

BETWEEN

**BRIAN WILLIAM SHAW**

**Applicant**

- and -

**THE ANZ EXECUTORS and TRUSTEE COMPANY  
LIMITED (AS THE TRUSTEES OF THE ESTATE  
OF JOHN WILLIAM SHAW, DECEASED**

**Respondent**

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**AFFIDAVIT IN SUPPORT**

Date of document:

*11<sup>th</sup>* APRIL 2013

Filed on behalf of: The Plaintiff

Prepared by: Brian Shaw

Address: C/- P.O.Box 800 Werribee  
Victoria, 3030

Tel: 0487 195 522

I, Brian William Shaw, care of P.O. Box 800, Werribee, 3030 in the State of  
Victoria do state and affirm the following:

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1. That this affidavit exhibits the authenticated order of Justice Habersberger on 13<sup>th</sup>  
March 2013. Exhibit is marked; **"Habersberger order"**.
2. That this affidavit exhibits the reasons for judgement of Justice Habersberger on 13<sup>th</sup>  
March 2013. Exhibit is marked; **"Reasons for Judgement"**.
3. That this affidavit exhibits the proposed Notice of Appeal relating to the decision of  
Justice Habersberger on 13<sup>th</sup> March 2013. Exhibit is marked;  
**"Proposed Notice of Appeal"**.

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AFFIRMED BY: \_\_\_\_\_

AT: \_\_\_\_\_

THIS \_\_\_\_\_

DAY OF APRIL 2013.

BEFORE ME: \_\_\_\_\_

**Marian B. Ciopicz**  
**ASCPA, Justice of the Peace (Vic.)**  
**32 Railway Place, Macedon, Vic. 3441**  
**Phone 03/5426 1681**

IN THE COURT OF APPEAL OF VICTORIA  
AT MELBOURNE  
IN THE COURT OF APPEAL

No. S APCI 2013 0043

BETWEEN

BRIAN WILLIAM SHAW

Applicant

- and -

THE ANZ EXECUTORS and TRUSTEE COMPANY  
LIMITED (AS THE TRUSTEES OF THE ESTATE  
OF JOHN WILLIAM SHAW, DECEASED

Respondent

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**EXHIBIT**

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This is the exhibit referred to in the affidavit of Brian William Shaw affirmed on the ... day of April 2013.

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Before me: \_\_\_\_\_

  
**Marian B. Ciopicz**  
**ASCPA, Justice of the Peace (Vic.)**  
**32 Railway Place, Macedon, Vic. 3440**  
**Phone 03/5426 1681**

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**“Habersberger order”**

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IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COMMERCIAL AND EQUITY DIVISION

S CI 2009 07640

BETWEEN:

**BRIAN WILLIAM SHAW**

Plaintiff

- and -

**THE ANZ EXECUTORS AND TRUSTEE COMPANY  
LIMITED (AS THE TRUSTEES OF THE ESTATE  
OF JOHN WILLIAM SHAW, DECEASED)**

Defendant

**GENERAL FORM OF ORDER**

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JUDGE: The Honourable Justice Habersberger.

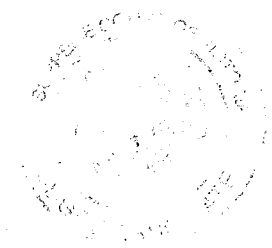
DATE MADE: 13 March 2013.

ORIGINATING PROCESS: Writ filed 9 July 2009.

HOW OBTAINED: Notice of appeal filed by the plaintiff dated 10 May 2012 and his oral application.

ATTENDANCE: The plaintiff appeared in person.  
Mr R C Wells of counsel for the defendant.

OTHER MATTERS: None.



**THE COURT ORDERS THAT:**

1. The plaintiff's application for special leave to rely on his nine affidavits affirmed by him on 23 May 2012 and on his four affidavits affirmed by him on 27 July 2012 is refused.
2. The plaintiff's application that he be granted leave to include the additional claims referred to in the reasons for judgment published on 13 March 2013 is refused.
3. The plaintiff's appeal against the order of Randall AsJ is allowed.
4. The plaintiff have leave to file, within 28 days, an amended statement of claim containing:
  - (i) paragraphs 1 to 7, 22 and 23 of, and paragraph G of the prayer for relief in, the draft amended statement of claim being exhibit "A" to the affidavit of the plaintiff affirmed on 17 September 2012 and filed herein, and
  - (ii) paragraphs 8, 9 and 11 of, and paragraphs A, B and C of the prayer for relief in, the statement of claim filed on 9 July 2009 and annexed to the writ herein.

5. The plaintiff pay the defendant's costs of the oral application for leave to include additional claims, including any reserved costs, such costs to be taxed, in default of agreement, on a party and party basis.
6. The plaintiff pay 75% of the defendant's cost of the appeal, including any reserved costs, such costs to be taxed, in default of agreement, on a party and party basis.

**DATE AUTHENTICATED:** 13 March 2013

D. J. Habsberger J.  
JUDGE

IN THE COURT OF APPEAL OF VICTORIA  
AT MELBOURNE  
IN THE COURT OF APPEAL

No. S APCI 2013 0043

BETWEEN

BRIAN WILLIAM SHAW

Applicant

- and -

THE ANZ EXECUTORS and TRUSTEE COMPANY  
LIMITED (AS THE TRUSTEES OF THE ESTATE  
OF JOHN WILLIAM SHAW, DECEASED

Respondent

10

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**EXHIBIT**

---

This is the exhibit referred to in the affidavit of Brian William Shaw affirmed on the ...!!! day of April 2013.

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Before me: \_\_\_\_\_



**Marian B. Ciopicz**  
**ASCPA, Justice of the Peace (Vic.)**  
**32 Railway Place, Macedon, Vic. 3440**  
**Phone 03/5426 1681**

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**“Reasons for Judgement”**

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IN THE SUPREME COURT OF VICTORIA  
AT MELBOURNE  
COMMERCIAL AND EQUITY DIVISION

Not Restricted

No. S CI 2009 07640

BRIAN WILLIAM SHAW

Plaintiff

v

ANZ EXECUTORS & TRUSTEE COMPANY LIMITED  
(ACN 006 132 332)  
(as Trustees of the Estate of John William Shaw, deceased)

Defendant

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JUDGE: HABERSBERGER J  
WHERE HELD: MELBOURNE  
DATES OF HEARING: 31 JULY, 16 AUGUST, 20 SEPTEMBER 2012  
DATE OF JUDGMENT: 13 MARCH 2013  
CASE MAY BE CITED AS: SHAW v ANZ EXECUTORS & TRUSTEE COMPANY LIMITED  
MEDIUM NEUTRAL CITATION: [2013] VSC 100

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PRACTICE AND PROCEDURE – Plaintiff a declared vexatious litigant – Leave granted to commence proceeding – Application to amend statement of claim – New claims going beyond leave granted – Application for leave to include new claims in proceeding – *Supreme Court Act 1986, s 21* – Whether draft amended statement of claim properly pleaded.

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APPEARANCES:

	<u>Counsel</u>	<u>Solicitors</u>
For the Plaintiff	In person	
For the Defendant	Mr R C Wells	Aitken Partners Pty Ltd

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HIS HONOUR:

**Introduction**

1 On 17 May 2007, pursuant to s 21(2) of the *Supreme Court Act 1986*, Mr Brian Shaw was declared a vexatious litigant on the application of the Attorney-General in proceeding number SCI 2006 09997.<sup>1</sup> The order of Hansen J (as he then was) relevantly prohibited Mr Shaw from commencing any proceeding in the Court “without leave of the Court”. Nettle JA, with Dodds-Streton JA concurring, dismissed Mr Shaw’s application for leave to appeal that order.<sup>2</sup>

2 On 4 September 2008, Vickery J ordered, in the 2006 proceeding, that:

The proposed Plaintiff, a vexatious litigant, nevertheless be granted the leave of the Court to commence legal proceedings in this Court in the manner described by the Statement of Claim submitted by the proposed Plaintiff.

3 The statement of claim referred to in Vickery J’s order read as follows:

1. The Plaintiff is one of the children of John William Shaw and he is one of a number of beneficiaries described in the Will of John William Shaw (“the Deceased”) who died on the 9<sup>th</sup> day of July 1978.
2. Probate dated the 23<sup>rd</sup> day of March 1979 issued in respect to the deceased’s Will dated the 22<sup>nd</sup> day of September 1975. The Will was proved by The Trustees, Executors and Agency Company Limited which continued on as Trustees of the Estate until such trustee company was liquidated in or about 1983.
3. The Defendant is a company incorporated in accordance with the *Corporations Law* and became the substituted Trustee of the Estate of John William Shaw in or about 1983 following the liquidation of the former Executor/Trustee.
4. Pursuant to the Will of John William Shaw, the deceased nominated some pecuniary legacies. The residue of the Estate was divided into five equal parts or shares. A one fifth share was retained for the lifetime of the surviving wife namely Roma Elizabeth Shaw and the remaining four fifths share was to be divided into eight equal parts or shares with each son obtaining a two eighths interest and the two daughters each obtaining a one eighth interest when each of them attained the age of forty years. Each of the surviving children have attained the age of forty years.

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<sup>1</sup> *Attorney-General for the State of Victoria v Shaw* [2007] VSC 148.

<sup>2</sup> See the reference to this unreported decision in *Attorney-General for the State of Victoria v Shaw* [2012] VSC 334, [5].

5. The surviving wife Roma Elizabeth Shaw died in the latter part of 2006 and the one fifth share held in trust for her has since been distributed between the brothers and sisters.
6. All brothers and sisters have survived their mother and father and all are presently living.
7. The Defendant refuses and/or has neglected to provide to the Plaintiff an Administration Statement from 1978 until 2007 despite repeated requests by the Plaintiff to do so.
8. The Defendant has acted in contravention of its duties to the Plaintiff pursuant to provisions of the *Administration and Probate Act*, the *Trustee Act*, the *Trustee Companies Act* and/or the *Supreme Court Act*.

And the Plaintiff seeks:-

- A. An Order that pursuant to Section 27 of the *Trustee Companies Act 1984* the Defendant provide to the Plaintiff an Administration Statement for the period from July 1978 until the final distribution was made by the Defendant in or about August 2007.
  - B. A Declaration whether the Defendant has breached Sections 6, 8 and 38 of the *Trustee Act* in the administration of the Estate.
  - C. An Order that pursuant to Section 28 of the *Trustee Companies Act 1984* that the Defendant's [sic] file and the Administration Statement to be produced be audited.
- 4 In his affidavit in support of his application affirmed on 27 August 2008, Mr Shaw deposed that:
- (a) he was a beneficiary of the estate of his late father, John William Shaw, who died on 9 July 1978;
  - (b) probate was granted to The Trustees Executors & Agency Company Limited ("TEA") and subsequently taken over by ANZ Executors & Trustee Company Limited<sup>3</sup> ("ANZ Trustees");
  - (c) in about August 2007 ANZ Trustees finalised the administration of his father's estate;

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<sup>3</sup> In fact, since 26 July 2007 the correct name of the company was ANZ Trustees Limited.



- (d) he received from ANZ Trustees the sum of \$140,535 in July 2007 and the sum of \$3,601 in August 2007, which ANZ Trustees said represented his final payment pursuant to his entitlement;
- (e) in about 1979 he was advised that his entitlement would be in the vicinity of \$289,000;
- (f) he was unable from the information supplied to him by ANZ Trustees to reconcile such payments; and
- (g) he had been in dispute with ANZ Trustees since 2000 or thereabouts.

Mr Shaw concluded his affidavit by stating that he was seeking leave to initiate civil proceedings against ANZ Trustees seeking:

- (a) whether ANZ Trustees had breached s 38 of the *Trustee Act* in the administration of the estate; and
- (b) an order that ANZ Trustees conduct a taking of accounts and the preparation of an administration statement for his father's estate.

### **Relevant Procedural History**

5 On 9 July 2009, Mr Shaw commenced this proceeding. The statement of claim annexed to the writ read as follows:

1. The Plaintiff is one of the children of John William Shaw and he is one of a number of beneficiaries described in the Will of John William Shaw ("the Deceased") who died on the 9<sup>th</sup> day of July 1978.
2. The Plaintiff although a vexatious litigant within the meaning of Section 21 of the *Supreme Court Act* was granted leave of the Court to commence legal proceedings in this Court in the manner described by the Statement of Claim submitted by the Plaintiff by an Order of the Honourable Justice Vickery given on the 4<sup>th</sup> September 2008.
3. The Trustees Executors and Agency Company Limited ("TEA") was the Executor to whom Probate of the Will of John William Shaw was granted by the Supreme Court of Victoria on the 23<sup>rd</sup> day of March 1979. The TEA continued to administer the Estate as Trustee until TEA was liquidated in or about 1983 by an Act of Parliament.

4. The Defendant is a company incorporated in accordance with the *Corporations Law* which became the successor in law to the TEA (then known as ANZ Executors and Trustee Company Limited) pursuant to an Act of Parliament titled *ANZ Executors and Trustee Company Act 1983* thereby installing the Defendant as the Trustee of the trusts under the Will of John William Shaw deceased.
5. Pursuant to the Will of John William Shaw, the deceased nominated some pecuniary legacies. The residue of the Estate was divided into five equal parts or shares. A one fifth share of the residue was retained for the lifetime of the surviving wife namely Roma Elizabeth Shaw and the remaining four fifths share of the residue was to be divided into eight equal parts or shares with each son obtaining a two eighths interest and the two daughters each obtaining a one eighth interest when each of them attained the age of forty years. Each of the surviving children have attained the age of forty years.
6. The surviving wife Roma Elizabeth Shaw died in the latter part of 2006 and the one fifth share of the residue held in trust for her has since been distributed between the brothers and sisters in or about 2007 thereby concluding the administration of the Estate of John William Shaw deceased.
7. All brothers and sisters have survived their mother and father and all are presently living.
8. The Defendant has failed to properly account to the Plaintiff for his entitlement in his father's estate.
9. The Defendant refuses and/or has neglected to provide to the Plaintiff an Administration Statement from 1978 until 2007 despite repeated requests by the Plaintiff to do so.
10. The Defendant as the trustee of the Estate has undersold real estate owned by the deceased for less than the then market value and accordingly the Defendant is liable to the Plaintiff to make good the losses occasioned by its actions. The properties concerned:-
  - a. 25-29 (Lot 6) Fitzgerald Road, Laverton sold in 1988
  - b. 207-213 Dohertys Road, Laverton sold in 1999.
11. The Defendant has acted in contravention of its duties to the Plaintiff pursuant to provisions of the *Administration and Probate Act*, the *Trustee Act*, the *Trustee Companies Act* and/or the *Supreme Court Act*.

And the Plaintiff seeks:-

- A. An Order that pursuant to Section 27 of the *Trustee Companies Act 1984* the Defendant provide to the Plaintiff an Administration Statement for the period from July 1978 until the final distribution was made by the Defendant in or about August 2007.
- B. An Order that pursuant to Section 28 of the *Trustee Companies Act 1984* that upon a determination being made by this Honourable Court

relating to the conduct of the Defendant, the Defendant conduct a taking of accounts and the preparation of an Administration Statement to then be audited and filed herein.

- C. A Declaration whether the Defendant has breached Sections 6, 8 and 38 of the *Trustee Act* in the administration of the Estate.
- D. Damages.
- E. Costs.
- F. Such other Orders that this Honourable Court may make.

6 It can immediately be seen that the statement of claim in the writ went beyond the leave granted by Vickery J by virtue of the inclusion of paragraph 10 containing the allegation that ANZ Trustees had undersold two properties of the estate of the deceased and the consequential claim for damages. That the statement of claim went beyond the leave granted by Vickery J was not disputed by Mr Shaw's then solicitors in correspondence between them and the solicitors for ANZ Trustees.

7 For Mr Shaw to include a new cause of action in his previously approved statement of claim was, in my opinion, the equivalent of commencing a proceeding in the Court without the leave required by the order of Hansen J. As a declared vexatious litigant, Mr Shaw's ability to bring separate causes of action in a proceeding was limited by the wording of any leave he had been given.

8 Accordingly, on 11 February 2010, ANZ Trustees issued a summons seeking an order dismissing the claim in paragraph 10, alternatively an order that paragraph 10 and "the relief consequential thereto" be struck out. That application was supported by an affidavit of Robert Hugh Davey, the solicitor acting for the defendant, sworn on 10 February 2010. On 24 February 2010, Daly AsJ ordered that paragraph 10 of the statement of claim and the prayer for relief seeking damages from the defendant be struck out. It was noted that this order was made without prejudice to the plaintiff's rights to seek leave pursuant to s 21 of the *Supreme Court Act 1986* "to press the claims set out in paragraph 10" of the statement of claim. Mr Shaw did not appeal this order. Nor did he make any timely application to widen the leave to commence the specified proceeding.

### The Initial Application

9 However, on 23 March 2012, Mr Shaw filed a summons seeking, in effect, leave to file an amended statement of claim, which was exhibited to an affidavit of Mr Shaw affirmed on 13 March 2012. The proposed amended statement of claim considerably expanded the plaintiff's pleading. It contained 61 paragraphs and 18 separate heads of relief. It arguably raised new claims which went beyond the leave granted by Vickery J.

10 Mr Shaw also filed five other affidavits all affirmed by him on 13 March 2012. Those affidavits were respectively headed:

- (a) "Trust Properties";
- (b) "Statement of Eileen Shaw";
- (c) "Statement of Carmel Shaw";
- (d) "Breach of Trust"; and
- (e) "Detailed Affidavit".

Mr Shaw filed two further affidavits affirmed by him on 3 May 2012. The defendant relied on an affidavit sworn by Mercia Diane Chapman, the chief legal officer of the defendant, on 27 April 2012.

11 On 10 May 2012, Randall AsJ dismissed Mr Shaw's application to amend his statement of claim in the form set out in the exhibit to his affidavit. His Honour ruled that if the proposed amendments were allowed the statement of claim would be "scandalous, frivolous, vexatious or would prejudice, embarrass or delay the fair trial of the proceeding as those expressions are used in Rule 23.02".

### The Appeal

12 By a notice of appeal dated 10 May 2012, Mr Shaw appealed the order made by Randall AsJ. When the appeal came on for hearing on 31 July 2012, Mr Shaw informed the Court that it was anticipated that on 10 August 2012 J Forrest J would be delivering judgment in respect of his application to have the vexatious litigant

declaration set aside. At Mr Shaw's request I adjourned the hearing of the appeal to 16 August 2012 as it was common ground between the parties that some of the issues in the appeal, in particular whether the proposed amended statement of claim went beyond the leave granted by Vickery J, would disappear if he were successful before J Forrest J.

13 His Honour did deliver judgment on 10 August 2012, but, contrary to Mr Shaw's expectations, his application was dismissed.<sup>4</sup> The appeal against the order of Randall AsJ therefore came back before me on 16 August 2012.

14 Mr Shaw commenced his application by making lengthy submissions about topics such as freemasonry, grand juries, and fracture of the Crown by removal of the Crown from State legislation in Victoria and Western Australia. In particular, he submitted that the Court was unconstitutional as a result of the amendment to s 6(1) of the *Legal Practice Act 1996* by s 3 of the *Courts and Tribunals Legislation (Further Amendment) Act 2000* removing the requirement that applicants for admission to practice swear an oath of allegiance to the Queen. He submitted that these matters raised an inter se question.

15 I ruled that no inter se question was raised by Mr Shaw's submissions. I also ruled that none of the topics he wished to raise, even if they had merit, were relevant to the application then before me, namely his appeal against the order of Randall AsJ dismissing his application to amend his statement of claim in this proceeding against ANZ Trustees. The Court of Appeal has previously pointed out the "fundamental difficulties" with Mr Shaw's submissions on these topics.<sup>5</sup>

16 In support of his application, Mr Shaw sought to rely on 13 further affidavits by him not used before Randall AsJ. As an appeal from an Associate Judge was then a re-hearing de novo (r 77.06(7) of the *Supreme Court (General Civil Procedure) Rules 2005* ("the Rules")) he needed special leave in order to do so (r 77.06(7)(b)). The first nine affidavits which were all affirmed on 23 May 2012, were respectively headed:

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<sup>4</sup> *Attorney-General for the State of Victoria v Shaw* [2012] VSC 334.

<sup>5</sup> *Shaw v Attorney-General for the State of Victoria* [2011] VSCA 63, [22]-[31] (Maxwell P and Buchanan JA).

- (a) "Governor General Brother Major General Michael Jeffrey Plus the Structure of Freemasonry";
- (b) "Private Prosecution 2004";
- (c) "Concealment of Criminal Activity";
- (d) "Fractional Reserve Banking";
- (e) "Extract of a Substituted Socialist Constitution";
- (f) "Shaw Affidavit 23 December 2009";
- (g) "High Court Justice Virginia Bell";
- (h) "Brief of Evidence"; and
- (i) "The Constitution and the Law of Treason".

The remaining four affidavits, which were all affirmed by Mr Shaw on 27 July 2012, were respectively headed:

- (j) "Stamped High Court Application";
- (k) No heading but the exhibit was headed "Grand Jury Defendants";
- (l) "The Murder of Corryn Rayner"; and
- (m) "David Ward".

17 Apart from the third of these affidavits, the further affidavits had nothing whatsoever to do with this case, as can be seen from their headings. I excluded the third affidavit from this categorisation because in it Mr Shaw referred to Randall AsJ, ANZ Trustees and its solicitors Aitken Partners. However, the reference to them was to allege that on 10 May 2012 they committed "serious indictable offences against the Constitution of the State of Victoria and the Constitution of the Commonwealth of Australia" including "the criminal offence of Treason". Thus, this affidavit was also not relevant to the issue before me, namely, whether Mr Shaw should be given leave to amend his statement of claim in the form sought by him. Accordingly, I refused Mr Shaw special leave to rely on the above 13 affidavits.

18 In the course of Mr Shaw's submissions I again raised with him that many of the new claims that he sought to include in his amended statement of claim arguably went beyond the leave granted by Vickery J to bring this specified proceeding. With quite some difficulty I managed to elicit from Mr Shaw that the new claims he wished to raise were:

- (a) the sale by ANZ Trustees of two properties at an undervalue;
- (b) the deduction of a sum of about \$57,000 from funds otherwise due to Mr Shaw;
- (c) the allegedly low rate of interest being credited to the estate's funds;
- (d) the allegation that an accommodation bond of \$100,000 was wrongly not returned to the executors of the estate of Mr Shaw's mother; and
- (e) an allegation that ANZ Trustees had breached s 27 of the *Trustee Act 1958*.

After further discussion about how the matter should proceed Mr Shaw made an oral application that he be granted leave to include additional claims in his proceeding.

19 Mr Wells of counsel, who appeared for the defendant, opposed that application. He submitted that the existing claims should be determined before any new claims were raised as that determination might resolve the new claims. I did not accept that this was a correct analysis of the relationship between the existing claims and the new claims. In any event, it seemed to me to be desirable that all possible claims be decided in the one proceeding, particularly one brought by a vexatious litigant.

20 Counsel then submitted that it was incumbent on the applicant to put some evidence before the Court to show that the new claims sought to be litigated had some basis in fact, that is, that they raised a sufficiently arguable case that the claims would not be an abuse of the process of the Court.<sup>6</sup> I agreed with this submission. It was common

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<sup>6</sup> *Supreme Court Act 1986*, s 21(4).

ground that such evidence was then lacking but Mr Shaw said that he could readily obtain it.

21 Further debate ensued as to whether the application should be adjourned to enable Mr Shaw to put his evidence before the Court or whether the appeal should continue in respect of the current proposed amended statement of claim. I granted Mr Shaw's request that his application be adjourned, as this seemed to me to be the most efficient way of resolving the outstanding issues.

22 On 17 September 2012, Mr Shaw filed another short affidavit. Exhibited to this affidavit was yet another version of the amended statement of claim on which he sought to rely. It was called a "Draft Amended Statement of Claim". It contained 51 paragraphs, divided into 26 paragraphs and 25 sub-paragraphs, and 9 separate heads of relief. Also exhibited to the affidavit was a Valuation Report dated 17 September 2012 by Mr John McEntee of the 14 acre property at 25-29 Fitzgerald Road, Laverton North ("the 14 acre property") as at 3 February 1988.

23 The defendant filed a further affidavit by Ms Chapman sworn on 19 September 2012 ("second affidavit").

### The Law

24 Section 21(4) of the *Supreme Court Act 1986* relevantly provides that leave to commence any legal proceedings "must not be given unless the Court ... is satisfied that the proceedings ... will not be an abuse of the process of the Court ..." The Court of Appeal has clearly set out what this entails. In *Shaw v Attorney-General for the State of Victoria*,<sup>7</sup> Maxwell P, with whom Buchanan JA agreed, said as follows:

... It is for the vexatious litigant to persuade the Court that what is proposed will not be an abuse of the process of the Court.

One form of abuse of process is commencing a proceeding which has no prospect of success, that is, is hopeless or, as his Honour said, is 'foredoomed to fail'. Where a proceeding has no legal merit whatsoever, it would be a waste of the Court's time to have to deal with it.

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<sup>7</sup> [2011] VSCA 63, [13]-[16].



The reason for that requirement in the *Supreme Court Act* is obvious enough. A person is declared a vexatious litigant when the Court has been persuaded, on the application of the Attorney-General, that the person has persistently engaged in litigation of a vexatious or hopeless kind. The power to declare a person a vexatious litigant exists, of course, because the courts must be available to the citizens of the State who have their various legal rights and interests to prosecute and defend. ...

The courts must be able to place a limit on those who would otherwise take up an unreasonable amount of available Court time. Declaring a person a vexatious litigant is designed to prevent the precious time of the courts of the State being taken up on issues that simply do not justify the time.

### **Consideration of the Application for Leave to Bring New Claims**

25 At the hearing on 20 September 2012, the first issue to be considered was whether Mr Shaw, as a vexatious litigant, should be given leave to include additional claims in his statement of claim. The five additional claims previously identified were repeated in the draft amended statement of claim. However, the question was whether there was sufficient evidence before the Court to show that the additional claims would not be an abuse of process.

26 After a great deal of confusion, Mr Shaw stated that he relied not only on his affidavit sworn on 17 September 2012, but also on his affidavit sworn on 27 January 2009 which was exhibited to one of his affidavits affirmed on 13 March 2012 ("Detailed Affidavit"), as providing the necessary evidence of his new claims.

27 I turn then to consider whether leave should be given to Mr Shaw to include any of the new claims in an amended statement of claim. Paragraphs 16 and 16.1 to 16.3 of the draft amended statement of claim contain the allegation that ANZ Trustees sold the 14 acre property for \$450,000 in 1988 and that within 12 months of that sale, the purchaser sold the same 14 acres for \$2,200,000 by public auction. Mr Shaw then pleads that Mr McEntee valued the 14 acre property as at 3 February 1988, the date on which the purchaser lodged a caveat, at \$1,450,000, based on comparable sales. He submitted that this showed negligence on the part of ANZ Trustees in its handling of the sale.

28 In her second affidavit, Ms Chapman deposed to having perused documents from the defendant's files. She said that between 1985 and 1988 a number of attempts were

made to sell the 14 acre property. In 1985, it was offered for sale by auction but no bidder attended. An offer of \$200,000 on 3 year terms was made in a letter dated 13 August 1986. The defendant was advised that this indicated a value of \$175,000 on a cash sale. In 1987 an offer was made to purchase the 14 acre property for \$420,000, with a deposit of \$21,000 and a settlement period of 120 days. Four of the six beneficiaries of the estate (not including the plaintiff who arguably no longer had any interest in the estate) approved the sale of the property on those terms. Then in late 1987 an offer of \$450,000 was received. The defendant obtained a report dated 3 December 1987 from Ned Walsh of Richard Ellis (Victoria) Pty Ltd valuing the 14 acre property at \$390,000. The property was sold to Rypbrook Pty Ltd on 21 January 1988 for \$450,000 with a 10% deposit and a settlement period of 90 days. The defendant also tendered a title search of the 14 acre property which showed that Rypbrook became the registered proprietor on 5 May 1988, a mortgage to the Commonwealth Bank of Australia was registered on 15 August 1988 and discharged on 16 November 1989, a caveat was lodged on 7 September 1990 and a new proprietor registered on 30 October 1990.

29 Counsel for the defendant submitted that on the basis of the above evidence there was no justification for giving Mr Shaw leave to bring this particular claim. He submitted that ANZ Trustees had done all that was required of it – it had tried to sell the 14 acre property at the best available price, it obtained a valuation from a reputable valuer and it consulted the beneficiaries and obtained the consent of the majority of them to sell at a lower price than that which was eventually obtained. Counsel submitted that there was no admissible evidence that the next purchaser had purchased the 14 acre property for \$2,200,000 or that it had done so within 12 months. He also submitted that, in any event, any increase in price may have been the result of improvements to the property. There was no admissible evidence that the property was resold in the same condition. Further, sharp increases in property prices generally might explain any increase on resale.

30 Notwithstanding the retrospective valuation of \$1,450,000 I am not satisfied that Mr Shaw has discharged the onus of persuading me that it would not be an abuse of the process of the Court to give him leave to bring the claim in respect of the sale of the 14 acre property in 1988.

31 Paragraphs 16 and 16.4 of the draft amended statement of claim contain the allegation that ANZ Trustees sold a 167 acre property in Doherty's Road, Laverton North ("the 167 acre property") for \$3,000,000 in 1999 without his consent. During argument, Mr Shaw conceded that he did not really have a complaint about the price obtained for this property. It is unnecessary, therefore, to consider this claim further.

32 Mr Shaw said that the actual issue now concerning him was that he had recently obtained evidence that there was a second property in Doherty's Road owned by the estate which had been sold in October 1997 for \$680,000. He thought it consisted of 20 acres. But Mr Shaw never articulated what issue arose out of this new development. In paragraphs 16 and 16.5 to 16.6 of the draft amended statement of claim, Mr Shaw had simply pleaded that he had "no knowledge of the existence of a third title" in Doherty's Road. Saying that he was now "questioning how a third title came into play" does not advance matters. Neither does saying "I have no knowledge of \$680,000, none".

33 I accept the defendant's submission that there is simply no evidence of any wrongdoing. In the current state of the evidence, it is clear that I must refuse the plaintiff leave to bring the claim, whatever it may be, in respect of the 20 acre property in Doherty's Road.

34 The second new claim (contained in paragraphs 11 to 11.2 of the draft amended statement of claim) which Mr Shaw sought leave to bring was that relating to a deduction of \$57,647.59 from a further capital distribution to him from the residuary estate of his father, following the death of the life tenant, his mother. It was common ground that Mrs Shaw had died in October 2006. It appears that the debt stemmed from loans made by the father's estate to Mr Shaw in the period 1978 to 1980. His

simple point was that any such indebtedness on his part disappeared when he went bankrupt in 1981 and that he should, therefore, have been paid this amount from his father's residuary estate.

35 Counsel for the defendant submitted that there was no proof that ANZ Trustees (or strictly TEA) on behalf of the father's estate proved in Mr Shaw's bankruptcy. He said that it may have elected not to prove and simply treated the debt as an offsetting claim against Mr Shaw's future entitlement under the estate upon his mother's death.

36 Mr Shaw referred to his Statement of Affairs, which was verified by an affidavit affirmed by him on 28 April 1981. In the Statement of Affairs, the estate of JW Shaw was listed as a secured creditor in the sum of \$340,000, with the value of the security being put at \$340,000. Mr Shaw's interest in that estate was listed as one of his items of property, valued at \$340,000. Finally, Mr Shaw had included TEA's name under the heading of "Debts Due to the Estate" noting that legal advice would be sought "as to their [sic] handling of this affair".

37 I observed during the course of argument that I was being asked to decide this point on "uncertain factual material and partially developed legal arguments". However, whatever inclination I may have had to give Mr Shaw leave to bring this claim was removed when I re-read ANZ Trustees' defence to the existing statement of claim. In paragraphs 8(j) to (l) of that defence, it is pleaded that:

- j) By a Deed of Family Arrangement dated 1<sup>st</sup> March 2000 ("the Deed"), entered into by the Plaintiff, all other beneficiaries of the estate and the Defendant it was agreed, inter alia, that the Plaintiff would be advanced a further \$150,000.00 out of the estate, being part of the 1/5<sup>th</sup> of the estate held on trust for the deceased's widow for life and in remainder for the Plaintiff as to 2/8ths thereof and his siblings as to the balance.
- k) It was a term of the Deed, inter alia, that –
  - i) the Plaintiff would not make any claim against the Defendant in respect of any past or future administration of the settlement or the estate of John William Shaw; and
  - ii) the Plaintiff and all other beneficiaries of the estate would jointly and individually agree to indemnify the Defendant from any liability resulting from the payment and transfer by the Defendant in the manner provided in the Deed.

- 1) On or about 18 July 2007, following the death of Plaintiff's mother on 29 October 2006, the Defendant distributed to the Plaintiff the sum of \$140,535.66, representing final distribution and payment of the Plaintiff's final entitlement in the estate, being the then value of his 2/8<sup>ths</sup> share in the 1/5<sup>th</sup> of the estate held on trust for life for the Plaintiff's mother, less the amount owed by the Plaintiff to the estate pursuant to the appropriations referred to above and pursuant to the further advance made to the Plaintiff pursuant to the Deed.

38 That caused me to see whether this alleged Deed was in evidence before me and I found that it was. It was part of exhibit "ANZ14" to Mr Shaw's affidavit affirmed on 27 January 2009, which in turn was the sole exhibit to Mr Shaw's affidavit affirmed on 13 March 2012, ("Detailed Affidavit"), which has been referred to above. Needless to say, the Deed does contain the terms pleaded in the above paragraphs of the defence. The Deed also makes it clear that the advance to Mr Shaw was being made pursuant to the power given by s 38 of the *Trustee Act*. I discuss below why Mr Shaw's existing s 38 claim must fail, in my opinion, because it can only be brought against TEA and not ANZ Trustees. This does not mean, however, that this is another opportunity for Mr Shaw to run his s 38 argument, this time against ANZ Trustees, because, in my opinion, Court approval to make the advance is not required where all interested parties, in this case the life tenant, Mrs Shaw, and the remaindermen, Mr Shaw and his four siblings, have requested the advance and in addition each of them has jointly and individually agreed to indemnify ANZ Trustees for any resulting liability (clause 3 of the Deed).

39 In the circumstances I consider that Mr Shaw has not discharged the onus of persuading me that it would not be an abuse of process of the Court to allow him to bring this claim and I therefore refuse him leave to do so.

40 The third new claim (contained in paragraph 18 of the draft amended statement of claim) was that:

The interest return on the capital fund investment ... was extremely low and did not reflect first mortgage interest rates or bank deposit rates over the period of the administration (1978-2011).

41 Counsel for the defendant submitted that although Mr Shaw referred to a figure of 3.2% for the return to the estate and to a figure of 5.4% for bank deposits at that time,

there was no admissible evidence of these figures. Further, there was no evidence that ANZ Trustees had done anything wrong if in fact the above figures were correct. Costs and expenses may well have reduced a higher return down to that alleged by Mr Shaw.

42 I agree. I am not satisfied that Mr Shaw has discharged the onus of persuading me that it would not be an abuse of process of the Court to give him leave to bring this claim.

43 The fourth new claim (contained in paragraphs 19 to 19.3 of the draft amended statement of claim) related to an allegation that an amount of \$100,000 was taken from his father's capital fund and used to pay an accommodation bond for his mother. On her death, it was repaid to ANZ Trustees as trustee of his father's estate. The plaintiff alleged that it should have been paid to his mother's executors and trustees.

44 During the course of argument I explained to Mr Shaw my understanding of what occurred and why there was, therefore, nothing in this complaint. He accepted my explanation and said that he withdrew this claim. It is unnecessary, therefore, to consider this claim further.

45 The fifth new claim (contained in paragraph 23.1 of the draft amended statement of claim) was a claim that legal costs had been charged by ANZ Trustees without approval of the Court contrary to s 27(4) of the *Trustee Act 1958*. The defendant correctly submitted, in my opinion, that this section related to audit costs, not legal costs as asserted by the plaintiff. Again Mr Shaw accepted my explanation as to why this claim was misconceived and why this meant that he should not have leave to bring this claim.

#### **Consideration of the Draft Amended Statement of Claim**

46 Having dealt with the application for leave to bring new claims, I return to the task of deciding whether Mr Shaw should be given leave to amend his existing statement of claim. The initial application sought leave to file the 61 paragraph proposed amended statement of claim. As previously stated, in the hearing before me Mr Shaw instead

sought leave to file the 51 paragraph "Draft Amended Statement of Claim". The changing of position by Mr Shaw was not helpful given that considerable time had already been spent analysing his earlier pleading. Fortunately there was relatively little change apart from a re-arranging of the order of many of the paragraphs.

47 The first comment I would make is that in every paragraph between 9 and 25, apart from paragraphs 19, 19.2, 20 and 20.1, Mr Shaw has included below the pleaded paragraph itself or the particulars to that paragraph the following words in bold type:

The Defendant did act in Statute Breach  
Causing the plaintiff to suffer loss and damage.

This is an inappropriate way to plead a cause of action and repeating it many times only makes it worse. It will not be allowed in any leave to amend should such be given.

48 I turn then to the individual paragraphs of the draft amended statement of claim. Paragraphs 1 to 7 of that pleading are largely repetitive of paragraphs 1 to 7 of the existing statement of claim. No issue arises out of the amended wording of these paragraphs.

49 Paragraph 8, identifying the five natural born children of the plaintiff, is irrelevant to the plaintiff's claims. It is therefore embarrassing and will not be included in any leave to amend.

50 Paragraph 9 sets out a non-exclusive list of issues in the draft amended statement of claim. It is unnecessary and therefore embarrassing and will not be included in any leave to amend.

51 Paragraphs 10 to 10.7 and 12 to 15.1 set out the details of the plaintiff's allegation that the defendant has breached s 38 of the *Trustee Act 1958*. This was raised in a very general and vague way in paragraph 8 of, and paragraph B of the prayer for relief in, the draft statement of claim before Vickery J and in paragraph 11 of, and paragraph C of the prayer for relief in, the existing statement of claim.

52 The gist of Mr Shaw's new pleading of this claim is that what he calls "the Executor and Trustee" advanced to him more than half of his beneficiary's expectant share of his father's estate in the period 1978 to 1981. He says that s 38 of the *Trustee Act 1958* relevantly required "the Executor and Trustee" to obtain the consent of the Court to advance to a beneficiary an amount greater than half the value of his or her share and that no such consent was obtained in his case. Alternatively, he says that in compliance with the section only half of the value of his share was advanced and that he is still awaiting receipt of the remaining half of his share.

53 However, it seems clear to me from paragraph 10.3 of the draft amended statement of claim that the alternative claim is only a debating point with no factual basis. What Mr Shaw pleads in paragraph 10.3 is that the payment by "the Executor and Trustee" of more than half the value of the share cannot be validated by "a purported 'Beneficiary Indemnity' purportedly obtained 9<sup>th</sup> July 1980". What Mr Shaw's own evidence makes clear is that Mr Shaw and all of the other beneficiaries consented to the distribution of more than half in an attempt to save him from bankruptcy, but allegedly without having the terms of s 38 drawn to their attention.

54 Counsel for the defendant submitted that now that this claim had been more fully pleaded it became clear that Mr Shaw's complaint concerned the conduct of TEA not ANZ Trustees. Counsel drew attention to the provisions of the *ANZ Executors & Trustee Company Act 1983* which, he submitted, gave ANZ Trustees a complete defence to this claim, apart from other arguments which it is not necessary to consider. He pointed out that whilst s 7 of that Act stated that upon the commencement of Part V (15 June 1983) the trust business of TEA as at that commencement was transferred to and vested in ANZ Trustees, the definition in s 2 of "the trust business of the Old Trustee" expressly did not include "the excluded items". Part of the definition of "the excluded items" was all present liabilities of TEA in respect of breach of trust or misfeasance. Counsel submitted that as Mr Shaw's claim related, on its face, to steps taken prior to 1983, ANZ Trustees had no liability for them.



55 I agree with this submission. I also agree with counsel for the defendant's further submission that leave should not be given to amend a pleading of a cause of action where the amendment was futile because the cause of action was hopeless.<sup>8</sup> Therefore, I will not allow paragraphs 10 to 10.7 and 12 to 15.1 to be included in any leave to amend.

56 This decision does not affect paragraph 11 of, and paragraph C of the prayer for relief in, the existing statement of claim. Leave was given by Vickery J to include such a claim and it remains on foot. If Mr Shaw decides to persist with this claim, paragraph 11 of, and paragraph C of the prayer for relief in, the existing statement of claim should be repeated in the amended statement of claim. I say this because that is the current status quo which, in my opinion, should not be changed unless there is an application by the defendant to strike out the s 38 claim at which time Mr Shaw will have the opportunity to present any arguments in opposition to that course.

57 My decision should not be taken as overruling the grant of leave by Vickery J. It was only when more facts were included in the pleading of this claim that it became clear that the defendant had this absolute defence. The application to Vickery J for leave to commence this proceeding was made ex parte and I am quite certain that his Honour would not have been referred to the provisions of the 1983 Act.

58 Leave has not been given to bring the claim contained in paragraphs 11 to 11.2 and they cannot remain.

59 Leave has not been given to bring the claims contained in paragraphs 16 to 16.6 and they cannot remain. This means that the allegation in paragraph 17 about the values of the 14 acre property, the 167 acre property and the unknown third title as at May 2009 also cannot remain. It was in any event irrelevant and embarrassing.

60 Leave has not been given to bring the claim contained in paragraph 18 and it cannot remain.

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<sup>8</sup> *Commonwealth v Verwayen* (1990) 170 CLR 394, 456 (Dawson J); *Gimson v Victorian Workcover Authority* [1995] 1 VR 209, 215 (McDonald J). See also r 23.02 of the Rules.

61 Leave has not been given to bring the claim contained in paragraphs 19 to 19.3 and they cannot remain.

62 Paragraphs 20 and 20.1 relate to the history of TEA and are irrelevant to the plaintiff's claims, as agreed by Mr Shaw in the course of argument. They are therefore embarrassing and will not be included in any leave to amend.

63 Paragraph 21 alleges no material facts and seems to be a summary of his complaints against the defendant in terms of the legal labels given to those allegations. It is therefore embarrassing and will not be included in any leave to amend.

64 Paragraphs 21.1, 24 to 24.3 and 25 (first sentence) are statements of law not related to any pleaded material facts and therefore should not be included in a statement of claim.<sup>9</sup> They will not be included in any leave to amend. The second sentence of paragraph 25 is a slightly varied repetition of paragraph 10.6. It is therefore embarrassing and will not be included in any leave to amend.

65 Paragraph 22 is an allegation that no annual reviews of investment statements were ever supplied to the plaintiff. It is similar to paragraph 7 of the draft statement of claim before Vickery J and paragraphs 8 and 9 of the existing statement of claim. It will be allowed as part of any amended statement of claim. However, I also consider that it would be in the interests of the plaintiff if paragraphs 8 and 9 were repeated in the amended pleading.

66 Whilst paragraph 23 is general in its terms, the particulars make it clear that it is based on s 27 of the *Trustee Companies Act 1984*.<sup>10</sup> Counsel for the defendant submitted that the section gives the relevant Minister the power to apply to the Court for an order under the section and that it was not applicable to the plaintiff. I do not agree. The section also applies to a person who is a "cestui que trust" such as the plaintiff. Paragraph 23 relates to paragraph 8 of, and paragraph A of the prayer for relief in, the

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<sup>9</sup> See r 13.02(2) of the Rules.

<sup>10</sup> Although s 27 was repealed on 11 May 2010 by the *Trustee Companies Legislation Amendment Act 2010*, it does not affect any application made to the Supreme Court for an order for account that was made but not determined before that repeal. See s 58 of the *Trustee Companies Act 1984*, inserted by s 15 of the *Trustee Companies Legislation Amendment Act 2010*.

draft statement of claim before Vickery J and paragraph 11 of, and paragraph A of the prayer for relief in, the existing statement of claim. It will be allowed as part of any amended statement of claim. However, I also consider that it would be in the interests of the plaintiff if paragraph 11 were repeated in the amended pleading.

67 Leave has not been given to bring the claim contained in paragraph 23.1 and it cannot remain.

68 Paragraph 26 is a bald plea of what is called "equitable estoppel" alleging that:

The Defendant is estopped from relying on any purported verbal agreement or agreements.

It makes no sense and will not be included in any leave to amend.

69 Turning to the prayer for relief, I do not understand why the plaintiff has not included paragraphs A to C of the prayer for relief in the existing statement of claim. They should be included in the amended statement of claim. Paragraphs A to F and H (where twice appearing) of the prayer for relief in the draft amended statement of claim cannot remain because they relate to paragraphs of the pleading itself which will not be included in any leave to amend.

### Conclusion

70 The result of the above is that paragraphs 1 to 7, 22 and 23 of, and paragraph G of the prayer for relief in, the draft amended statement of claim are all that remain. Because so little of that pleading will be included in the leave to amend and because, in my opinion, parts of the existing statement of claim should be repeated, it is not appropriate simply to substitute the new pleading for the old one. The order giving Mr Shaw leave to amend his statement of claim will have to be fashioned to accommodate this situation. The orders I propose to make are as follows:

- (a) The plaintiff's application for special leave to rely on his nine affidavits affirmed by him on 23 May 2012 and on his four affidavits affirmed by him on 27 July 2012 be refused.


- (b) The plaintiff's application that he be granted leave to include the additional claims referred to in the reasons for judgment published on 13 March 2013 be refused.
- (c) The plaintiff's appeal against the order of Randall AsJ be allowed.
- (d) The plaintiff have leave to file, within 14 days, an amended statement of claim containing:
- (i) paragraphs 1 to 7, 22 and 23 of, and paragraph G of the prayer for relief in, the draft amended statement of claim being exhibit "A" to the affidavit of the plaintiff affirmed on 17 September 2012 and filed herein, and
  - (ii) paragraphs 8, 9 and 11 of, and paragraphs A, B and C of the prayer for relief in, the statement of claim filed on 9 July 2009 and annexed to the writ herein.
- (e) An order for costs.

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**CERTIFICATE**

I certify that this and the 21 preceding pages are a true copy of the reasons for judgment of Habersberger J of the Supreme Court of Victoria delivered on 13 March 2013.

DATED this 13th day of March 2013.

  
Associate

**IN THE COURT OF APPEAL OF VICTORIA  
AT MELBOURNE  
IN THE COURT OF APPEAL**

**No. S APCI 2013 0043**

BETWEEN

**BRIAN WILLIAM SHAW**

**Applicant**

- and -

**THE ANZ EXECUTORS and TRUSTEE COMPANY  
LIMITED (AS THE TRUSTEES OF THE ESTATE  
OF JOHN WILLIAM SHAW, DECEASED**

**Respondent**

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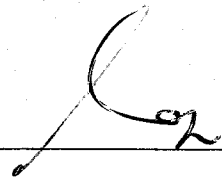
**EXHIBIT**

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This is the exhibit referred to in the affidavit of Brian William Shaw affirmed on the . . . day of April 2013.

20

Before me: \_\_\_\_\_



**Marian B. Ciopicz  
ASCPA, Justice of the Peace (Vic.)  
32 Railway Place, Macedon, Vic. 344  
Phone 03/5426 1681**

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**“Proposed Notice of Appeal”**

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**IN THE COURT OF APPEAL OF VICTORIA  
AT MELBOURNE  
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**No. S APCI 2013 0043**

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LIMITED (AS THE TRUSTEES OF THE ESTATE  
OF JOHN WILLIAM SHAW, DECEASED**

**Respondent**

10

**PROPOSED NOTICE OF APPEAL**

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Date of document: 11<sup>th</sup> APRIL 2013

Filed on behalf of: The Plaintiff

Prepared by: Brian Shaw

Address: C/- P.O.Box 800 Werribee  
Victoria, 3030

Tel: 0487 195 522

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**FOUNDATIONS OF APPEAL**

The appeal is made in relation to the whole order / judgement of Justice Habersberger on 13<sup>th</sup> March 2013.

20

**GROUND 1 INTER SE LAW**

The removal of the Oath of Allegiance from the Legal Practice Act 1996 (Victoria) by enactment of the Act titled: **“Court and Tribunal (Further Amendment) Act 2000 Victoria”** is in direct conflict with the Oath of Allegiance contained in the Constitution of the Commonwealth of Australia Act 1900, in addition to excess of power additional criminal offences do activate and as such must be returned to the Exclusive Jurisdiction of Grand Jury within Victoria.

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**PRIVY COUNCIL AUTHORITY**

**“The whole cause is completely stopped at that stage if an Inter Se question is involved in the matter”**

Source

**“Commonwealth V Bank of NSW  
Privy Council 1949 79 CLR 497 at 576”**

## GROUND 2      PERSONAL INTEREST

40 All Officers of the Supreme Court of Victoria, after the removal of the Oath of Allegiance from the Legal Practice Act 1994 are concealing a criminal act and compounding the criminal activity.

### Crimes Act 1914 Commonwealth

#### Division 2—Judges and magistrates

#### SECTION 34 Judge or magistrate acting oppressively or when interested

##### *Excessive and unreasonable bail*

- 50 (1) A person commits an offence if:
- (a) the person is a judge or magistrate; and
  - (b) the judge or magistrate is required or authorised by law to admit a person accused of an offence to bail; and
  - (c) the judge or magistrate requires excessive and unreasonable bail; and
  - (d) the requirement is an abuse of the judge's or magistrate's office; and
  - (e) the offence referred to in paragraph (b) is an offence against a law of the Commonwealth.

60 **Penalty: Imprisonment for 2 years.**

(2) Subsection (1) does not apply if the judge or magistrate has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

(3) Absolute liability applies to the paragraph (1)(e) element of the offence.

##### *Acting when interested*

- 70 (4) A person commits an offence if:
- (a) the person is a judge or magistrate; and
  - (b) **the judge or magistrate perversely exercises jurisdiction in a matter;** and
  - (c) **the judge or magistrate has a personal interest in the matter;** and
  - (d) the jurisdiction is federal jurisdiction.

**Penalty: Imprisonment for 2 years.**

## GROUND 3      FRAUD

80 The Law of fraud states that any order or judgement attained with fraud is void in Law. The jurisdiction of the Supreme Court of Victoria comes from the Constitution Act of the State of Victoria; such Constitution is subject to the superior Act, the Constitution of the Commonwealth of Australia. The instant that the Crown was removed without the referendum process, fraud activated. **The judgement of Justice Habersberger is tainted with fraud.**

#### **GROUND 4 UNITED NATIONS**

On the 24<sup>th</sup> September 1999, the United Nations allegedly issued an edict that all Governments of the World surrender their sovereignty into the United Nations. On 6<sup>th</sup> November 1999 the Electors of the Commonwealth of Australia voted by referendum to retain the Monarch and rejected a proposed Republic, with no knowledge whatsoever in relation to the United Nations nor the ramifications and consequences of **AGENDA 21**. All of which is and remains **fraud** by all concerned on the people of Australia, accordingly a number of people have Grand Jury Hearings pending, relating to fraud, treason and Misprison of treason. All Supreme Court Officers involved in this litigation have concealed the criminal offences, inclusive of officers of the defendant.

#### **GROUND 5 AGENDA 21 (Abolition of ALL private ownership)**

On the 6<sup>th</sup> November 1999 all Constitutions, State and Commonwealth were secretly suspended and a Socialist – Communist agenda imposed under the direction and auspices of the United Nations “**Agenda 21**” under the control and direction of international **Freemasonry**, because of this it is pointless to base this Proposed Notice of Appeal on either Statute or Common Law because of the concealed and unlawful suspension.

Agenda 21 was adopted by more than 178 Governments at the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro, Brazil from June 3-14 1992. **The Australian Keating Government committed Australia to a persistent plan towards World Communism at the Rio de Janeiro Earth Summit Conference in June 1992 when it agreed to Agenda 21.**

**AGENDA 21 is a comprehensive plan of action to be taken globally, nationally and locally by organizations of the United Nations System, Governments and Major Groups in every area in which humans impact on the environment.**

Since 1994 the Keating government has been sending early progress reports to the United Nations on ‘**sustainable development**’ as required by **Agenda 21**. The plans envisage **abolition of all private ownership including land and housing** to be confirmed by the Kyoto Protocols.

Officers of the Supreme Court of Victoria, **inclusive of Justice Habersberger** have concealed this.

#### **GROUND 6 The CONSTITUTIONAL GRANT**

All Officers of the Victorian Supreme Court are operating outside of the Constitutional Grant of Power, granted or derived from the Victorian Constitution Act of 1975, formerly the 1855 Victorian Constitution Act. As amended from the 1854 Bill, the 1855 Act, an Act of the United Kingdom Parliament **was not repealed in the United Kingdom** prior to the replacement in 1975, under the then Governor Henry Winneke.



## **GROUND 7      ULTRA VIRES**

By enactment of the Courts and Tribunals Legislation Further Amendment Act 2000 on 5<sup>th</sup> September 2000, such Act at part 2 removed the Oath of Allegiance to Queen Elizabeth the  
130 Second from the Legal Practice Act 1994. By such enactment the legislation was **Ultra Vires**  
to the Constitution of the State of Victoria and **Ultra Vires** to the Constitution of the  
Commonwealth of Australia in addition to a criminal offence.

## **GROUND 8      CRIMINAL OFFENCES**

By such enactment of above mentioned legislation the element and criminal offence of  
Treason (**Breach of Allegiance**) did occur, meaning in law the Judge, lawyers and respective  
law firms involved in this matter are currently operating outside of the Constitution of  
Victoria and Australia, in addition to committing the criminal offence of Treason (**Breach of**  
140 **Allegiance**) and Misprison of Treason (**Concealment of Treason**).

## **GROUND 9      CONCEALMENT of OFFENCES**

On January 1 2004, the Government of Western Australia removed both the Crown and Her  
Majesty from Law within Western Australia **without the statutory referendum**. All  
concerned in this litigation have concealed this revealed fact, inclusive of the defendant, the  
ANZ Executors and Trustee Company Limited and the parent bank of such defendant, the  
ANZ Banking Group.

150

## **GROUND 10      CONCEALMENT of CRIMINAL CHARGE**

The current Prime Minister of Australia, Julia Gillard, a Federal Politician in the House of  
Representatives in the Lalor seat at Werribee, Victoria **remains pending** a Grand Jury  
hearing lodged **29 January 2007**, in relation to the Western Australian fraud / treason /  
Misprison of treason which is the base of the criminal charge on Julia Gillard. All concerned  
in this litigation, **the defendant and the Supreme Court**, inclusive of Associate Justice's  
Muktar, Daly and Randall have concealed the act of Treason out of Western Australia, which  
amounts to Misprison of treason.

160 The base of the criminal charge on Gillard;

**JULIA GILLARD – CHARGE and SUMMONS**  
**(January 29, 2007 – Melbourne Magistrates Court)**  
**(January 29, 2007 – Grand Jury Application)**

*On 1<sup>st</sup> January 2004, the Government of West Australia at Perth, Western  
Australia, inclusive of the Executive Legislature and Judicial arms, in  
agreement with “the Commonwealth”, did enact an overt Act, titled, “Acts  
Amendment and Repeal Courts and Legal Practices Act 2003 WA”.*

*By such enactment an Act of Treason was committed.*

*Such Treason has been concealed by the defendant, since the date of  
enactment up to and inclusive of the present date.*

170

## **GROUND 11 DEED of GUARANTEE**

All Supreme Court Officers within the State of Victoria inclusive officers of the ANZ Bank and their respective Trustee Company, the defendant, have concealed this crime and the respective offences, fraud, treason and Misprison of treason.

### **The concealment enabled a Deed of Guarantee.**

180 The Australian Government represented by Mr Wayne Swan did sign the Deed of Guarantee in respect to the Australian Government Guarantee Scheme for large deposits and wholesale funding on **20 November 2008**. In addition the Australian Government Solicitor, Mr George Witynski, Deputy Chief General Counsel did give a written legal opinion in relation to the validity and enforceability of Deed of Guarantee **omitting the evident fact** that both Crown and Queen had been removed **without the statutory referendums**.

## **GROUND 12 SEVEN HIGH COURT JUDGES**

Seven High Court Judges presently presiding or retired have been formally charged and **remain pending** Grand Jury hearings. The seven Judges are;

- 190
1. **Justice Michael Kirby**
  2. **Justice Ian Callinan**
  3. **Justice Anthony Gleeson**
  4. **Justice William Gummow**
  5. **Justice John Heydon**
  6. **Justice Kenneth Hayne**
  7. **Justice Susan Crennan**

## 200 **GROUND 13**

**Justice Michael Kirby (Grand Jury Defendant)**

*The Defendant a Commonwealth Judicial Officer on 3rd August 2006, at the Canberra branch of the High Court, such branch attached to the Melbourne branch of the High Court, did intentionally and perversely exercise Federal Jurisdiction, in that the defendant did protect the current Governor General Mr Michael Jeffrey from a Grand Jury Application lodged with the Full Court of the Victorian Supreme Court, by hearing a matter in a closed Court procedure disallowing representation at the hearing.*

210

#### **GROUND 14**

Justice Ian David Francis Callinan (Grand Jury Defendant)

*The Defendant, a Commonwealth Judicial Officer on 3rd August 2006, at the Canberra branch of the High Court, such branch attached to the Melbourne branch of the High Court did intentionally and perversely exercise Federal Jurisdiction, in that the defendant did protect the current Governor General Mr Michael Jeffrey from a Grand Jury Application lodged with the Full Court of the Victorian Supreme Court, by hearing a matter in a closed Court procedure disallowing representation at the hearing.*

220

#### **GROUND 15**

Justice Anthony Murray Gleeson (Grand Jury Defendant)

*On 1<sup>st</sup> January 2004, the Government of Western Australia at Perth, Western Australia, inclusive of the Executive Legislature and Judicial arms, in agreement with "the Commonwealth", did enact an overt Act, titled, "Acts Amendment and Repeal Courts and Legal Practice Act 2003 WA". By such enactment an Act of Treason was committed. Such Treason has been concealed by the defendant, since the date of enactment up to and inclusive of the present date.*

230

#### **GROUND 16**

Justice William Montague Charles Gummow (Grand Jury Defendant)

*On 1<sup>st</sup> January 2004, the Government of Western Australia at Perth, Western Australia, inclusive of the Executive Legislature and Judicial arms, in agreement with "the Commonwealth", did enact an overt Act, titled, "Acts Amendment and Repeal Courts and Legal Practice Act 2003 WA". By such enactment an Act of Treason was committed. Such Treason has been concealed by the defendant, since the date of enactment up to and inclusive of the present date.*

240

## **GROUND 17**

Justice John Dyson Heydon (Grand Jury Defendant)

250 *On 1<sup>st</sup> January 2004, the Government of Western Australia at Perth, Western Australia, inclusive of the Executive Legislature and Judicial arms, in agreement with “the Commonwealth”, did enact an overt Act, titled, “Acts Amendment and Repeal Courts and Legal Practice Act 2003 WA”. By such enactment an Act of Treason was committed. Such Treason has been concealed by the defendant, since the date of enactment up to and inclusive of the present date.*

## **GROUND 18**

Justice Kenneth Madison Hayne(Grand Jury Defendant)

260 *On 1st January 2004, the Government of Western Australia at Perth, Western Australia, inclusive of the Executive Legislature and Judicial arms, in agreement with “the Commonwealth”, did enact an overt Act, titled, “Acts Amendment and Repeal Courts and Legal Practice Act 2003 WA”. By such enactment an Act of Treason was committed. Such Treason has been concealed by the defendant, since the date of enactment up to and inclusive of the present date.*

## **GROUND 19**

Justice Susan Maree Crennan (Grand Jury Defendant)

270 *On 1<sup>st</sup> January 2004, the Government of Western Australia at Perth, Western Australia, inclusive of the Executive Legislature and Judicial arms, in agreement with “the commonwealth”, did enact an overt Act, titled, “Acts Amendment and Repeal Courts and Legal Practice Act 2003 WA”. By such enactment an Act of Treason was committed; such Treason has been concealed by the defendant, since the date of enactment up to and inclusive of the present date.*

## **GROUND 20**

Robert Hulls (Grand Jury Defendant)

280 *The Defendant since 1st January 2004, up to and inclusive of present date, has concealed from the People and Electors of the Commonwealth of Australia, the primary Act of Treason, when the overt Act titled “Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 WA” was enacted 1st January 2004, at Perth Western Australia, the hidden purpose of such Act was to unlawfully and illegally remove Her Majesty Queen Elizabeth II, such an Act was and remains a total breach of the Oath of Allegiance, in addition to a breach of the Oath of Office.*

## **GROUND 21**

Major General M. Jeffery (Grand Jury Defendant)

*The defendant within the Commonwealth of Australia during the period from 1<sup>st</sup> January 2004 up to and inclusive of present date did commit the offence of Common Law Treason by consent to the overt Act titled "Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 WA" enacted at Perth Western Australia on 1st January 2004.*

290

## **GROUND 22**

John Howard (Grand Jury Defendant)

*The defendant within the Commonwealth of Australia during the period from 1<sup>st</sup> January 2004 up to and inclusive of present date did commit the offence of Common Law Treason by consent to the overt Act titled "Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 WA" enacted at Perth Western Australia on 1<sup>st</sup> January 2004.*

300

## **GROUND 23**

Kim Beazley (Grand Jury Defendant)

*The defendant within the Commonwealth of Australia during the period from 1<sup>st</sup> January 2004 up to and inclusive of present date did commit the offence of Common Law Treason by consent to the overt Act titled "Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 WA" enacted at Perth Western Australia on 1st January 2004.*

310

## **GROUND 24**

Damian Bugg (Grand Jury Defendant)

*The defendant during the period 1st January 2004 up to and inclusive of present time at Perth Western Australia did commit the offence of common law treason by agreeing to the enactment of the Overt Act, titled, "Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 WA", the purpose was to remove and replace Her Majesty Queen Elizabeth II, Her Heirs, Her Successors and Her Subjects without lawful consent of the People nor the knowledge of the People The defendant did consent to the Treason by the inclusion of the Supreme Court Act 1935 WA into Part 8 of the Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 WA.*

320

## **GROUND 25**

Damian Bugg (Grand Jury Defendant)

330 *The defendant at the Melbourne Magistrates Court Victoria on 25th September 2006 or thereabouts did Attempt to Pervert the Course of Justice in relation to the Judicial Power of the Commonwealth by making Application to Magistrate C Randazzo (Out of Jurisdiction) for an order to take over and have struck out Private Prosecution Charges filed and served by the informant against Justice Michael Donald Kirby, a current Judge of the High Court of Australia, Returnable 25<sup>th</sup> September 2006.*

## **GROUND 26**

Wayne Martin (Grand Jury Defendant)

340 *The defendant during the period 1<sup>st</sup> January 2004 up to and inclusive of present time at Perth Western Australia did commit the offence of common law treason by agreeing to the enactment of the Overt Act, titled, "Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 WA", the purpose was to remove and replace Her Majesty Queen Elizabeth II, Her Heirs, Her Successors and Her Subjects without lawful consent of the People nor the knowledge of the People The defendant did consent to the Treason by the inclusion of the Supreme Court Act 1935 WA into Part 8 of the Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 WA.*

350

## **GROUND 27**

James McGinty (Grand Jury Defendant)

*The defendant during the period 1<sup>st</sup> January 2004 up to and inclusive of present time at Perth Western Australia did commit the offence of common law treason by enacting the Overt Act, titled, Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 WA, the purpose was to remove and replace Her Majesty Queen Elizabeth II, Her Heirs, Her Successors and Her Subjects without lawful consent of the People nor the knowledge of the People.*

360

## **GROUND 28**

James Maley (Grand Jury Defendant)

370 *The defendant during the period 1st January 2004 up to and inclusive of present time Perth Western Australia did commit the offence of common law treason by agreeing to the enactment of the Overt Act, titled, Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 WA, the purpose was to remove and replace Her Majesty Queen Elizabeth II, Her Heirs, Her Successors and Her Subjects without lawful consent of the People nor the knowledge of the People. The defendant did consent to the Treason by the inclusion of the Supreme Court Act 1935 WA into Part I of the Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 WA.*

## **GROUND 29**

**Steve Kons (Grand Jury Defendant)**

*The Defendant since 1<sup>st</sup> January 2004, up to and inclusive of present date, has concealed from the People and Electors of the Commonwealth of Australia, the Act of Treason, when the overt Act titled "Acts Amendment and Repeal (Courts and Legal Practice ) Act 2003 WA" was enacted 1<sup>st</sup> January 2004, at Perth Western Australia, the hidden purpose of such Act was to unlawfully and illegally remove Her Majesty Queen Elizabeth II, such an Act was and remains a total breach of the Oath of Allegiance, in addition to a breach of the Oath of Office.*

380

## **GROUND 30**

**Phillip Ruddock (Grand Jury Defendant)**

*The, " Defendant since 1st January 2004, up to and inclusive of present date, has concealed from the People and Electors of the Commonwealth of Australia, the prim Act of Treason, when the overt Act titled "Acts Amendment and Repeal (Courts and Legal Practice ) Act 2003 WA" was enacted 1<sup>st</sup> January 2004, at ,Perth Western Australia, the hidden purpose of such Act was to unlawfully and illegally remove Her Majesty Queen Elizabeth II, such an Act was and remains a total breach of the Oath of Allegiance, in addition to a breach of the Oath of Office.*

390

## **GROUND 31**

**Simon Corbell (Grand Jury Defendant)**

*The Defendant since 1st January 2004, up to and inclusive of present date, has concealed from the People and Electors of the Commonwealth of Australia, the primary Act of Treason, when the overt Act titled "Acts Amendment and Repeal (Courts and Legal Practice ) Act 2003 WA" was enacted 1<sup>st</sup> January 2004, at Perth Western Australia, the hidden purpose of such Act was to unlawfully and illegally remove Her Majesty Queen Elizabeth II, such an Act was and remains a total breach of the Oath of Allegiance, in addition to a breach of the Oath of Office.*

400

## **GROUND 32**

**Dr Peter Toyne (Grand Jury Defendant)**

*The Defendant since 1st January 2004, up to and inclusive of present date, has concealed from the People and Electors of the Commonwealth of Australia, the primary Act of Treason, when the overt Act titled "Acts Amendment and Repeal (Courts and Legal Practice ) Act 2003 WA" was enacted 1<sup>st</sup> January 2004, at Perth Western Australia, the hidden purpose of such Act was to unlawfully and illegally remove Her Majesty Queen Elizabeth II, such an Act was and remains a total breach of the Oath of Allegiance, in addition to a breach of the Oath of Office.*

410

### **GROUND 33**

Robert John Debus (Grand Jury Defendant)

420 *The Defendant since 1<sup>st</sup> January 2004, up to and inclusive of present date, has concealed from the People and Electors of the Commonwealth of Australia, the Act of Treason, when the overt Act titled "Acts Amendment and Repeal (Courts and Legal Practice ) Act 2003 WA" was enacted 1<sup>st</sup> January 2004, at Perth Western Australia, the hidden purpose of such Act was to unlawfully and illegally remove Her Majesty Queen Elizabeth II, such an Act was and remains a total breach of the Oath of Allegiance, in addition to a breach of the Oath of Office.*

### **GROUND 34**

Michael Atkinson (Grand Jury Defendant)

430 *The Defendant since 1<sup>st</sup> January 2004, up to and inclusive of present date, has concealed from the People and Electors of the Commonwealth of Australia, the primary Act of Treason, when the overt Act titled "Acts Amendment and Repeal (Courts and Legal Practice ) Act 2003 WA" was enacted 1<sup>st</sup> January 2004, at Perth Western Australia, the hidden purpose of such Act was to unlawfully and illegally remove Her Majesty Queen Elizabeth II, such an Act was and remains a total breach of the Oath of Allegiance, in addition to a breach of the Oath of Office.*

### **GROUND 35**

Kerry Shine (Grand Jury Defendant)

440 *The Defendant since 1<sup>st</sup> January 2004, up to and inclusive of present date, has concealed from the People and Electors of the Commonwealth of Australia, the Act of Treason, when the overt Act titled "Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 WA" was enacted 1<sup>st</sup> January 2004, at Perth Western Australia, the hidden purpose of such Act was to unlawfully and illegally remove Her Majesty Queen Elizabeth II, such an Act was and remains a total breach of the Oath of Allegiance, in addition to a breach of the Oath of Office.*

### **GROUND 36**

Robert Cock (Grand Jury Defendant)

450 *The defendant within the commonwealth of Australia during the period from 1<sup>st</sup> January 2004 up to and inclusive of present date did commit the offence of Common Law Treason by consent to the overt Act titled "Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 WA" enacted at Perth Western Australia on 1<sup>st</sup> January 2004.*



### **GROUND 37**

John Bowler (Grand Jury Defendant)

460 *The defendant at Perth Western Australia in the period of 2003 up to and inclusive of present time by the introduction and enactment on 1st January 2004, of the overt Act, titled "Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 WA" did agree to and consented to the overt Act thereby committing the Common Law offence of Treason.*

### **GROUND 38**

Darren Renton (Grand Jury Defendant)

470 *The defendant during the period 1<sup>st</sup> January 2004 up to and inclusive of present time Perth Western Australia did commit the offence of common law treason by agreeing to the enactment of the Overt Act, titled, "Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 WA", the purpose was to remove and replace Her Majesty Queen Elizabeth II, Her Heirs, Her Successors and Her Subjects without lawful consent of the People nor the knowledge of the People The defendant did consent to the Treason by the inclusion of the Supreme Court Act 1935 WA into Part 8 of the Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 WA.*

### **GROUND 39**

Robert Mitchell (Grand Jury Defendant)

480 *The defendant during the period 1<sup>st</sup> January 2004 up to and inclusive of present time Perth Western Australia did commit the offence of common law treason by agreeing to the enactment of the Overt Act, titled, "Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 WA", the purpose was to remove and replace Her Majesty Queen Elizabeth II, Her Heirs, Her Successors and Her Subjects without lawful consent of the People nor the knowledge of the People The defendant did consent to the Treason by the inclusion of the Supreme Court Act 1935 WA into Part 8 of the Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 WA.*

### **GROUND 40**

Christine Wheeler (Grand Jury Defendant)

490 *The defendant during the period 1<sup>st</sup> January 2004 up to and inclusive of present time at Perth Western Australia did commit the offence of common law treason by agreeing to the enactment of the Overt Act, titled, Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 WA, the purpose was to remove and replace Her Majesty Queen Elizabeth II, Her Heirs, Her Successors and Her Subjects without lawful consent of the People nor the knowledge of the People The defendant did consent to the Treason by the inclusion of the Supreme Court Act 1935 WA into Parl 8 of the Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 WA.*

## **GROUND 41**

Christopher Steytler (Grand Jury Defendant)

500 *The defendant during the period 1<sup>st</sup> January 2004 up to and inclusive of present time at Perth Western Australia did commit the offence of common law treason by agreeing to the enactment of the Overt Act, titled, "Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 WA", the purpose was to remove and replace Her Majesty Queen Elizabeth II, Her Heirs, Her Successors and Her Subjects without lawful consent of the People nor the knowledge of the People. The defendant did consent to the Treason by the inclusion of the Supreme Court Act 1935 WA into Part 8 of the Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 WA.*

## 510 **GROUND 42**

Michael Buss (Grand Jury Defendant)

*The defendant during the period 1<sup>st</sup> January 2004 up to and inclusive of present time at Perth Western Australia did commit the offence of common law treason by agreeing to the enactment of the Overt Act, titled, Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 WA, the purpose was to remove and replace Her Majesty Queen Elizabeth II, Her Heirs, Her Successors and Her Subjects without lawful consent of the People nor the knowledge of the People The defendant did consent to the Treason by the inclusion of the Supreme Court Act 1935 WA into Part 8 of the Acts Amendment and Repeal*  
520 *(Courts and Legal Practice) Act 2003 WA.*

## **GROUND 43**

Christopher Pullin (Grand Jury Defendant)

*The defendant during the period 1<sup>st</sup> January 2004 up to and inclusive of present time at Perth Western Australia did commit the offence of common law treason by agreeing to the enactment of the Overt Act, titled, Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 WA, the purpose was to*  
530 *remove and replace Her Majesty Queen Elizabeth II, Her Heirs, Her Successors and Her Subjects without lawful consent of the People nor the knowledge of the People The defendant did consent to the Treason by the inclusion of the Supreme Court Act 1935 WA into Part 8 of the Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 WA.*

#### **GROUND 44**

John McKechnie (Grand Jury Defendant)

540        *The defendant during the period 1<sup>st</sup> January 2004 up to and inclusive of present time at Perth Western Australia did commit the offence of common law treason by agreeing to the enactment of the Overt Act, titled, Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 WA, the purpose was to remove and replace Her Majesty Queen Elizabeth II, Her Heirs, Her Successors and Her Subjects without lawful consent of the People nor the knowledge of the People The defendant did consent to the Treason by the inclusion of the Supreme Court Act 1935 WA into Part 8 of the Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 WA.*

#### **GROUND 45**

550        Audrey Braddock (Grand Jury Defendant)

*The defendant during the period 1<sup>st</sup> January 2004 up to and inclusive of present time at Perth Western Australia did commit the offence of common law treason by agreeing to the enactment of the Overt Act, titled, Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 WA, the purpose was to remove and replace Her Majesty Queen Elizabeth II, Her Heirs, Her Successors and Her Subjects without lawful consent of the People nor the knowledge of the People. The defendant did consent to the Treason by the inclusion of the Supreme Court Act 1935 WA into Part I of the Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 WA.*

#### **GROUND 46**

C Randazzo (Grand Jury Defendant)

*The defendant at Melbourne Magistrates Court Victoria on 25th September 2006, did intentionally and perversely exercise Federal Jurisdiction in a matter where a personal interest was involved, in that the defendant chose to purportedly grant an Order "in excess of Jurisdiction", to protect her salary and superannuation in simple words, "to keep her job".*

#### **GROUND 47**

Ian Leslie Grey (Grand Jury Defendant)

570        *The Defendant did at Melbourne Magistrate Court in the State of Victoria on the 15<sup>th</sup> December 2006, did unlawfully agree with the Commonwealth Director of Public Prosecutions, Mr Damian Bugg, and the Director of Public Prosecutions Victoria Mr Paul Coghlan to conceal the serious indictable offence of Treason by failing to prosecute the offence or hold the offenders to bail in accordance with Rule of Law. The offence of Treason was created by the Overt Act of Treason, titled, "Acts Amendment and Repeal Courts and Legal Practice Act 2003 WA", [Part 5 & 8 of such Act] such amendments to such Act were agreed to by the State of Western Australia and "the Commonwealth" without lawful involvement nor consent of the Electorate in accordance with Section 73(2) of the Western Australian Constitution Act in addition to Section 128 of the Commonwealth Constitution Act 1900, such Act being the Superior Act in Australia encompassing a Law of the United Kingdom involving both Houses of the United Kingdom, the House of Commons And House of Lords.*

580

## **GROUND 48**

Damian John Bugg (Grand Jury Defendant)

590 *The Defendant did at Melbourne Magistrate Court in the State of Victoria on the 15<sup>th</sup> December 2006, did unlawfully agree with the Chief Magistrate of the Magistrates Court of Victoria, Mr Ian Gray, and the Director of Public Prosecutions Victoria Mr Paul Coghlan to conceal the serious indictable offence of Treason by failing to prosecute offence or hold the offenders to bail in accordance with Rule of Law. The offence of Treason was created by the Overt Act of Treason, titled, "Acts Amendment and Repeal Courts and Legal Practice Act 2003 WA", [Part 5 & 8 of such Ac] such amendments to such Act were agreed to by the State of Western Australia and "the Commonwealth" without lawful involvement nor consent of the Electorate in accordance with Section 73{2} of the Western Australian Constitution Act in addition to Section 128 of the Commonwealth Constitution Act 1900, such Act being the Superior Act in Australia encompassing a Law of the United Kingdom involving both Houses of the United Kingdom, the House of Commons And House of Lords.*

600

## **GROUND 49**

Paul Coghlan (Grand Jury Defendant)

610 *The Defendant did at Melbourne Magistrate Court in the State of Victoria on the 15<sup>th</sup> December 2006, did unlawfully agree with the Chief Magistrate of the Magistrates Court of Victoria, Mr Ian Gray, and the Commonwealth Director of Public Prosecutions, Mr Damian Bugg to conceal the serious indictable offence of Treason by failing to prosecute the offence or hold the offenders to bail in accordance with Rule of Law. The offence of Treason was created by the Overt Act of Treason, titled, 'Acts Amendment and Repeal Courts and Legal Practice Act 2003 WA', [Part 5 & 8 of such Act] such amendments to such Act were agreed to by the State of Western Australia and "the Commonwealth" without lawful involvement nor consent of the Electorate in accordance with Section 73(2) of the Western Australian Constitution Act in addition to Section 128 of the Commonwealth Constitution Act 1900, such Act being the Superior Act In Australia encompassing a Law of the United Kingdom involving both Houses of the United Kingdom, the House of Commons And House of Lords.*

620

## GROUND 50

This particular ground involves 8 individuals, all of which have been formally presented before the Melbourne Magistrates Court where they were protected by fellow judicial officers who declined to present, thereby permitting the legal right to put each individual before a Grand Jury in accordance with Section 354 of the Crimes Act 1958 Victoria, followed by Section 80 of the Commonwealth Constitution.

The individuals and respective Grand Jury lodgement dates are:

Charles Wheeler	19-03-2004
Major General M Jeffery	28-05-2004
Robert Brooking	28-05-2004
Peter Buchanan	28-05-2004
Stephen Charles	28-05-2004
Alex Chernov	28-05-2004
John Winneke	28-05-2004
Philip Cain	28-05-2004
Paul Coghlan	28-05-2004

## GROUND 51 GOVERNOR ALEX CHERNOV

The principal person in the above mentioned group is Alex Chernov, a former judge of the Supreme Court of Victoria (Court of Appeal), a pending Grand Jury defendant, but now, **the current Governor of Victoria**, who is in agreement with the former and present Governor of the State of Western Australia to depose and substitute Her Majesty Queen Elizabeth the Second **without the required referendums** to achieve such objective. In simple words, the electorate has been denied the referendum right in the decision.

In relation to the recent appointment of Alex Chernov into the Office of Governor of the State of Victoria, it was not disclosed to the people of Victoria, in particular the Electors of the State of Victoria and Electors of the Commonwealth of Australia, that Alex Chernov is and remains a Grand Jury Defendant in accordance with the Legal Right set out under Section 354 of the Crimes Act 1958 Victoria. The purported appointment amounts to malfeasance in Public Office and is in excess of power in addition to criminal offences against the Constitution and the people. **The critical inter se issue here is found in Section 12 of the Commonwealth Constitution** where the Governor of the State (Governor Chernov) issues the writ for the State Senators to sit in the Commonwealth Parliament.

## GROUND 52

670 The concealment of all revealed criminal activity by Officers of the ANZ Executors and Trustee Company Limited and their parent Bank, the ANZ Bank, activates Section 3AA Crimes Act 1914 and Section 80 Criminal Code Act 1995 Commonwealth.

### CRIMES ACT 1914 - SECT 3AA (Commonwealth)

#### State offences that have a federal aspect

##### Object

(1A) The object of this section is to identify State offences that have a federal aspect because:

(a) they potentially fall within Commonwealth legislative power **because of the elements of the State offence**; or

680 (3) A State offence is taken to be covered by paragraph (1)(c) if the conduct constituting the State offence:

(a) affects the interests of:

(i) **the Commonwealth**; or

(ii) **an authority of the Commonwealth**; or

(iii) **a constitutional corporation**; or

(b) was engaged in by a **constitutional corporation**; or

(c) was engaged in in a **Commonwealth place**; or

(d) involved the **use of a postal service** or other like service; or

(e) involved an **electronic communication**; or

(f) **involved trade or commerce**:

690 (i) between **Australia and places outside Australia**; or

(ii) **among the States**; or

(iii) within a Territory, between a State and a Territory or between 2 Territories; or

(g) involved:

(i) **banking** (other than State banking not extending beyond the limits of the State concerned); or

(ii) **insurance** (other than State insurance not extending beyond the limits of the State concerned); or

(h) relates to a **matter outside Australia**; or

700 (i) relates to a matter in respect of which an **international agreement** to which Australia is a party imposes obligations to which effect **could be given by the creation of an offence against the domestic laws** of the parties to the agreement; or

(j) relates to a matter that affects the **relations between Australia and another country or countries** or is otherwise a subject of international concern.

“**constitutional corporation**” means a corporation to which **paragraph 51(xx)** of the Constitution applies.

“**State offence**” means an offence against a **law of a State**.

710 **Commonwealth Constitution**

*Section 51(xx.)*

*Foreign corporations and trading or financial corporations formed within the limits of the Commonwealth:*

**TREASON and MISPRISON OF TREASON**

**Criminal Code Act 1995, Section 80**

*Chapter 5 -- The security of the Commonwealth*

*Division 80 -- Treason and urging violence*

720 *Subdivision B--Treason*

**80.1 Treason**

- (1) A person commits an offence if the person:
- (a) causes the death of the Sovereign, the heir apparent of the Sovereign, the consort of the Sovereign, the Governor-General or the Prime Minister; or
  - (b) **causes harm to the Sovereign, the Governor-General** or the Prime Minister resulting in the death of the Sovereign, the Governor-General or the Prime Minister; or
  - (c) causes harm to the Sovereign, the Governor-General or the Prime Minister, or imprisons or restrains the Sovereign, the Governor-General or the Prime Minister; or
  - (d) **levies war, or does any act preparatory to levying war, against the Commonwealth;** or
  - (g) instigates a person who is not an Australian citizen to make an armed invasion of the Commonwealth or a Territory of the Commonwealth.

730

**Penalty: Imprisonment for life.**

740

- (2) A person commits an offence if the person:
- A. receives or assists another person who, to his or her knowledge, has committed an offence against this Subdivision (other than this subsection) with the intention of allowing him or her to escape punishment or apprehension; or
  - B. knowing that another person intends to commit an offence against this Subdivision (other than this subsection), does not inform a constable of it within a reasonable time or use other reasonable endeavours to prevent the commission of the offence.

750

**Penalty: Imprisonment for life.**

**ORDERS SOUGHT**

760

1. That all inter se work is exclusive jurisdiction of the High Court.
2. In consideration of the fact that High Court Judges have been charged pending Grand Jury, the matter should go immediately to Grand Jury for all Grand Jury applications to be heard.
3. A trial of the issue.  
*Judiciary Act 1903, Section 77 (C)*
4. In the alternative, the matter be removed to the Privy Council under State jurisdiction.

770

DATE: 11/ APRIL / 2013

Signature



780

**To: The Respondent**  
Attorney General of Victoria  
Mr Robert Clarke  
121 Exhibition Street, Melbourne.

**TAKE NOTICE:** Before taking any step in the proceedings you must, within **14 DAYS** after service of this application, enter an appearance in the office of the Registry in which the application is filed, and serve a copy on the applicant.

790

The applicants address for service by **registered post** is:

Post Office Box 800  
Werribee Victoria 3030  
Telephone 0487 195 522