronology of Debt Collection of debts owed under Personal Guarantees Version 20.03.2018 final & Annexure.pdf AMG 6776 FFR; CAG; DCCRM-0073-2019; HIGH TREASON; GRAND CORRUPTION; 28.06.2023 plus annexures pg 1-1185.pdf AMG 6867 FFR; AMG; CAG; DCCRM-0073-2019 CORRIGENDUM TO AMG 6776.pdf AMG 7015 FFR; AMG; CAG; DCCRM-0073-2019 CORRIGENDUM TO AMG 6776 AND AMG 6867 TREASON; - Portuguese (Brasil) published 28.08.2023.pdf	