COMMUNICATIONS, ELECTRICAL, ELECTRONIC, ENERGY, INFORMATION, POSTAL, PLUMBING AND ALLIED SERVICES UNION OF AUSTRALIA & ORS v. QUEENSLAND RAIL & ANOR (B63/2013)

Writ of summons filed: 12 November 2013

Date special case referred to the Full Court: 28 July 2014

The central issue in this case is whether Queensland Rail, the first defendant, is a corporation within the meaning of s 51(xx) of the Constitution despite s 6(2) of the *Queensland Rail Transit Authority Act* 2013 (Qld) ("the Act") which provides that Queensland Rail "is not a body corporate". The plaintiffs (each of whom has members who are employees of Queensland Rail) submit that it possesses all the essential characteristics of being such a corporation. Further, the plaintiffs also contend that Queensland Rail is a trading corporation within the meaning of s 51(xx) of the Constitution as it was established to carry on a commercial enterprise, its trading activities are significant and substantial, and those trading activities are an integral part of its operations.

Prior to the commencement of the Act on 3 May 2013 Queensland Rail's operations were undertaken by Queensland Rail Limited, a government owned corporation within the meaning of the *Government Owned Corporations Act* 1993 (Qld). Various of the plaintiffs were parties to two industrial instruments with Queensland Rail Limited – the Queensland Rail Limited Traincrew Collective Workplace Agreement ("the Traincrew Agreement") made in 2009 under the *Workplace Relations Act* 1996 (Cth) and the Queensland Rail Rollingstock Agreement ("the Rollingstock Agreement") made in 2011 under the *Fair Work Australia Act* 2009 (Cth) ("the FW Act").

By the terms of the Act, the employees and assets of Queensland Rail Limited were transferred to a newly established entity, Queensland Rail, which informed the plaintiffs that, by virtue of the Act, clause 22 of the Rollingstock Agreement no longer had any effect and that the request to commence consultation pursuant to that clause was without foundation and also that the unions' request to negotiate for a new enterprise agreement to replace the Traincrew Agreement, in accordance with the FW Act, was not legally correct. The plaintiffs submit that the apparent intent of the creation of the new entity, and the provision in s 6(2) of the Act, is to remove the employees from being subject to the terms of the FW Act and industrial instruments made thereunder.

On 9 December 2013 the plaintiffs filed a s 78B notice. The Attorney-General of the Commonwealth and the Attorneys-General for the states of New South Wales, South Australia, Victoria and Western Australia have advised the Court that they will be intervening in this matter.

The questions stated in the Special Case for the opinion of the Full Court are:

1. Is the first defendant (Queensland Rail), a corporation within the meaning of s 51(xx) of the Commonwealth Constitution?

2. If so, is Queensland Rail a trading corporation within the meaning of s 51(xx) of the Commonwealth Constitution?

3. If so, does the FW Act apply to Queensland Rail and its employees by the operation of s 109 of the Constitution, to the exclusion of the Act or the *Industrial Relations Act* 1999 (Qld) or both?

4. What relief, if any, are the plaintiffs entitled to?

5. Who should pay the costs of the special case?