

John Mathieson

From: andrew.garrett [REDACTED]
Sent: Friday, 25 September 2015 5:05 PM
To: John Mathieson; 'Finass General'; peter.weekes [REDACTED]
Kenneth.Richards [REDACTED] chris.iordan [REDACTED]
Cc: admin@opi.sa.gov.au; [REDACTED] Ombudsman@ombudsman.sa.gov.au;
agd@agd.sa.gov.au; dpcwebmaster@dpc.sa.gov.au
Subject: Internal Review and application for Financial Assistance under the Public Interest Test
Case funding scheme
Attachments: Email to John Mathieson 16062015 re forward email dated 06062015 to Chief Justice.pdf;
DCCIV-2003-1666-Affidavit - AMG -15092015.pdf; Email Chain with reply dated
30052015 regarding s17 of the FCA Act and open Justice.pdf; Email to Registry regarding
failures to refer of the FCCA dated 30052015.pdf; 13131986 LETR A. Garrett 16 Sep
15.pdf; Email VT to AMG dated 12th May 2015 17.42pm re reasons.pdf; RQ14_01968 s
54W(a) closure.pdf; Email to ICAC Commissioner, SA Public Sector Minister, HH Riordan
J and and SA Governor dated 17092015.pdf
Importance: High

Dear John

Thank you for your FOI decision dated 14th September 2015 in respect to the application for Compensation
I make this application for Internal Review of that decision.

The grounds of the application for Internal Review are set out in the Draft Affidavit dated 15th September
2015 that I propose to file in the District Court of South Australia in respect to my application to reopen the
findings of Master Norman that are referred to in the attached letter from the Commissioner of Taxation
dated 16th September 2015 that is attached and my submissions made in all cases heard by Judicial Officers
in the Victoria Registry.

I am stunned by the level of misconduct of the officers of the two courts in question experienced by me
when I simply sought to adduce new evidence that was not previously in my possession and control ("the
FOI releases") prior to March 2014.

The list of documents that the Court should rely upon in assessing my application for compensation includes
all documents filed in the relevant actions and all documents of an Administrative Nature that have not yet
been produced by the Courts in breach of s17 of the *Federal Court of Australia Act 1976* (Cth) and the
Freedom of Information Act 1982 (Cth)

I do not request copies of all documents filed in the various actions by me or the Respondents in this
proceedings however I request that the schedule of documents to be considered under the compensation
application should nominate all documents in all actions.

My Draft affidavit sets out an excerpt from the Judgment of Mortimer J at paragraph 43 that reveals Her
Honour had regard to the use of Court Resources and absolutely no regard for the justice of the matter in
respect to the new evidence adduced and the proper application of rule 1.32 of the Federal Court Rules.
Worse still all courts have failed to make orders for discovery in accordance with my statements of claim
and or applications for subpoena.....to be clear I find the courts conduct lacking any morality whatsoever.

The focus of Her Honour Mortimer J on the issue of Court Resources makes it clear that there must be an
extraordinary volume of communications and documents of an administrative nature that have not been
produced to me despite my repeated requests under the provisions of the FOI Act in which regard I have
requested the office of the Australian Information Commissioner to review the various FOI decisions
previously made by the two courts. Conveniently the OAIC has clearly set out in a recent decision dated 1st

September 2015 that documents of an administrative Character are those that are related to the allocation of Court Resources.

In relation to FOI requests made to Courts, tribunals and the Official Secretary to the Governor-General, the Freedom of Information Guidelines explain:

The phrase, 'matters of an administrative nature', is not defined in the FOI Act. In *Kline v Official Secretary to the Governor General* the High Court held that the phrase refers to documents that concern 'the management and administration of office resources, such as financial and human resources and information technology'. By contrast, the phrase does not apply to documents that relate to the discharge of a court's or the Governor-General 'substantive powers and functions'. The Court approved a similar distinction drawn by the Full Federal Court in the decision under appeal between the substantive functions or powers of a court or the Governor-General, and the office 'apparatus' supporting the exercise or performance of those substantive powers and functions.¹

As a delegate of the Information Commissioner, I have decided under s 54W(a) of the FOI Act not to undertake reviews of the two Federal Court decisions identified above, on the basis that the IC review applications are lacking in substance. I am satisfied that you are seeking documents that relate to you and your Federal Court applications. These are not documents relating to the 'management or administration of office resources'.

I have pointed out the error in the Information Commissioner's decision by virtue of reference to Mortimer J's Judgment dated 21st November 2014 given in VID 248 of 2014.

Davies J had no regard for the Federal Court Rules 22.01 – 22.07 in Her Honours decisions 13th May 2015 19th May 2015 and 3rd August 2015 in VID 158 –VID 166 of 2015 and VID 739 of 2014 for reasons that are far from clear to me, similarly the Honourable Justice Beach did not even refer to the Notice to Admit filed in VID 731 of 2014 dated 1st May 2015 despite being clearly on notice of my application to reopen on the basis of the admitted facts in VID 158-VID 166 of 2015.

My emails to you dated 30th May 2015 and 16th June 2015 (annexing email to the Chief Justice dated 6th June 2015) are of particular relevance to the application for Compensation and the fundamental breach of my Human Rights by the Courts involved, the use of the provisions of the Bankruptcy Act 1966 as a barrier to Justice as well as s37AO of the Federal Court of Australia Act is simply appalling.....especially in respect to an self-represented litigant.

I have the clear impression that Registrar Caporale and Justice Davies, between them, have whipped the other Judicial Officers of both Courts into a frenzy of jurisdictional error which led to the referral from the Chief Justice dated 28th January 2015 to Justice beach to hear all appeals and while I am not a qualified person I have met similar persons and I verily believe that Registrar Caporale and Justice Davies fall into the category where the definition of Psychopath/ Narcissistic personality types applies.

On no less than 12 separate occasions those FOI materials were presented by me to the various judicial officers and not referred to in any judgment; by example see the judgment of Pagone referred to in the Commissioner's Letter dated 16th September 2015;

3. Further, we apprehend these requests to be yet another attempt to reagitate matters previously litigated. We draw your attention to paragraphs 18 and 19 of the Reasons for Judgment of Pagone J in *Garrett v Commissioner of Taxation* [2015] FCA 117 where his Honour states:

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

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

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

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

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

The relief sought in paragraph 8.1.3 expressly seeks to reopen the matters previously determined by the District Court of South Australia. Paragraph 8.1.3 asks this court to order a party to commence proceedings in another court to bring about a different

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

19. Paragraph 8.1.2 of Mr Garrett's originating application refers to the 'Amending Activity Statement GST Corrections', which formed part of the defence that Master Norman found to lack merit. Mr Garrett had sought to argue before the Master that he had made some self-assessed amendments of GST on behalf of the Andrew Garrett Family Trust in respect of tax periods that occurred between 1 July 2002 and 30 June 2004, which resulted in there being no tax debt owed by Mr Garrett in connection with the Andrew Garrett Family Trust as at 24 October 2008. It was plain to Master Norman, as was the fact, that the self-assessed amendments of GST involved a claim for input tax credits made on behalf of the Andrew Garrett Family Trust more than four years after the tax period to which they were attributable and, therefore, that the Andrew Garrett Family Trust was no longer entitled to the credits (if it ever was entitled) pursuant to s 105-55 of Schedule 1 to the Taxation Administration Act 1953 (Cth). The evidence before Master Norman was that the credits claimed in the self-assessed GST amendments had initially been processed in error, but that they were reversed once it was realised that the Business Activity Statements which contained the claimed credits were lodged outside the four year time limit. The "corrections" sought to be reinstated by the writ of mandamus sought in paragraph 8.1.2 of the originating application refers to those corrections which were in issue and considered and determined by the District Court of South Australia.

It is my respectful submissions that the degree of malfeasance in public office and unlawful judgments delivered by various judicial officers is only exceeded by the conduct of the ATO and counsel representing the ATO.

It is of course difficult to comprehend how the Commissioner of Taxation has concerns about re-litigation when neither the Federal Court of Australia and the Federal Circuit Court of Australia have referred to the evidence that was presented on 12 separate occasions.

I note that the FOI Released has revealed that you have seen fit to brief counsel in respect to my application for compensation in which regard I remind you of the Hardiman Principle, all too often administrative officers adopt the adversarial Bethcar Strategy which has absolutely no application in Administrative Law.

The conduct of each public and judicial officer of the Courts involved is unlawful within the meaning of the findings of the High Court in *Project Blue Sky*.

I make this application to the relevant officer to make a grant of Financial Assistance to me under the Public Interest Test Case Funding scheme to match that of the office of the Commonwealth Attorney General that was accepted by me on the 30th July 2015

Were it not for the conduct of the Federal Court of Australia and the Federal Circuit Court the foreshadowed proceedings in the High Court would not be necessary consequently it would be unreasonable to expect the office of the Commonwealth Attorney General to shoulder the whole of the Financial Burden in such circumstances.

Please confirm to me by return communication when I can expect the application for compensation to be finalised in which regard I note that making such a decision involves the application of morals in the exercise of discretion that have been notably lacking thus far.

I look forward to receiving the internal review of your FOI decision as discussed I refer to our recent Phone Conversation and that you noted my allegations. It is my view that the public confidence in the Federal Court and the Federal Circuit court's ability to properly and impartially administer justice will be severely shaken based on my experience in both the South Australian and Victorian Registries in which regard I direct your attention to a recent communique to Commissioner Lander in South Australia , formerly a Judicial Officer of the Federal Court dated 17th September 2015.

The influence of the alleged secret society with "Mafia Proportions" referred to in the South Australian Parliament in 1981 in the administration of Justice that is referred to in the aforementioned communique must be brought to an end in the Public Interest.

Mr Viscariello has been of great service to this State having invested heavily in his pursuit of exposing the corruption that you know only too well is rampant and out of Control and has remained this for over 34 years which regard I direct your attention to the attached excerpt from the House of Assembly reading at the time of the passing of the Legal Practitioners Act 1981 (SA)

"The Law Society is now assuming Mafia Proportions" quoted in context below

ON THE NOMINATION OF THE ATTORNEY-GENERAL.

Mr CRAFTER: I do not think this amendment can be cast aside without at least some comment, because it is fundamental to the concept of public accountability and the Government, I believe, has erred in residing all of the authority for this tribunal in legal practitioners. There have been very cogent and strong arguments put in another place, and I believe that the defeat of this amendment will raise a great deal of criticism in the community of the Government's desire that the proper practice of the law is undertaken in this State and appears to be practised in a proper and responsible publicly accountable way. I believe that there is substantial latitude not legal practitioners, but who no doubt are other responsible members of the community who would see to it that the public interest is not only done but is seen to be done.

I look forward to receiving a positive response to my application for Public Interest Test Case Funding in which regard I also await a positive decision from the Commissioner of Taxation ; Chris Jordan who is copied on this communique

Best Regards

Andrew Garrett

From: John Mathieson [mailto:John.Mathieson@fedcourt.gov.au]
Sent: 14 September 2015 15:03
To: andrew.garrett [REDACTED]
Subject: Freedom of Information Request

UNCLASSIFIED

Dear Mr Garrett,

Further to our telephone discussions this morning, I attach copies in PDF format of my letter dated today setting out my decision and reasons in regard to your FOI request in your email sent on 17 August 2015 and the schedule of documents attached to that letter.

The original letter, schedule and a CD with electronic copies of the documents I have decided should be released to you is being posted to you today.

Yours sincerely,

John Mathieson
Deputy Registrar
Principal Registry
Federal Court of Australia
john.mathieson@fedcourt.gov.au
Phone [REDACTED]
www.fedcourt.gov.au

John Mathieson

From: John Mathieson
Sent: Thursday, 15 October 2015 11:43 AM
To: 'andrew.garrett' [REDACTED]
Subject: Request for financial assistance under the Public Interest Test Funding Scheme
Attachments: Letter to Mr Garrett- Request for Financial Assistance.pdf

UNCLASSIFIED

Dear Mr Garrett,

Please see attached letter regarding your request for financial assistance under the Public Interest Test Funding Scheme.

Regards
John

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**FEDERAL COURT OF AUSTRALIA
PRINCIPAL REGISTRY**

A.B.N. 49 110 847 399

LEVEL 16
LAW COURTS BUILDING
QUEENS SQUARE
SYDNEY NSW 2000

Your Ref:
Our Ref:

15 October 2015

Mr Andrew Garrett
[REDACTED]

By email: [REDACTED]

Dear Mr Garrett,

Request for Financial Assistance under the Public Interest Test Funding Scheme

I refer to your email dated 25 September 2015 and your request in that email for a grant of financial assistance from the Court under the Public Interest Test Funding Scheme to match the funding that the Office of the Commonwealth Attorney-General has agreed to provide to you.

As relevant to your request, the Federal Court is a legal entity for the purposes of the *Public Governance, Performance and Sustainability Act 2013* and receives appropriations through Appropriation Acts. Under the *Constitution*, the Court may commit to spend money only for the purposes for which that money was appropriated to it and which is authorised under the *Constitution* or a statute made under it (see sections 81 and 83 of the *Constitution*, *Combet v The Commonwealth* [2005] HCA 61, *Pape v Federal Commissioner of Taxation* [2009] HCA 23, *Williams v The Commonwealth* [2012] HCA 23 and *Williams v Commonwealth of Australia* (2014) HCA 23). The appropriations received by the Court are for the management of its administrative affairs and the administrative affairs of the National Native Title Tribunal only, and, in particular, it receives no money to provide financial assistance to any person or entity external to the Court for test case funding or otherwise (see section 18BB of the *Federal Court of Australia Act 1976*).

In contrast, the Attorney-General's Department receives appropriations for the provision of financial assistance for legal advice and proceedings in relation to a range of statutory and non-statutory schemes, including Commonwealth public interest and test cases, and since 1 July 2012 has managed the consideration of this funding under the *Commonwealth Guidelines for Legal Assistance 2012*. Decisions about financial assistance under those guidelines are made by the Attorney-General or his or her delegates within the Attorney-General's Department.

No funding for public interest test cases is however available or could lawfully be provided by the Federal Court to any person or entity.

Yours sincerely


John Mathieson
Deputy Registrar