

64. By reference to the matters deposed in the Thompson summary judgment affidavit it is clear that whatever may or may not have happened prior to 14 June 1991, after the black folder containing the "critical document" was handed to Mr Thompson by Counsel acting for the Council and the Water Authority there could not be and was no intentional concealment thereafter of any relevant material on the part of the Council.
65. In the context of section 27 and what must be established, it is important to note that the handing of the black folder to Mr Thompson was a voluntary act on the part of the Council and the Water Authority. The terms of settlement in the prior Tylden Road proceeding did not provide for the provision of any documents to the plaintiffs. This is not action consistent with intentional concealment, quite the opposite.
66. It is apparent that the Council's conduct in voluntarily providing to Mr Thompson the black folder containing "the critical piece of the puzzle" is not conduct evidencing a consciousness of wrongdoing or involving dishonesty or moral turpitude. From the time Mr Thompson received the black folder, he had in his possession the information required to make the claims sought to be advanced in the current proceeding. If the limitation period in respect of the tort of misfeasance in public office had not already begun to run, it certainly commenced running from 14 June 1991 (and thus expired in June 1997).
67. There is high authority for the proposition that once the relevant party has the documents, there can thereafter be no fraudulent concealment. In *Mann v Commonwealth*,⁶² the New South Wales Court of Appeal held that the service of an affidavit on the plaintiff by a defendant in a prior proceeding which listed certain documents and which stated that such documents had been disclosed to the defendant by various Commonwealth and State public servants was sufficient to inform the plaintiff of the existence of a claim against the Commonwealth and the relevant States in respect of the disclosure of those documents. Accordingly the Court of Appeal held that the time for limitation began to run from the date of service of the affidavit and not from the later date asserted by the plaintiff as being the date that he became aware of the cause of action.

⁶² New South Wales Court of Appeal, Handley, Powell and Stein JJA, 13 July 2001, unreported.