HIGH COURT OF AUSTRALIA

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Details of Filing

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IN THE HIGH COURT OF AUSTRALIA
HOBART REGISTRY

H2/2021

BETWEEN:

HOBART INTERNATIONAL AIRPORT PTY LTD
Appellant

and

CLARENCE CITY COUNCIL
First Respondent

THE COMMONWEALTH OF AUSTRALIA
Second Respondent

H3/2021

BETWEEN:

AUSTRALIA PACIFIC AIRPORTS (LAUNCESTON) PTY LTD
(ACN 081 578 903)
Appellant

and

NORTHERN MIDLANDS COUNCIL
First Respondent

THE COMMONWEALTH OF AUSTRALIA
Second Respondent

SUBMISSIONS OF THE FIRST RESPONDENT IN EACH APPEAL

Part I: Certification

1. These submissions are in a form suitable for publication on the internet.

Part II: Statement of Issues

2. The issues that arise in these appeals are:
   2.1. whether the first limb[1] of the privity principle operates to deny standing to the Councils, as participants in the contractual relationship of the parties, to seek declaratory relief as to the meaning of the leases;

[1] The second, that a burden cannot be imposed on a non-party, is not in issue in these appeals.

2.2. in determining whether the Councils have standing to seek such declaratory relief, does it matter that the contracting parties are not in dispute as to the meaning of their contract; and

2.3. is it necessary in these cases that the contracting parties be disputants for there to be a *'matter'* for the purposes of Chapter III of the Constitution?

Part III: Section 78B Notices

3. The notices given by the appellants are sufficient.

Part IV: Material facts in contention

4. Subject to the following additions and clarifications, the Councils agree with the appellants' statement of the facts.

5. The appellants omit to mention important background facts. At the time of privatisation of the Hobart and Launceston airports, the Federal Airports Corporation (FAC) or its tenants paid rates on an *ex gratia* basis to the Councils.[2] The payment of rates equivalents in respect of airport land pre-dates the Competition Principles Agreement of 11 April 1995: FC [12]-[13] (AB 95), and reflected longstanding Government policy.[3]

6. When the two airline policy operated, the airport terminals were leased to Qantas and Ansett.[4] The leases from an early date required the payment of sums in lieu of rates by the airline operators as tenants.[5] The inclusion of clause 26.2 in each of the leases implemented "competitive neutrality"[6] but also continued the historic policy of paying rates equivalents when the airports were under the control of the Commonwealth.

7. Between 1998 and 2013, clause 26.2 operated satisfactorily. Each council calculated the equivalent amount, gave notification to the appellants in the form of a rates notice

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[2] Phase 2 Federal Airports Hobart Airport Information Memorandum: Respondents' Joint Book of Further Material (**RFM**) 12; Phase 2 Federal Airports Launceston Airport Information Memorandum: RFM 22; Q & A Report and Response Hobart Airport: RFM 24.

[3] The FAC Policy Manual Volume 8: Property and Policy Manual dated October 1994 (extracts RFM 25-61) refers to the *"long-standing Government policy"* to make such payments and the Commonwealth's intention that the policy would continue to apply to airports under FAC control. The FAC agreed to continue the practice: RFM 60. See also RFM 54.

[4] Phase 2 Federal Airports General Information Memorandum: RFM 70-71.

[5] See: clause 5.4 of the lease between the Commonwealth of Australia and Ansett Transport Industries (Operations) Pty Ltd dated 31 December 1987 in respect of Hobart Airport: RFM 96-7; clause 5.4 of the lease between the Commonwealth and Australian National Airlines Commission: RFM 186-7; and clause 6.4 of the lease between the Commonwealth and Ansett both dated 31 December 1987 in respect of Launceston Airport: RFM 294-5.

[6] See PJ [2]-[3] (AB 11), FC [12]-[13] (AB 95).

and the amounts were paid without objection: FC [24] (AB 99). In the 2014 financial year, the Valuer-General undertook revaluations of the airports resulting in a significant increase in the capital values and assessed annual values of each. That increase was reflected in the amounts notified by the Councils. The appellants objected. Protracted disputes then arose as summarised by the FC at [25-32] (AB 98-99). The mechanism implemented by the Commonwealth in an effort to resolve the disputes, the appointment of the independent valuer and the calculation by the appellants of the rates equivalents based on the valuation, was not agreed to by the Councils and is not a methodology that clause 26.2 authorises.[7] Neither the Commonwealth nor the appellants contended before the PJ or the FC that clause 26.2 of the leases had been varied to accommodate this mechanism.

Part V: Argument

Introduction

8. The Councils frame their arguments in accordance with the tripartite inquiry identified by Gaudron and Gummow JJ in *Re McBain; Ex parte Catholic Bishops Conference* (2002) 209 CLR 372 at [62]. The appellants no longer pursue arguments that the applications for declaratory relief did not engage the jurisdiction of the Federal Court pursuant to s.39B(1A)(c) of the *Judiciary Act 1903*. The subject matter of the dispute concerns the interpretation of leases granted pursuant to s.22 of the *Airports (Transitional) Act 1996* as explained by the FC at [168-170] (AB 153-4). The right, duty or liability to be established by the declaratory relief sought is the resolution of the genuine controversy that exists between the Councils, the appellants and the Commonwealth as to the meaning of clause 26.2(a). The justiciable controversy[8] to be quelled by the exercise of federal judicial power is the dispute between the Councils, as non-party participants in the contractual mechanism, and the contracting parties. Whilst it is true that the parties to the leases are not subjectively in dispute as to the meaning of clause 26.2(a), they are disputants on the question whether the Councils have standing to seek a binding declaration as to the meaning and effect of their contract. Section 21 of the *Federal Court of Australia Act 1976* (***FCA Act***) confers an

[7] The mechanism utilised by the appellants is explained at FC [27]-[32] (AB 100-1).
[8] '*a real controversy susceptible of judicial determination*': *CGU Insurance Ltd v. Blakeley* (2016) 259 CLR 339 at [26], French CJ, Kiefel, Bell and Keane JJ (**CGU**).

entitlement to claim declaratory relief even though the Councils do not have a legal cause of action.[9] The question is whether the privity principle operates in these cases to deny standing as a limitation upon the exercise of judicial power: as explained in CGU at [25], '*other limits on 'judicial power' are encompassed by such terms as 'justiciability', 'standing' and 'incompatibility'.*

Ground One

Privity

9. The appellants' arguments do not expose for analysis the doctrinal reason for the privity rule that a third party cannot, generally, enforce a contractual promise made for its benefit. Although there is disagreement,[10] the most satisfactory justification for the principle is that it gives effect to the bargain theory of contract: a contract being a private arrangement is the bargain only of the parties to it and can only create rights and obligations as between them.[11] That justification is supported by Sir Anthony Mason,[12] Brennan J,[13] Furmston,[14] Furmston & Tolhurst[15] and Kincaid.[16] In his essay, "Privity – A Rule in Search of a Decent Burial?", Sir Anthony Mason reasoned that:

> *'The principal justification is unquestionably conceptual, arising from the bargain exchange theory of contract and the apparent attraction of the idea that only a person to whom a promise is made can sue on it. The attraction of the idea is enhanced by the simplicity of the rule and its capacity to provide a clear solution to a variety of problems. Its capacity to provide a clear solution amounts to a functional justification.'*[17]

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[9] *Ashmere Cove Pty Ltd v. Beekink (No.2)* (2007) 244 ALR 534 at [36], French J (**Ashmere Cove**) ; *CGU* at [26].
[10] JD Heydon, *Heydon on Contract,* (Thomson Reuters, 2019) at [12.30] (**Heydon on Contract**).
[11] *Printing and Numerical Registering Co v. Sampson* (1875) LR 19 Eq 462 at 465 per Jessell MR: *'...contracts where entered into freely and voluntarily shall be held sacred and shall be enforced by Courts of justice.'* See further *Chitty on Contracts,* (30th ed Thomson Reuters, 2008) at [1-001]; Seddon & Bigwood, *Cheshire & Fifoot: Law of Contract* (11th ed LexisNexis, 2017) at [27.20]; Peel, *Treitel's Law of Contract* (14th ed Sweet & Maxwell, 2015) at [1-005]; and Furmston, *Cheshire, Fifoot & Furmston's Law of Contract* (17th ed OUP, 2016) at p.571.
[12] "Privity – A Rule in Search of a Decent Burial?", Chapter 5 in P. Kincaid (ed.)*, Privity: Private Justice or Public Regulation* (Ashgate, 2001) at pp.89-92 (**Kincaid – Privity**).
[13] *Trident General Insurance Co Ltd v. McNiece Bros Pty Ltd* (1988) 165 CLR 107 at 132 (**Trident**).
[14] "Return to *Dunlop v. Selfridge*?", (1960) 23 Mod LR 373 at 376.
[15] *Privity of Contract*, OUP (2015) at [2.32] (**Furmston & Tolhurst**).
[16] "Privity and Private Justice in Contract", (1997) 12 JCL 47 at 47.
[17] *Kincaid – Privity* at p.92. At pages 91-92, he sets out other suggested justifications for the rule being: *'(1) the injustice of allowing a person to sue on a contract when that person cannot be sued on the contract; (2) the effect on the rights of contracting parties to rescind or vary their contract of a third party's right to enforce a promise made for its benefit; and (3) a lack of symmetry in allowing a third party donee to sue when the law does not give*

10. In these cases the contracting parties did not reserve for themselves the task of calculating and notifying the equivalent rate amount in each year. To be effective, their bargain requires participation by the Councils. The promise made by the appellants to *'promptly pay'* the notified amount is functionally related to the task that the parties assume will be performed by the Councils. Conformably with the objective theory of contract, there is only one correct meaning of clause 26.2(a) and only one correct method of calculation and notification as explained by the FC at [143] (AB 144-5).[18] Understood in this way, declaratory relief at the suit of the Councils does not intrude upon the private bargain of the parties; their participation is a necessary element of the bargain and that is the lens through which the privity principle falls to be viewed in these cases.

11. The FC was careful to summarise the various statements of the principle made by judges of this Court at [81] (AB 122) and properly construed at [83-86] (AB 123-4) and [88] (AB 125) the arguably broader language of the statements of Kitto J in *Wilson v. Darling Island Stevedoring & Lighterage Co Ltd* (1956) 95 CLR 43 at 80 (**Wilson**) and Deane J in *Trident* at 142-143. Its conclusion at [90] (AB 126) that suing *'on'* or *'upon'* a contract refers to direct enforcement is consistent with each of the statements at [81] (AB 122), most notably that of Barwick CJ in *Coulls v. Bagot's Executor and Trustee Company Ltd* (1967) 119 CLR 460 (**Coulls**) at 478: *'...a person not a party to a contract may not himself sue upon it so as to directly enforce its obligations.'*[19]

12. The appellants' summary of the way in which the principle has been expressed in various cases is of limited assistance. It is understandable that the privity principle has been differently expressed as often the answer to the question depends on the purpose for which it is asked. What is of greater importance is an understanding of how the justification for the principle ultimately determines its operation in particular cases. Kitto J in *Wilson* was concerned with the difficult problem of when a limitation of liability clause may operate to the benefit of a third party, which he resolved by focusing on the question of consent to and acceptance of a risk of injury.[20] He ultimately determined that the facts did not support an inference that the charterer had consented

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a gratuitous promisee a right to enforce the promise.' Of these he concludes that *'the suggestions have little weight.'*

[18] See further *Heydon on Contract* at [9.1450] and the reference to *National Bank of Sharjah v. Dellborg* [1997] EWCA Civ 2070 at p.10, Saville LJ.

[19] That statement of principle was referred to with approval in *Trident* by Brennan J at 127 and Toohey J at 165.

[20] *Wilson* at 81-82.

to negligent handling of the goods by the stevedore.[21] It is in this context that his statement of the principle as *'the elementary general rule that the only persons that are entitled to the benefits or bound by the obligations of a contract are the parties to it'*[22] is to be understood together with his later observation *'that the benefit and burden of contracts are, generally speaking, confined to the contracting parties'* which he described as *'not without qualifications'*.[23] *Wilson* was not concerned with an attempt by a third party to secure payment of a contractual benefit.[24] In *Trident*, although Deane J approved the formulation of the principle by Kitto J in *Wilson*[25], he also approved the arguably narrower formulation, suing on or upon a contract of Fullagar J in *Wilson* and Barwick CJ and Windeyer J in *Coulls*.[26] And then, having adopted the explanation of Professor Anson for the rule, put it as a *'reflection of an aspect of the nature of a contract, namely, that a contract between two or more parties does not, of itself, directly confer rights or impose liabilities upon persons who are not parties to it.'*[27]

13. *Trident* concerned an action brought by the non-party for indemnity pursuant to a public liability insurance policy for the amount of damages awarded to the injured employee, less workers compensation payments, which differs markedly from the relief sought in the present cases. The same point of distinction may be made for each of the cases relied upon by the appellants at AS [18] where the object of each action (save for the limitation of liability cases) was to directly enforce payment of a benefit at the suit of a third party. By contrast these cases raise no question of direct enforcement of the obligation to make the equivalent rates payment.[28] The FC, accordingly, correctly understood the ambit of the privity principle relevant to the relief sought in these cases as restricting a third party from suing on or upon a contract to directly enforce its obligations (FC [90] (AB 126)) which is consistent with the statement of the principle of Barwick CJ in

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[21] *Wilson* at 85-86.
[22] *Wilson* at 80.
[23] *Wilson* at 81.
[24] The particular problem in *Wilson* is now addressed by the *Carriage of Goods by Sea Act 1991* which by ss.7 and 8 applies the amended Hague Rules.
[25] *Trident* at 142.
[26] *Trident* at 142.
[27] *Trident* at 143.
[28] To the extent one or more of the declarations may have gone that far (for example paragraph 2 of the declaratory relief sought: Amended Originating Application in TAD 25 of 2018 and Amended Originating Application in TAD 27 of 2018 (PJ [15] (AB 14)), that did not justify his Honour's order to dismiss the entirety of the proceeding. One of the declarations sought, paragraph 1(d), was broadly framed as: *'Alternatively, a declaration as to how the ex-gratia payment in lieu of rates is to be calculated in accordance with clause 26.2 of the lease'*: (PJ [15] (AB 14)). The PJ made no attempt to interrogate the privity question by focusing individually upon each claim for relief.

Coulls at 478. None of the cases cited at AS [18] involved the refusal of claims for declaratory relief on the basis of the application of the privity doctrine. It follows that the arguments at AS [20] that the FC impermissibly limited the privity doctrine should be rejected.

Declaratory and Executory Relief and s.21 of the FCA Act

14. The FC did not, as contended by the appellants at AS [21], erroneously distinguish between the consequences of declaratory and executory judgments. The reasoning of the FC at [90-93] (AB 126-7) is orthodox. As French CJ has observed, extrajudicially, declaratory relief *'does not require the prior existence of a cause of action, a wrong or an injury. Importantly, it does not create rights capable of enforcement without a further order of the court.'*[29] Section 21 of the *FCA Act* confers power to *'make binding declarations of right, whether or not any consequential relief is or could be claimed'* where the court otherwise has jurisdiction: FC [62] (AB 116).[30] In *Ruhani v. Director of Police,*[31] McHugh J referenced the making of declarations as an example of the exercise of judicial power *'even though no question of 'enforcement', as such, arises.'*[32] Jurisdiction is not derived from any cause of action, but from the statutory scheme: FC [91] (AB 127).

15. The appellants' arguments pay insufficient attention to the background constitutional requirement of justiciable controversy and therefore "matter" in the exercise of federal jurisdiction. In *Pape v. Federal Commissioner of Taxation,*[33] Gummow, Crennan and Bell JJ observed: *'It is now well established that in federal jurisdiction, questions of 'standing' to seek equitable remedies such as those of declaration and injunction are*

[29] "Declarations: Homer Simpson's Remedy – Is There Anything They Cannot Do?", in Dharmananda and Papamatheos (eds), *Perspectives on Declaratory Relief,* (The Federation Press, 2009), p.26. At p.27 he sets out the distinction drawn by Zamir and Woolf between declaratory and executory orders and then observes: *'the absence of any coercive element in declaratory judgments is reflected in the difficulty of securing stay orders in relation to them.'* PW Young QC in *Declaratory Orders* (2nd ed Butterworths, 1984) at p.18 [214] says: *'The enforceability of a declaratory order is the weak spot in its armour, as there is no sanction built into declaratory relief'.*

[30] French J in *Ashmere Cove* at [36]: *'The applicants assert no legal right or any cause of action against the insurers. But the want of a legal right or a cause of action is not a bar to the grant of declaratory relief.'*

[31] (2005) 222 CLR 489.

[32] At [45].

[33] (2009) 238 CLR 1.

subsumed within the constitutional requirement of a 'matter'.'[34] The FC correctly understood this interrelationship at [67] and [72-75] (AB 117, 119-120).

16. What is obvious is that in cases where the applicant for declaratory relief has enforceable rights, other coercive remedies are open. That was so in *EB9 and 10 Pty Ltd v. The Owners of Strata Plan 934* (2018) 98 NSWLR 889 (**EB9)** and *Royal Insurance Co Ltd v. Mylius* (1926) 38 CLR 477 (**Royal**) upon which the appellants place primary reliance.

17. *EB9* and *Royal* are each examples of cases where the applicant could assert an entitlement to coercive relief based on, respectively, a proprietary interest in a strata scheme[35] and the statutory entitlement of a non-party to the benefit of an insurance policy,[36] but they do not stand for the proposition that declarations are always, or must be, enforceable. The Court of Appeal in *EB9* was concerned with whether the declaratory relief granted was akin to the statutory rights of enforcement available to the applicant lot owner and the decision needs to be understood in that context. Barrett AJA accepted in *EB9* that a plaintiff with the benefit of a binding declaration *'cannot resort to any form of execution of the declaration'*.[37] In *Royal,* the registered proprietor of the land and buildings damaged by fire was not a party to the policy of insurance but was entitled, pursuant to s.49 of the *Imperial Acts Application Act 1922* (Vic), to request payment of the proceeds of the policy as a *'person interested in or entitled to any house or other building which hereafter is burned down…'*. This Court construed that provision as conferring a right of action against the insurer and that is the context in which Isaacs J stated that every declaration of right, with liberty to apply, may be the subject of a further application to enforce it.[38]

18. At AS [24] the argument is put that declaratory relief confers an entitlement to *'seek coercive relief'* to compel the appellants to abide by the declarations. The appellants do not explain what relief of that character would look like. Upon their applications

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[34] At [152]. See further *Re McBain; Ex parte Australian Catholic Bishops Conference* (2002) 209 CLR 372 at [242-243], Hayne J; *Abebe v. Commonwealth* (1999) 197 CLR 510 at [32], Gleeson CJ and McHugh J; and *Croome v. Tasmania* (1996) 191 CLR 119 at 126, Brennan CJ, Dawson and Toohey JJ and 133, Gaudron, McHugh and Gummow JJ.

[35] In *EB9* the applicant successfully contended that the owners corporation could not exercise rights in relation to common property, in derogation of a lot owner's right to use that property. The applicant's rights in that case were derived from the statutory scheme.

[36] In *Royal*, s.49 of the *Imperials Acts Application Act 1922* (Vic) operated.

[37] At [35].

[38] *Royal* at 497.

for special leave,[39] they asserted the available relief was *'akin to specific performance'* to compel payment of any shortfall calculated amounts. That argument was not put to the PJ or to the FC. It is sufficient to expect that the Commonwealth will abide by and give effect to any declaration that the Court makes: FC [182] (AB 157).[40] Any declaratory judgment would, nevertheless, bind the appellants if subsequent proceedings were brought by the Commonwealth to enforce the terms of each lease.[41]

19. There are two primary difficulties with the coercive relief argument. One, the rule in *Tasker v. Small* [42] (that the proper parties in a suit for specific performance are the parties to the contract), consistently with the privity principle,[43] stands firmly against acceptance of it. The appellants do not point to any of the recognised exceptions to that rule in support of their arguments.[44] The other, the absence of a *'legal right'* is fatal to any claim to further coercive relief: *Smethurst v. Commissioner of the Australian Federal Police* (2020) 94 ALJR 502, Kiefel CJ, Bell and Keane JJ at [76]. Thus, no question of circumvention of the privity principle arises in these cases.

20. Turning next to the arguments that focus upon s.21 of the FCA Act, in its reconciliation of the principles the FC at [128-130] (AB 139-40) correctly understood that where there is a matter within federal jurisdiction, s.21 operates to confer power to grant only declaratory relief and the privity principle may operate as a limit on the exercise of judicial power: *CGU* at [25]. The circular reasoning arguments of the appellants at AS [25-26] misunderstand the reasoning of the FC. At FC [91] (AB 127), the Court was careful to incorporate with its reasons what it had said at [61-66] (AB 115-7) and viewed in that light it is clear that the Court understood that s.21 only operates where the Court *'is otherwise vested with jurisdiction'*: FC [62] (AB 116). The appellants do

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[39] Submissions filed 24 September 2020 at [22].

[40] *Plaintiff M 76/2013 v. Minister for Immigration, Multicultural Affairs and Citizenship* [2013] HCA 53; (2013) 251 CLR 322 at [112], Hayne J.

[41] *JN Taylor Holdings Ltd (in liq) v. Alan Bond* (1993) 59 SASR 432, King CJ at 441; *Interchase Corporation Ltd (in liq) v. FAI General Insurance Co Ltd* [2000] 2 Qd R 301, Davies JA at 309-311 cited with approval in *Ashmere Cove*, French J at [56]-[58]; *Employers Reinsurance Corporation v. Ashmere Cove Pty Ltd* (2008) 166 FCR 398, Heerey, Sackville and Siopis JJ at [66]-[71] (**Ashmere Cove (FCAFC)**).

[42] (1837) 3 My & Cr 63 at 68-9; 40 ER 848 at 850-851.

[43] *Thomson v. Richardson* (1928) 29 SR (NSW) 221 at 222-3, Harvey CJ in Eq: *'The purchaser cannot [in] a suit for specific performance join [the] third person as a party, as there is no privity whatever between the plaintiff and that third person…'.* In *Pham v. Sebie* [2015] NSWSC 745, at [2] Young AJA said of the rule that it is *'one of the cardinal rules of equity.'*

[44] Primarily, in vendor and purchaser proceedings, where the third party has taken a conveyance from the vendor with notice: *Moonking Gee v. Tahos* (1963) 63 SR (NSW) 935 and *Shaw v. Harris (No.2)* (1992) 3 Tas R 167 at 211. See further Heydon, Leeming and Turner, *Meagher, Gummow & Lehane's Equity: Doctrines and Remedies*, (5th ed LexisNexis Butterworths, 2015) at [20-255].

not now dispute that these cases engage the original jurisdiction of the Court pursuant to s.39B(1A)(c) of the *Judiciary Act 1903*. Understood in this way, it matters not that the Councils' claims to relief are *'solely referrable'*[45] to each lease; that submission overlooks the functional relationship between calculation and notification of the equivalent amount as engaging the payment obligation. There is no incursion upon the privity principle for the reason that the parties created the 'right' of participation by the Councils which is the subject matter of the declaratory relief sought. The same error is committed at AS [29-30].

Ground Two

10 21. The appellants' central argument is anchored by what May LJ said in *Meadows Indemnity Co Ltd v. The Insurance Corporation of Ireland Plc* [1989] 2 Lloyd's Rep 298 at 309 (**Meadows**) and the subsequent analysis of Nettle J in *CGU* at [92-96] in the particular application of the privity principle to declaration cases. There are several answers to it. First, if there is a matter within federal jurisdiction, questions of standing to seek declaratory relief are ordinarily subsumed within it: FC [72-75] (AB 119-20). Thus, the FC was correct at [129] (AB 139-40) that *Meadows* does not stand for the proposition that standing to seek declaratory relief is limited to the parties to the contract *'but rather that the absence of privity supports an inference that the applicant has no real or sufficient interest.'*[46]

20 22. Secondly, as explained by Nettle J in *CGU* at [96], whether an outsider has standing requires close attention to what is meant by that concept in individual cases. At [102], his Honour references the decision in *Aussie Airlines Pty Ltd v. Australian Airlines Ltd* (1996) 68 FCR 406 (**Aussie Airlines**) as an example of a case where a non-party, with a real commercial interest, has standing to seek a declaration as to the meaning of a contract to which it was not a party. The only difference between that case and these is that the FAC and Qantas were in dispute as to the meaning of a particular clause in a lease. The Councils are not outsiders to these leases for the reasons set out in answer to ground 1, and by reference to the factors identified by the FC at [151-152], [176-178] and [180-181] (AB 148, 155-6, 157) which found the ultimate conclusion at [183]

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[45] AS [28].
[46] Adopting the view of the authors of *Meagher, Gummow and Lehane's Equity: Doctrines and Remedies* (5th ed) at p.631 [19-210].

(AB 157-8) that the declaratory relief *'is of real commercial and practical interest to the Councils.'*

23. Contrary to the argument at AS [34], and as explained by the FC at [151-153] (AB 148-9), Nettle J in *CGU* at [96] focused upon the nature and quality of the applicant's interest and did not reason that all third party applicants are disqualified as *'outsiders'*. This is made clear by his Honour's reference to *Aussie Airlines* at [102] fn 120 as an exemplar of when an applicant may have standing.

24. Thirdly, the attempt to distinguish *Aussie Airlines* and *Edwards v. Santos* Ltd (2011) 242 CLR 421 (**Edwards**) at AS [38-40] is unconvincing, primarily for the reasons given by the FC at [137-138] (AB 142): the matter requirement is not determined by the contractual relationship and there may be a justiciable controversy even if the contracting parties are not disputants. The *'very different case'* submission at AS [39] fails to explain why these cases are materially different to *Aussie Airlines* save for the factual difference that the contracting parties are not subjectively in dispute as to the meaning of the contract. Indeed, these are *a fortiori* cases in that the applicant in *Aussie Airlines* was not a contractual participant of the character of the Councils. The FC was correct in its rejection of the appellants' submission at FC [136] and [150] (AB 141, 147).

25. Fourthly, the approach in *Aussie Airlines* was referred to with approval by Heydon J in *Edwards* at [38] as *'an example of how a person can have standing to obtain a declaration.'* His Honour approved of *'the real practical importance'* and *'real commercial interest'* criteria where there is a contradictor and, in consequence, a real controversy. His Honour did not identify as a necessary element that the contracting parties be disputants for the third party to have standing.[47]

26. The point of distinction identified by the appellants at AS [39], namely that the Councils will not be denied the right to operate their business absent the grant of relief, does not justify a denial of standing. The principles enunciated in both *Aussie Airlines* and *Edwards* were not expressed to be confined to the specific factual scenarios or, in the case of *Edwards*, to public rights.

27. Fifthly, the private law context submission at AS [41] fails to engage with the reasoning of the FC at [150] (AB 147-8) where the Court clearly understood the differences

[47] French CJ, Gummow, Crennan, Kiefel and Bell JJ agreed with Heydon J at [1].

between claims in public and private law but also referenced the degree of similarity of the considerations in *Aussie Airlines* with those in *Edwards*. The appellants do not explain why those considerations introduce uncertainty and denude the practical relevance of the privity principle in cases where the contract *'refers to, contemplates, or is dependent upon, the participation of a third party'*: FC [152] (AB 148). Similarly, the arguments at AS [43] downplay the importance of the Councils' contractual participation to the point of distortion. What cannot be ignored, and what the appellants fail to grapple with, is that non-party contractual participants are not *'outsiders'* upon an application for declaratory relief as to the meaning of the provision that frames the task that the contracting parties have assumed will be undertaken by the participant in accordance with their bargain.

28. Sixthly, in a series of cases in the United Kingdom, it has been accepted that the fact that an applicant is not a contracting party is not a fatal objection and that the law has *'moved on'* since *Meadows*.[48] In what has proven to be an influential judgment, albeit in dissent as to the result, Aikens LJ in *Rolls-Royce PLC v. Unite the Union*[49] set out seven summary principles that focus upon the nature and quality of the dispute and of which the fourth proposition is: *'the fact that the claimant is not a party to the relevant contract in respect of which a declaration is sought is not fatal to an application for a declaration, provided that it is directly affected by the issue.'* [50]

29. As explained in *Zamir & Woolf*,[51] those developments derive support from the alteration to the procedural rules in 1998[52] but are not solely attributable to it.[53] Two single judge decisions in the United Kingdom appear to stand against this trend where the contracting parties were not in dispute,[54] although what is clear in each case is that

[48] *Re: S* [1996] Fam. 1 at 21-22, Millett LJ; *Feetum v. Levy* [2006] Ch 585 at [81-82], Jonathan Parker LJ; *Financial Services Authority v. Rourke* [2001] EWHC 704 (Ch.), Neuberger J; *Rolls-Royce PLC v. Unite the Union* [2010] 1 WLR 318 at [119-120], Aikens LJ; *Office of Fair Trading v. Foxtons Ltd* [2010] 1 WLR 663 at [60], Waller LJ; *Milebush Properties Pty Ltd v. Tameside Metropolitan Borough Council* [2011] EWCA Civ 270 at [38-39], Mummery LJ and [69], [73] and [88], Moore-Bick LJ.
[49] [2010] 1 WLR 318.
[50] At [120].
[51] *Zamir & Woolf: The Declaratory Judgment* (4th ed Sweet & Maxwell, 2011) (**Zamir & Woolf**).
[52] Part 40.20 of the CPR 1998 reads: '*The Court may make binding declarations whether or not any other remedy is claimed'* and omits any reference to *'binding declarations of right'* which was the case pursuant to order 15, rule 16 of the RSC.
[53] The authors at [3.23] observe: *'Even before the changes introduced by the CPR, the authorities were bringing into question whether the decisions in Gouriet and Meadows had adopted an unduly restrictive view of the High Court's jurisdiction.'*
[54] *Federal Mogul Asbestos Personal Injury Trust v. Federal Mogul Ltd* [2014] EWHC 2002 (Comm) at [93-96], Eder J and *Day v. Barclays Bank PLC* [2018] EWHC (QB) 394 at [38-39], Waksman J.

the applicants lacked a sufficient interest to attract the exercise of the discretion to grant relief in any event.[55]

30. Finally, the *'windful gain'* point at AS [42] sits uncomfortably with the background facts set out in these submissions and the agreed fact before the primary judge that clause 26.2(a) was included to give effect to certain provisions of the Competition Principles Agreement and the objective of competitive neutrality: FC [3], [13] and [177] (AB 92, 95, 156). For those reasons it is plainly incorrect to contend that clause 26.2(a) was not intended to benefit the Councils.

Grounds Three and Four

31. That there must be *'some immediate right, duty or liability to be established by the determination of the Court'*[56] does not require the Councils to have a legal right, duty or liability if there is a genuine controversy. As explained by Nettle J in *CGU* at [91]: '*it is not an essential feature of a matter that the parties to a claim share correlative rights, in the sense of reciprocal rights and obligations.*'[57] The FC reasoned accordingly at [137] and [141] (AB 142, 144). The matter in these cases is the dispute between the Councils and the contracting parties which is to be quelled by the making of binding declarations: *Palmer v. Ayres* (2017) 259 CLR 478 at [27], Kiefel, Keane, Nettle and Gordon JJ and *Ainsworth v. Criminal Justice Commission* (1991) 175 CLR 564 at 582, Mason CJ, Dawson, Toohey and Gaudron JJ. The relevant distinction is between a genuine controversy and an advisory opinion.[58]

32. The controversy in these cases focuses upon how the Councils as participants in the contractual mechanism are to undertake the equivalent rates calculation. The answer obviously affects the legal obligations of the appellants. That controversy is of *'real*

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[55] In *Federal Mogul Asbestos Personal Injury Trust,* the applicant did not have a function to perform pursuant to the insurance contracts and sought declaratory relief described as indirectly conferring a right in its favour inconsistent with the contractual wording: [99]. *Day* concerned a very late application to amend that was refused for various discretionary reasons.

[56] In *Re: Judiciary and Navigation Acts* (1921) 29 CLR 257 at 265, Knox CJ, Gavan Duffy, Powers, Rich and Starke JJ.

[57] His Honour's reference is to *Truth About Motorways Pty Ltd v. Macquarie Infrastructure Management Ltd* (2000) 200 CLR 591 at [122] per Gummow J and [183] per Hayne J. To the same effect see *Re McBain; Ex parte Catholic Bishops Conference* (2002) 209 CLR 372 at [67], Gaudron and Gummow JJ, *Ashmere Cove (FCAFC)* at [50] and *Hooper v. Kirella Pty Ltd* (1999) 96 FCR 1 at [51] where the Full Court said: *'The reference to 'an immediate right, duty or liability' was used by the Court to distinguish a genuine controversy from a desire to obtain an advisory opinion from the Court divorced from such controversy. It was not intended to, and cannot be read as, denying the existence of a matter unless proceedings claiming substantive relief have been instituted.'*

[58] In *Palmer v. Ayres* at [27], reference is made with approval to the decision of the Full Court of the Federal Court in *Hooper v. Kirella* (1999) 96 FCR 1 at [51] and [55].

practical importance or is one in which the [Councils have] *a real commercial interest'*: CGU at [102], Nettle J.

33. The submission at AS [56] that the moving party *'must assert or claim some right, duty or liability'* for there to be a matter is wrong. The plurality in CGU at [42], in approving the dissenting view of Davies JA in *Interchase Corporation Ltd (in liq) v. FAI General Insurance Co Ltd,*[59] specifically rejected that requirement by focusing upon *'the reality of the plaintiff's interest which was not to be confined by a requirement that the plaintiff demonstrate a claim for vindication of an existing legal right against the insurer.'* The observation of Gaudron J in *Truth About Motorways Pty Ltd v. Macquarie Infrastructure Investment Management Ltd*[60] that the appellants emphasise at AS [56] is taken out of context. It must be read with her Honour's reasoning at [45] (*questions of 'standing'... are subsumed within the constitutional requirement of a 'matter'*) and is directed to hypothetical cases where *'absent standing'* there is no justiciable controversy. Further, her Honour's reference to the enforcement of a *'right, duty or obligation in question'* is not to be understood as a requirement that there must be reciprocity or mutuality of rights and liabilities. So much is clear from the separate reasons of Gummow J at [76-77] and [122], Hayne J at [183] and Callinan J at [203-204]. Nettle J also made that point in CGU at [85].

34. Accordingly, the FC correctly reasoned by reference to *Ashmore Cove (FCAFC)* that *'the boundaries of the justiciable controversy in that case were not confined by the contractual relationship between the parties to the insurance policy'*: FC [115] (AB 134). That conclusion is consistent with the reasoning of the plurality in CGU at [30] that identification of a justiciable controversy *'has an evaluative element.*' The reliance by the appellants at AS [52] upon cases where an insurer had not denied liability do not stand for the proposition that the absence of controversy between the contracting parties is fatal to the standing of a non-party applicant for a declaration if, as explained in *Aussie Airlines, 'for other reasons'* the applicant demonstrates a real interest, the question is not hypothetical and there is a proper contradictor.[61] The insurance cases are also readily distinguishable for the straightforward reason that the core of the controversy in these cases concerns the dispute as to the interpretation of the terms of

[59] [2000] 2 Qd R 301.
[60] (2000) 200 CLR 591 at [46].
[61] 68 FCR at 414B-E and 415E-G.

the leases (involving the obligations of the appellants) and how the Councils are to undertake the steps that are contemplated by it. By contrast, there is no relevant point of distinction to be made between this case and the factual circumstances in *Aussie Airlines*, *Ashmere Cove*, *Edwards* and *CGU*.

35. One reason that May LJ gave in *Meadows* for the conclusion that Meadows' interests were not *"vitally affected"* such as to warrant a finding that they had *locus* was that the insurer (ICI) was vigorously disputing its liability to the bank (ICB). In that circumstance, he was not satisfied that Meadows' position as reinsurer was threatened.[62] Thus, the existence of a dispute between the parties to the contract militated against standing of the third party. In *CGU*, Nettle J when referring to the statement in *Meadows* that an outsider to a contract has no standing observed at [96]: *"But that depends on what is meant by an outsider and upon the circumstances in which the parties to the contract have chosen, or been influenced, not to raise an issue"*. In these cases, the parties do not raise the interpretation question despite engagement of a new mechanism for the calculation and payment of the disputed rates equivalents which is not contemplated by clause 26.2(a). In proceeding in that way, the involvement of the Councils in the calculation and notification process has been side-stepped. The Councils' interests as participants in the lease and as recipients of the benefits of clause 26.2(a) are vitally affected.

36. The appellants are critical of how the FC analysed and applied the reasoning in *Ashmere Cove (FCAFC)* at AS [51], asserting that the circumstances in that case bear no analogy to the Councils' claims. However, the proposition that was embraced by the FC from *Ashmere Cove (FCAFC)* that a single justiciable controversy can involve a controversy involving one of the contracting parties and a third party even where the contracting parties are not in dispute was approved by the plurality in *CGU* at [43-44] and separately by Nettle J at [89-90]. Once that is understood, there is no force in the *'no analogy'* and *'critical point of distinction'* arguments of the appellants that they contend were not dealt with by the FC.

37. The appellants' final argument that some interest *'over and above'* (AS [57]) the expectation of receipt of a benefit under a contract is necessary for there to be a matter (seemingly they go so far as to contend that a statutory right must be in issue) is contrary

[62] At 309.

to the plurality reasoning in CGU at [42] and the separate reasons of Nettle J at [85] and [90-91]. In summary, it is not necessary for there to be a matter that declaratory relief must relate directly to property or legal rights or interests of the applicant. The fact that the Councils do not seek to vindicate rights of that character does not explain why determining the meaning of clause 26.2(a) lacks utility to them as participants and to the contracting parties. Conformably with the reasoning of the plurality in CGU at [41-49] and with that of Nettle J at [99-103], the FC carefully essayed a number of matters in support of its conclusion at FC [183] (AB 157-8) that the Councils have a requisite interest. Those considerations included: (a) *'The strength of connection between the third party and the subject matter of the contract'*: [151] (AB 148); (b) that the contract *'refers to, contemplates, or is dependent on, the participation of a third party'*: [152] (AB 148); (c) *'The existence of the notification mechanism'* as *'relevant to one of the core questions relevant to the question of standing'*: [176] (AB 155); (d) the Councils *'are clearly intended to be participants and (where applicable) derive benefits, under the leases'*: [177] (AB 156); (e) the Councils, by calculating and notifying the equivalent amounts are participants in the process of receiving the benefits of the contract and in that sense *'are invitees, not invaders, to the contractual relationship'*: [178] (AB 156); (f) the Councils will be assisted in negotiating with the applicants to reach agreement as contemplated by the leases: [180] (AB 157); and (g) the Councils *'also stand to potentially obtain direct financial benefits from the declaratory relief':* [181] (AB 157).

38. The arguments at AS [59-60] that seek to distinguish the public law cases should be rejected for the reason given by the FC at [150] (AB 147-8): no support is to be found in the authorities for a *'radically different'* approach.

Part VI: Notices of Contention

Exceptional Circumstances

39. Ground 5 of each appeal to the FC[63] contended that the PJ erred in failing to find that, if the privity principle operated, these cases nonetheless involved exceptional circumstances: *Meadows* at 109, May LJ; CGU at [95-96], Nettle J. It was not necessary for the FC to deal with this ground, reasoning at [153] (AB 148-9) that *'[n]or,*

[63] AB 54-55, 62-63.

in our view, is it necessarily determinative to label the circumstances of the case as 'exceptional' to warrant a third party to a contract obtaining standing' as it focused upon the quality of the interests of the Councils to determine whether they were outsiders. The error in the approach of the PJ is that he confined his analysis of exceptional circumstances to those where the source of the right claimed arises otherwise than by reason of the operation of the contract (PJ [57] (AB 25)), or where the contracting parties are in dispute as to the contractual meaning: PJ [59] (AB 25, 26). On that basis his Honour reasoned that *Aussie Airlines* *'cannot be read to effect by a side wind a radical change to principles of privity'*: PJ [60] (AB 26).

40. If the privity principle operates in that way, and in consequence the non-party lacks standing in the circumstances of these cases save in exceptional circumstances, then all relevant circumstances must logically fall for consideration. Those factors are: (a) clause 26.2 is incapable of operating unless the Councils calculate and notify the equivalent amount correctly; (b) the contracting parties must be taken to have assumed that the Councils would proceed to calculate the equivalent amounts in accordance with the objective meaning of their contract; (c) the contacting parties did not dispute the notified amounts until the Valuer-General undertook a revaluation with effect from the 2013/2014 financial year; (d) protracted disputes then arose; (e) the Commonwealth in particular, and each Lessee, actively engaged with the Councils in an attempt to resolve the disputes; (f) no agreement was reached; (g) the appellants paid, with the consent of the Commonwealth, amounts that they chose to calculate in accordance with a methodology not provided for in the leases; (h) the contracting parties are disputants on the question whether the Councils have standing; (i) the leases have 27 years left to operate with an additional 49 year option; and (j) once the correct meaning of clause 26.2 is settled, it is likely that the appellants and the Councils will each be assisted in negotiations to enter into the agreement that clause 26.2 contemplates.

41. Upon a proper analysis, the primary judge ought to have concluded that these factors were not only capable of, but did amount to, exceptional circumstances.

Confining Privity

42. There is very considerable judicial,[64] academic[65] and Law Reform body[66] criticism to the effect that the privity principle fails to give effect to the expectations of the contracting parties. The issue in these appeals is now unlikely to arise, in consequence of legislative reform, in Queensland,[67] Western Australia,[68] the Northern Territory,[69] New Zealand,[70] England or Wales,[71] Scotland,[72] Singapore[73] and Hong Kong.[74] The reason is that third parties may, subject to compliance with the statutory requirements, enforce promises made for their benefit by direct action.

43. In the United States, since the decision of the New York Court of Appeal in *Lawrence v. Fox* in 1859,[75] the common law was set upon a different pathway and is now to the effect that an intended beneficiary of a contractual promise has an enforcement right.[76] In Canada, the privity rule applies but has been the subject of considerable judicial

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[64] For example: *Trident* at 116-123 per Mason CJ and Wilson J and 163-170 per Toohey J; *Olsson v. Dyson* (1970) 120 CLR 365 at 393, Windeyer J; *Beswick v. Beswick* [1968] AC 58 at 72 per Lord Reid; *Swain v. The Law Society* [1983] 1 AC 598 at 611 per Lord Diplock and *Darlington Borough Council v. Wiltshire Northern Ltd* [1995] 1 WLR 68 at 76 per Steyn LJ. For a more complete survey see Furmston & Tolhurst at [2.07-2.10].

[65] For example: Flannigan, "Privity – The End of an Era (Error)", (1987) 103 LQR 565; Furmston, "Return to *Dunlop v. Selfridge*", (1960) 23 Mod LR 373; Furmston & Tolhurst at [2.07-2.25] and [8.01-8.13]; Mason A, "Privity – A Rule in Search of a Decent Burial?"*, Kincaid - Privity* from p.88; and the list of articles in Chesire, Fifoot, & Furmston's, Law of Contract (17th ed OUP) at p. 585-587.

[66] Law Revision Committee, *Sixth Interim Report (Statute of Frauds and the Doctrine of Consideration)*, May 1937; The Law Commission, *Privity of Contract: Contracts for the Benefit of Third Parties*, July 1996; Queensland Law Report Commission, Report No. 16 (February 1973) with respect to clause 55 of a bill to consolidate, amend and reform the law relating to conveyancing, property and contract; New Zealand Contracts and Commercial Law Reform Committee, *Privity of Contract* (May 1981); The Law Reform Commission of Hong Kong report: *Privity of Contract* (September 2005); Law Reform Commission, Republic of Ireland Report, *Privity of Contract and Third Party Rights* (February 2008).

[67] *Property Law Act 1974* (Qld), s.55.

[68] *Property Law Act 1969* (WA), s.11.

[69] *Law of Property Act 2000* (NT), s.56.

[70] *Contracts (Privity) Act 1982* (NZ), s.4.

[71] *Contracts (Rights of Third Parties) Act 1999 ss. 1 and 2*.

[72] *Contract (Third Party Rights) (Scotland) Act 2017, ss. 1 and 2.* The issue dealt with in that Act differs from England and Wales in that the privity principle did not operate if the third party was sufficiently identified and if the contracting parties had by express provision conferred an enforcement right which was unalterable. The common law position in Scotland is discussed in the report by the Scottish Law Commission: *Review of Contract Law Report on Third Party Rights* (July 2016) at [2.1-2.49].

[73] *Contracts (Rights of Third Parties) Act 2001 (Singapore) s.2*.

[74] *Contracts (Rights of Third Parties) Ordinance (2016) (HK), ss. 4 and 5.*

[75] 20 NY 268 (1859).

[76] Restatement (2d) of Contracts (1981), §304: *'a promise in a contract creates a duty in the promisor to any intended beneficiary to perform the promise, and the intended beneficiary may enforce the duty'.* See also the analysis in Furmston & Tolhurst at [1.27-1.28] and Calamari & Perillo, *The Law of Contracts* (4th ed West Group, 1998) at [17.1-17.4].

limitation in consequence of the decision of the Supreme Court in *London Drugs Ltd v. Kuehn & Nagel International Ltd*[77] by creating principled exceptions to the rule.[78]

44. In *Trident*, Mason CJ and Wilson J observed that the rule, where it survives, has *'been under siege throughout the common law world'*.[79] Toohey J was more strident: the rule *'is based on shaky foundations and, in its widest form, lacks support both in logic or in jurisprudence.'*[80] Similarly, Steyn LJ in *Darlington Borough Council v. Wiltshire Northern Ltd*[81] stated: '*..there is no doctrinal, logical or policy reason why the law should deny effectiveness to a contract to the benefit of a third party where that is the expressed intention of the parties.'*[82]

10 45. The appellants' arguments offer no explanation to justify the broadly framed statement of the privity principle that they contend this Court should accept as dispositive of these appeals. It should not, on their arguments, be confined to actions *'on'* or *'upon'* a contract so as to directly enforce an obligation. At AS [19-20] the appellants appear to frame the principle as extending to deny standing to any claim to a benefit or right *'in relation to a contract'* so as to include, within that *'ambit'*, applications for declaratory relief of the type in question. That cuts across the reasoning in *CGU* and the principle should not be framed in that way. The justification that Sir Anthony Mason advanced for the privity principle should be accepted. It:

> *'...gives expression to the notion that the legal conception of a contract is that*
20 *it is a bargain between the parties to it and that it creates rights and obligations only as between the parties to it. The rule rests primarily on a legal conception rather than on any functional or policy consideration, the legal conception itself embracing the idea that a person who makes a promise is accountable at law to the person to whom it is made and not to anyone else.'*[83]

46. Here the parties created a participation 'right', although one that is not enforceable. Recognising the standing of the Councils in these cases does not, therefore, intrude upon the contractual freedom of the parties as explained by Professor Furmston, albeit

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[77] [1992] 3 SCR 299; (1992) 97 DLR (4th) 261.
[78] For an analysis see Ogilvie, "Re-defining Privity of Contract: *Brown v. Belleville (City)*", (2015) Alberta LR 731; Furmston & Tolhurst at [9.27-9.32].
[79] At 116.
[80] At 168.
[81] [1995] 1 WLR 68.
[82] At 76.
[83] "Privity – A Rule in Search of a Decent Burial?", *Kincaid - Privity* at p.90.

in the context of reform of the privity rule: *'the fundamental principle underlying the reform is that of party autonomy: the parties should be free to create a right by contract in other parties if they want to do so'.*[84] Accordingly, the FC was correct to reason at [92] (AB 127) that the declaratory relief in these cases *'does not necessarily raise a question as to the application'* of the doctrine. That is because the Court correctly understood the doctrine as limited to third party claims *'on'* or *'upon'* a contract which seek direct enforcement: FC [88-91] (AB 125-7).

47. If the principle is confined in that way, no harm is done to the bargain theory in a claim for declaratory relief by a non-party participant. The accountability of the appellants to the Commonwealth to make the payment is directly related to the invitation that the contracts extend to the Councils. Accordingly, there is no tension between the doctrinal justification for the privity principle and acceptance that the Councils are not deprived of standing simply because they are non-parties. In that circumstance the privity principle and the fact that the parties are not disputants is relevant to discretion, not standing, on the broader question of sufficient interest. The FC was correct to so confine the privity principle and to proceed in that way at FC [128-131] (AB 139-40). This Court should confirm that approach.

Part VII: Estimate of Time

48. It is estimated that 1 hour will be required for presentation of the oral arguments of the Councils.

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[84] *Cheshire, Fifoot, & Furmston's Law of Contract* (17th ed OUP, 2016) at 571.

ANNEXURE A

LIST OF CONSTITUTIONAL PROVISIONS, STATUTES AND STAUTORY INSTRUMENTS REFERRED TO IN THE SUBMISSIONS

Constitutional provisions

Nil

Statutes

Federal Court of Australia Act 1976, s. 21 – current version
Judiciary Act 1903, s. 39B (1A)(c) – current version
Airports (Transitional) Act 1996, s. 22 – current version
Imperial Acts Application Act 1922 (Vic), s. 49 as at October 1926 – as enacted
Property Law Act 1974 (Qld), s.55 – current version
Property Law Act 1969 (WA), s.11 – current version
Law of Property Act 2000 (NT), s.56 – current version
Contracts (Privity) Act 1982 (NZ), s.4 – current version
Contracts (Rights of Third Parties) Act 1999 (UK), ss. 1 and 2
Contracts (Third Party Rights) Scotland Act 2017, ss. 1 and 2 – current version
Contract (Rights of Third Parties) Act 2001 (Singapore), s. 2
Contracts (Rights of Third Parties) Ordinance (2016) (HK), ss. 4 and 5 – current version

Statutory instruments

Rules of the Supreme Court 1965 (UK), O15 Rule 16 – as at 25 April 1999
Civil Procedure Rules 1998 (UK), Rule 40.20 – current version